Kings Bench, Montreal.

Civil Pleas.

October Term 1817.

February Term. 1818.

October Term 1817.

Wednesday 1st Oct.

Present
The Ch. Justice, &
Mr J. Reid —.

Meers. Curtis } On mo. for hearing on merits —
Stuart for Dfdt. adduces an affidavit to shew sickness of Dfdt — unable to attend to the cause, but consents that cause be tried in 4th inst —

Ogden & Sherwood for Pltff contend that cause cannot be delayed, as sickness of Dfdt. is no sufficient cause to delay cause — the affidavit insufficient — too much delay already granted to Dfdt — under form affidavits — the absence of a witness not sworn to —

Stuart in reply — the party has been prevented by the act of God from doing diligence to get any witnesses

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On Petition of Jos. Royer de Latour & Marie Charlotte Deamotte his wife widow of late Henry Belisle —

To obtain a new election of a Tutor to children of late Henry Belisle, and to set aside the appointment of as their tutor, from irregularity in the appointment —

Rolland for Tutor of Children, proposes an Intervod for a new appointment — insists however that the widow was called to the assembly — & also denies all the facts stated in the petition —

Vigé for Petr — contends that a written answer should be given in to the Petn for the regularity & certainty of the proceedings —

—

Ratel & Corbin

Rolland for Defdr moves that the return of the cause in garantie be joined to the original cause —

Bourré for Plff — the Defdr did not obtain any order for calling in his Gart — & did not proceed in the usual delay, nor has he pleaded in the Cause — he is in default — & Plff cannot now be delayed wt a Garant irregularly brot into the Cause — The original cause was returned on the 6th June last & no delay[illegible] done by Defdr during that Term. —

Gagnon v. Bourassa } On Pltff's mo. for continuance of Enquete on the 7th inst —

Etu v. Etu } Same motion. —

Smith v. Aylwin & Perrault opp. } On mo. of the Oppost. that a certain act of partage filed by Doucet a notary on giving his evidence in the Cause, be rejected art. 234. Cout. p. 367. tom. 1. No. 1 to 10 —

Rolland for Pltff, the point raised by the motion regards the merits —

Park v. Stuart } On Defts. mo. for contn. of Enquete on first Wn. day in vacation

Borton for Pltff, objects to the right of Defts. to adduce any Wn. as they were not called & their names inscribed on the diary on the last Wn. day

Grant for Defts. — the names of Wn. are inscribed on Enquete book. —

Platt v. Brooks } On Pltff's mo. for contn. of Enquete in vacation — rescinded —

Jones v. Henderson } On Pltff. mo. for contn. of Enquete —

The Deft. objected to diligence done by Pltff. during last Vac. —

Boston for Pltff — offer to [illegible] the Subpoena & service —

Nobles v. Monjeau } on mo. for contn. of enquete —

Ross for Pltff — only one Wt. to ex — & Deft. to cross ex. then to close his evidence —

Bedard for Deft — has a no. of Ws. to ex. — & it ought to go to vacation —

Hammond v. Wilson } on Deft. mo. for contn. of Enquete

Boston for Pltff — Deft. not entitled to it, as the names of Ws. are not mentd. on role —

Stuart in ansr. — the names of Ws. are inscribed —

Latour v. Ducharme } On Deft. mo. to ex. Pltff on faits & articles on 7th — objected that all proceedings should be stopped till the record be compleated —

Gearn
vs
Meredien
&
Papineau

On Defendts motion for security for costs -

—

Bowman
vs
Gauvin

On Defendt mo. that the cause should be declared perié & dismissed from want of proceeding, under reg. Prac. Sec. 24 - cite cases. Adhemar v. Carrigal - and Cuvillier v. McDonald.

Stuart for Plff, cites cases differently adjudged in the Court of appeals - & contends that the application be made for a hearing is more consistent with Justice.

Ross. in reply - denies the point to have been adjudged in appeals -

Hedden
vs
Hart.

On hearing on law issue

Ogilvie for Defdt - objects to sufficiency of the first Count in declaration, as it is not stated that any demand had been previously made upon the maker of the note before suing the indorser cites. Promissory Note act. Sec. 4 -

Ogden for Plff - Declaration suffe without stating that a protest was made -

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Mitchell
&
Clerke and
Cross

On rule to shew Cause why Exon shd not issue on Judgt

Sherwood of Counsel for Defts. Cross moved that he should be permitted to put in a written plea to the action — and stated that he could not be enabled to use his reasoning in the Court of Appeals —

Ross for Plff — The mo. is contrary to the rules of practice. Sec. 21. No 14 — and has been frequently refused —

2d. Oct. Sherwood in support of his motion further stated that he has matters of importance to ~~state~~ allege — namely the Cause originated 7 years ago — the Exon issued out has not been returned —

Thursday 2. Oct. 1817.

Meers v. Curtis — The Court under the circumstances of the Case gave delay to the Defend. until the 7th inst. to adduce his witnesses.—

Ratel v. Corbin — The Defendants motion granted, but without retarding the pltff from proceeding in the Cause against the Defend. in the same manner as he the Pltff would have been entitled under the rules of practice, had not the said motion been granted.

Gagnon v. Bourassa — Mo. granted for the Vacation:—

Etu v. Etu — Do ——— do ——— do —

Smith v. Taylor et al. & Perrault opp. — The Court reserved to determine upon the motion until the parties shall have been heard upon the merits, inasmuches the question agitated by the said motion regards the merits.—

8 5.

Park
v.
Stuart
& contra

Mo. granted for the vacation

Platt
v.
Books

Same Judgt

Nobles
v.
Morjeau

Same Judgt

Hammond
v.
Wilson

Same Judgt

Bowman
vs
Gauvin

The Plaintiffs motion granted upon payt to Defendt of 25/. costs on the rule issued out by him to shew Cause why action shd not be stayed.

Roi
v.
Trudelle

Interlocr.

Gordon
Surv. gen.
vs
Mendell

Judgt for Pltff

Bedard
~
Delagrave } Judgt

Jones.
~
Henderson } The mo. granted, as the point regarded
a question of Jurisdiction. —

On Petition
of Royerstorfe } An order for proof.

The Counsel for the Petr stated that it had
been the practice for the parties to state their answer
or defence on the Petition in writing, and submitted
that the parties should be held to do so in this case
but the Court considered the proceeding here to be
of a summary nature, and as the person shewn
cause had not stated any ground for such written
answer nor demanded permission to make his
answer in that way, the Court declined to direct
any written proceedings being made —

M'donald
~
Doré — } on Pltff's mo. to discharge the Sp. bail
entd into by Defendt the same having been
so entered into without notice to the Pltff. &
without leave of the Court. —

The Defts. stated that bail was given in open
Court with the knowledge of Pltff. and afterwards upon
the

motion of the counsel for Defts the Court directed that all proceedings in the cause should be staid until the Pltff had given security for Costs, and thereupon this motion cannot be heard. —

Mitchell
vs
Cross et al } Motion rejected —

Gaignon
vs
Bautron
et al } on Pltffs mo. for trial by Jury —
Ross for Defendts stated that the action is not triable by a Jury, the injury complained of not being for a tort personal to the Pltff.

O'Sullivan for Pltff, this is a case of quasi-delictum a wrong done to the person of the Pltff, which is within the words & spirit of the Order —

Armarin qer
vs
Raizenne } action for defamation
Trial by Special Jury. —

Jos Brazeau — is a bailiff of this Court and served a copy of the notice now shewn to Defendt in person —

does not read English, nor understand it — when the paper was presented to him he refused to make any certificate thereon, but upon being told that it was the same as the paper he had served on Defendt — he made his Certificate on it, but cannot ~~say~~, whether the paper he so served was the same or not as that now shewn

Lo Levesque and S. W. Monk } to prove hand writing of Jas Grant the attorney of the pltff to the notice produced. —

Mr Bedard objected to the producing of the paper and reading same to the Jury, as the name of the attorney prosecuting ~~has~~ is not ~~been~~ indorsed upon it —

The Court directed that the paper shd be read before the objection shd be adjudged upon that the Court might see whether it were a sufficient notice or not — It was read.

Mr Ross of counsel for the Defendt. now reiterates the objection to the insufficiency of the indorsement on the Notice —

Stuart for Pltff, all the essentials req. by the Statute are found in the Notice. — It is not said

said that a notice wanting the formality stated shall not be read in evidence—

The Court held that the notice was insuffᵗ and that this Stat. has always been liberally interpreted in favor of the Justice. Defendᵗ

The Pltff then contended that he ought to be permitted to go on with the Cause as the Defendᵗ. in his individual capacity.

Ogden
vs
Taylor

Pluff demands Indt—

Jassemin
vs
Simpson

On Defts mo. for security for Costs—
Rolland for Pluff— It is stated in the declaration that Pluff is resident in the Province, and the allegation that he is living out of the Province, cannot be set forward by motion, but ought to have been pleaded by way of exception à la forme.
Boston for Defts. contends that the course of proceeding is by motion & not by pleadings—

Friday 3d October 1817—

Grignon
vs
Bautron

The mo for a trial by Jury granted

Leprohon
vs
Patenaude

on rule to shew Cause why a new Execution shall not issue &c—
Bedard for Defendt. prays that he might be permitted to plead in writing to the Rule, as the rights

rights of the Defend^r. and also of another person from whom he holds a discharge for the debt, are implicated M^r Rolland for Plff consents that Defend^t be allowed to plead in writing —

On Petition of Jos. Royer & wife — —

M^r Rolland for Tutor files an admission that the mother of the Children & two of the relations were not notified to attend when he was appointed and consents that a new election be had & submits to the Judgment of the Court. —

Latour v Duchesne

On Plff^s mo. to suspend proceedings until a certain exhibit filed in the Cause shall have been produced and the Record completed —

Stuart in answ^r the objection has been already settled by the opinion given by the Court in regard of this exhibit that as soon as any question arose touching the same proceedings then only shall be suspended —

Sauvé
vs
Viret

On defts. mo. for time to plead.—

Osullivan for Pltff. states that Defendt. is in contempt of this Court by having taken possession of the property in question after service of a copy of the Judgt. of this Court touching the property—

Thayer
vs
Percival

On trial by Special Jury—
action for £24.12.6—on promy. Note—
Verdict for Pltff

Buckston
vs
Lacombe

action for damages, for trespass & breaking
Pltff.

Xavier Lacombe
Amable Martin dit Barnabé
Jos: Lariviere
Jos. Piché—

Verdict. for Defts

Pratt
vs
Talon

On Defts mo. for enquête—
The Pltff says parties at issue only last Vacation
& ought not to be driven to a hearing at instance of Defts—
who does not suffer, as he is in poss. of the boat (

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Poirrier
&
Proctor

On Defds. mo. to cont. enquete for the exam. of Jos. Siné –

Stuart for Plff, no diligence to procure the attend. of Siné in Sept. as the enquête was cont. from Augt. to Sept. –

Ross for Defds. The Wr. was absent from Augt & had not ret. in Sept. –

—

Pothier
&
Fouchers
al. —

On question of proving by writ a copie collationnée of an act produced in the Cause.

Bedard for Plff: the question submitted to Mr. Franchere is whether the copy filed in the Cause & collationné by Mr Guy Lanothen Notary has been compared by the Witness with the original will & if it be a true copy –

Vigé for Defds. P. Not. Act. Lw. q. ch. 14. Depot an act. of Depot cannot be proved by Wit. –

Bedard in ans. In case the original be ordered to be taken from the record on the objection raised by the Defendants, the proof of a compared copy ought

in

in that Case to be admitted. —
Poth. Dou. Tut. p. 300 —

Saturday 4th October 1817.

Poirrier
vs
Proctor } The defend. mo. granted. —

McDonald
Doré } On Defend. mo. to quash the process
from irregularity —

Vigé for Defd.

1. No indorsement on the writ, conformably to the rules of practice — there being a diff. between sum in the decln & that indorsed on the writ

2. The copy of the declaration served on the Defend. is not conformable to the Original —

Grant for Pltff.

The sum stated in the affidavit is indorsed on the writ, it is not necessary to state sum mand. in the Decln on the back of the writ. —

The irregularities in the copy of the decln ought to be taken advantage of by a plea of Variance —

That the rules of practice require that every objection of this kind ought to be made on return day of writ. —

Belanger v. Desforges — } Ogden cites case Burk v Scott — Feby. Term 1817, where the mo. for quashing the writ from irregularity not having been made on the return day of the writ, the mo. was rejected —

Vigé in answer. the Defendts mo. to stay proceedings until security for Costs shd be given, precluded the possibility of making the present motion —

Morin v Morin } action for establishing an alimentary allowance to a bastard child of Defendt —

Rolland for Pltff — the Court has the means of settling the amount of the allowance from the evidence adduced —

Bourré for Defdt — The Defdt has already provided sufficient for the child & offered to take the Child and support him — at all events the allowance to be made by the Court ought to be moderate, as the Defd. is a poor man —

Poitras
v
Fereau
&

action en Complainte.—

Rolland for Pltff— The Pltff has made out his poss^n— the evidence adduced by Defd^r. consists in a title pf— was given to him by the pltff, but in it there is a reserve of that possession & enjoyment, which the Defend^r. has interrupted — The other evidence adduced shews that the Defd^r. had not taken any possession under the pf title a deed of Donation made to him beyond what he had done before, as he lived in the house of the ~~Deft~~ Pltff having been brot. up by ~~Defdr~~ him

Rollin for Defd^r— By the donation the usufruit is reserved by the Pltff of a certain part only of the property, but is given up to Defend^r. also in part The Pltff about 4 months after don. left house and Defend^r in poss. of it, pf— shews that Defend^r was in the peaceable poss. of the property — That a donation in view of marriage does not require acceptation, being considered in the most favorable light by the Law — cites. 1 Ricc. 194 Ferr. V^o acceptation. p. 15

Vigé if counsel for Defd^r— The donation made by Pltff was confirmed by marriage Contract of same date — The Pltff having about 4 months after left the Defend^r. in possession, shews a legal upht in Defd^r

to

20)

to hold that possession —

Rolland for Pltff in reply — the Pltff's temporary absence from his house did not warrant the Defts taking possession of what was never intended to be given him by the Donation — the Pltff coming to Montreal was not abandoning the poss. he held in the house, & the refusal of Defts to give up that poss. was an infringement of the Pltff's possession —

—

Richardson
vs
Bouchard

Action en complainte —

Ogden for Pltff — contends that proof is sufficient to depose of Moreau —

Beaubien for Deft — the proof not sufft. the wood cut not being on waste lands, but on granted lands — That one Pominault & Co. is in poss. for 10 years past — That Moreau is not interested in the Suit — not have ordered the Stakes to be cut upon the land in question

Ogden in reply — The P. Verbal can make no proof it is not authentique, nor is it in the name of Pominault

Lepprohon
&
Marié

On Rule Nisi - upon Execution -

Bedard for Defdt - the rule not regularly
served on Defendt - being after 8 o'Clock at
night -

Beauchamps
&
Contant -

On Defendt mo. to reject the depos.
of one Etienne Chaput a Witness for
the Pltff

Stuart for Defdt - action upon an award, the
dep. of Chaput was to prove a consent of the Defdt
to a submission of the point in dispute to arbitrators
this point should be decided upon the hearing on the
merits - The consent of Defendt was to the nomination
of Mr Panet as a Tiers arbitre - acting jointly with
the other Experts altho' they had not differed in
opinion -

McRoland for Pltff contends that testimony of the
Wn does not go to any consent or agreement - but merely
to the fact of the parties being notified of the sitting of
Mr Panet, as Tiers Arbitre -

Aylwin v. Cuvillier } On Rule for Defend.t to shew Cause why Defend.t should not be contraint par Corps for hav.g resisted the seizure of his effects —

Beaubien for Defend.t prays ~~delay~~ leave to put his reasons in writing in answer to rule — because, the Defend.t means to alledge that he is a member of Parl.t & not liable to the Contrainte — further that the return of the Sheriff cannot bind the rights of the Defend.t — that the s.d return is false —

The Court directed the answer to be put in writing —

Clement v. Bone — } On Evocation —
Quest. whether the evocation ought to be admitted

Joubert v. Laing & al & Divers opp.ts } On Judg.t of Distribution —
Stuart for Opp.t — The proceeding irregular, as no demand stands before the Court to award any thing in favor of the heirs of the Pl.ff

Monday 6th Oct. 1817

Hedden v. Hart } K Judgt.

Pothier v. Foucher } 4 Judt. on question proposed to W. rejects same —

Burton v. ~~Mc...~~ Roi } 4 Judgt. in favor of Pltff; under evidence adduced —

Lafrance v. Rousseau } 4 action dismissed —

Roi v. Leishman } action dismissed —

Beauchamp v. Content } the deposition of Chaput rejected —

Hedden v. Taylor } Inv

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M^r Intire
M^c Donald } Just^d

Dupré
Richard } H Just^t for Plff — survenance d'Enfans —

Lepine
Desjardins } H Just^t on moyens. —

Requete de
Jos. Roger } Cert of Tabelle set aside & new election appointed —

Audaire
v^s Gastonguay
& Dumouchelle
& Dickson } Just^t. Plff to pay costs — from want of a previous demand —

Leprohon
& Marié } Objections to service of rule rejected —

M^c donald
& Doré } Objections Depts mo. rejected as to costs

Chevrier
Lat. — vs —
St. Julien } H

Judgt —

Bridge
& Penn
vs
Heyndux }

On Pltff — mo — for faits & art. on Defendts

Sherwood for Defendt — 1. By laws of England the faits & art. cannot be admitted —

The Prov. St. of 25 · King introduces rule of evidence as established in England, being a commercial Cause —

2. The wife cannot be admitted to give evidence agt her husband — Lett. book. 6. 2 Str. 1094

O'Sullivan. cites case of Munn v. Johnson — in April last — when faits & art — were granted in a similar Case —

Delaronde
vs
Forsyth & al } action for a malicious prosecution Trial by Sp. Jury —

Louis Leveque — proves the process sued out by the Defendt. agt. the Pltff in Aug. 1809 — & also Judgt discharging Pltff from that arrest —

G. O. Radford — proves imprisonm.t — from Aug.t to Oct.r —

Lo. Brisbois — his deposition taken in vacation read —

Paul Robillard — voyageur — went —

Jn Bt. Dubois — voyageur — went up to Shebisco for the late Denis Laronde in 1807 — but W. was the guide —

~~Hyacinthe Janvé~~.

David David — has kn. Plff & his brother — That since the death of Denis Laronde, the Plff has done business w.th him in his trade to the Up. Country — did not understand that Denis was a partner w.t Plff — that Denis only took a part of his equippm.t from W. — That Plff was put in Gaol at suit of Deft. — was obliged to send to the Upp. Country to get down property to put into the hands of the W. to bail him —

Proves handwriting of Plff to Exhib. No. 1. filed by Deft.

Hyacinthe Janvé — — went up to Shebascon w.t canoe load of goods &c —

Pre. Bellair

Marie Lse Kirz widow of the late Denis Lavoude who died in 1808 — the deceased purchased goods on his own acct. and sold them to the Pltff —

It was objected to the produc? this Witness that being the Sister in Law of the Pltff she could not be heard in the Cause — The Pltff contended that as the facts he meant to prove were facts of a commercial nature, he ought to be admitted to prove them by this Wn — altho' the action was for damages — That the action for damages arose out of transactions of a commercial ~~transaction~~ nature & without this kind of proof, an evident injury might be done to Pltff

The Court admitted Wn

John McKay — — to prove the receipt of Pettis —

Henry Forrest — Do —

Alexr. Henry — auctioneer

Wm McKay — as to opinion of Indians —

M. De Lotbiniere — Pltff's family character —

Isaac Coon. That 20 a 25 years he ~~heard~~ understood from the Pltff this Witness Nat Hay ~~knew~~ in partnership for one year — heard it was dissolved at end of that year — never saw any public notice of that dissolution. —

Defence

Touss^t. Pothier, being produced, was objected to – as an interested W^s he having been one of the Pl^ffs. in the Suit at which the Pl^ff was arrested. –

Peake 144 Stuart for Def^d: the W^s is not interested – his declaration to that effect is suff^t – one of several trespassers can be a Wit^s – for the others, even where several are indicted for perjury on several bills of Ind^t they may be heard for each other – W^s was exam^d –

Was agent of the Mich^l. C^o – in 1807 – was at Machinac in that year – directed that goods to be made up to M^r Delaronde – & to be intrusted to M^r Delacroix – the invoice now produced is the Invoice of those goods – the Pl^ff stud at his post – was informed that in future he w^d be – supplied by the Mack. C^o instead of the House of McGill & C^o – –

W^m. M^c.Gillivray – was a Partner in the Mackinac C^o & it was stipulated that the Individuals composing that concern sh^d not in future purchase goods on their own private acc^t. but on acc^t of the general concern –

Henry Forrest was Clerk to the Mack. C^o the order now produced was handed to him in July 1807 by M^r McG^v W^y. to be forwarded to Pl^ff – That M^r

Mr. M'Gill called on Mr to enquire if he had rec'd. the 2d. order, saying that since the Coalition he could not supply them — the Mr made up the goods the Invoice of — of. amount. to £466 — — That the exh. No 2 is a true copy from the books of — ant= of the Makenia Co. — — The goods were made up by Mr. & forwarded to Pluff at Grand Lac. —

Charles Reeves — one of the Jurors — swear that two of — ants. No 5. & 6 — from books — error in No 5 credit is Jany. 1809 — instead of Augt. 1809.

Evidence closed —

Objected that the arrest had not been proved, nor that the Capias had ever been delivd to the Sheriff

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Tuesday 7th October 1817. –

Smith – v. Curilliersal & Curillier oppt.

On oppt's mo. for a con Reg –

Rolland – for Pltff – oppⁿ. too late – not within four days after joining issue –

Beaubien for Oppt – there were matters of law to be heard & determined, & upon that the Cause was under consideration since last term – That mo. is also to ex. Pltff on faits & art. which will have the effect of suspending the Cause till next Term

Armour v. Judson

On mo. to ex. Defdt on faits & art –

Beaubien for Defd – parties not at issue Deft has not yet pleaded, & therefore mo. for faits & articles is premature –

O'Sullivan for Pltff – contended that by rules of practice he is entitled to have the faits & articles en tout etat de Cause. –

The Court granted motion – see Letté v. Deschaillets. 2 Feby. 1815 –

Wednesday 8th October 1817

Witness-day.

Thursday 9th Oct.

Smith. v. Cuvillier et al v. Cuvillier oppt } H

Mo. for Com. Rog. granted — the Court holds, that where there were matters of law pleaded which required the previous opinion of the Court, the Com. Rog. for the ex. of Witnesses could be applied for after such opinion given, although after the four days marked by the rules of Practice after the Issue was joined

Bridge & Penn v. Flyn & ux — } H The Pltff. mo. granted — see notes —

Tavernier v. Cuvillier & Smith v. Cuvillier } Judgt. on mo. of Smith, subrogating him in the room of Tavernier for the sale of Lands

Bridge et al v. Namur } On Pltff. mo to reject certain parts of Defends. plea as irregular —

Vigé for Defd. Defend. has pleaded a matter qt. & an exception peremptoire to Pltff. action, that Defdt had terme for payt. – The other plea of payt. is also an exception to Pltff. action –

Bender v. Foucher }

On Pltff. mo. for faits & articles –

Ross for Defdt – there is a plea of prescription which must be first decided before party can be examined on faits & articles –

Beaubien for Pltff – alleges that Defend. has acknowledged the debt within the year & day –

Pearson v. Newell }

On Pltff's mo. that faits & art. should be declared confessed –

Ogden for Defd. – The Pltff has not annexed a copy of the papers to which he refers & requires the Defend. to answer – therefore Interrogy not complete refers to cases so adjudged in Feby term last –

Bolton for Pltff – The cases alluded to by Defdt were different cases – here Defdt. has pleaded – & the papers referred to are some of the exhibits filed by the Defdt. –

Beauchamps
&
Content — } On action to recover the amount of an award made between the parties —

Rolland for Pltff. The sentence arbitrale was rendered by three persons, the tiers being acceded to by the parties — This proved by the subsequent consent of the Defendt — in complying wt a part of the sentence arbitrale — cite Rep. Vo acquiescement p. 132. Poth. Obl. No 11. chon Jugée — p 362. 8vo Lacomb. Vo compromis. No 2. Dec. Dmit. Vo acquiescement. 1 Cours. d'Andr p. 45 — Lloyd on awards. p. 322. Rep. Vo compromis. p. 315 — Id. Vo arbitrage 548 — The 2 arb. have a right to name a third without the consent of the parties — Pltff cause favorable Jouse adv. Justice Cuvillier — arbitrage —

Stuart for Defdt — There is no legal evidence of the award — it is a sous seing privé, and not proved regularly. the depositions of Lavoie, Lavergne & Seguin, ought to be rejected — as being grounded upon leading questions — but if the depositions stand, yet the evidence not sufficient, as the Arbs do not say, that they saw the arbitrators write & sign —

Poth. No 785.

That award is a nullity by having been made by persons incompetent to make it — No authority given to

to Parnt- as Tiers arbitre, as there appt. to be no difference in opinion between the arbitrators named —

The acquiescement can cure want of form only, but not what was absolutely void — being a thing which cannot be confirmed — Poth. Chon jugée No 17 heavy a nullity for want of power in the Judge. No 35 — The retractation des experts can be considered as an — acquiescement only to that part of the sentence of the arbitrators — but other parts are not thereby acquiesced in — N. Denist. Vo acquiescement — where there are different & distinct heads of contest adjudged upon — The payt. by Defend. of a sum of money exceeding 100th. cannot be considered as an acquiescement in the sentence by the Defts as verbal evidence cannot be admitted to establish this fact — That the acquiescent was made under error by Defts therefore not binding Repre. Vo acquiescement. p. 32

Rolland in reply — The proof of Sentence arbitrale is suffte — There was no objection made to the question by Defend — The acquiet. covers even the defaut de pouvoir of arbitres, as stated in the authority from Lacombe The Court must presume that there was a difference of opinion or a suffte. Cause for naming the Tiers arbitre this has been acknowledged by the Defend in submitting to their Judgment — That even putting aside Mr Parnt allegation

altogether, still the sentence of the two arbitrators named by the parties still remains — acquiescent cures even want of Jurisdiction — N° 17. Poth. Chon Lugie — When the party condemned does not mean to conform to the Sentence of the arbitrators, he must protest agt. it to save his right —

—

Lanctot
vs
Fontaine

action for part of lot of land sold by Plff to Defd —

Ross for Defd — The Plff not entitled to recover as land is not within the Designation of Lanquent as stated in his deeds — Defd has made improvements which he is liable to lose by being turned out of poss. by the true proprietor — Defd has set up an Incidental demand for those improvements —

Lacroix for Plff — action is well founded, — the Incidental demand is made by one Lamoureux, who is not before the Court — There is no proof in support of the Plea — the fact alleged by Defd. have not been made — Plff has objected to the testimony of ~~the Mess.~~ ~~Lamoureux~~ who is an interested Wr on the Cause ~~so much so~~ that Lamoureux & not Defd. appears to be the person making the improvements and the

Court

cannot give any Judt. in his favor, even if the Incidental demand had been proved —

Courselles v. Guilmore } action ~~to establish a cours d'eau~~ for goods sold by Pltff to brother of Defdt. of whom he is heir —

Beaubien for Defdt. The Pltff has not made proof of his demand — nor of any work done or anything furnished by Pltff to late Arthur Gilmore since 17 March 1812, when the parties settled acct. The wit. cannot speak to the year — The Oblig. given by Defdt.'s late brother on the settlemt. of acct. has been paid in consequence of a Judt. agt. him —

Lacroix for Pltff — the wits. prove that the fournitures was made to late Arthur Gilmore after the settlemt. of acct. & therefore Pltff entitled to his serment suppletoire

Brunet v. Legault } action to establish a cours d'eau —

Lacroix for Pltff — Parties are neighbours & by proof made the Pltff entitled to the remedy he applies for —

Stuart

Stuart for Defts. The Propr. of inferior land has no action agt. the Propr. of the superior land unless there has been labour employed to direct the course of the water upon the Inferior Land —

That Decln is insuffte — & the plea made to it by Defd. will still apply — no suffte. allegation there are no conclusions adapted to that part of the demand pt. could be maintained, namely that act if the Defndt. in obstructing the free course of the water — There is no proof of the fact that the digue in question was made by Defndts — The faits & art, do not shew the identity of the lands mentd. in the declaration —

Lacroix in reply — The Court by dismissg the exceptions pleaded to the action, admitted the relevancy of the demand, if proved — The proof is made out as well by Wt as by a Sentce of the Inferior Court between the same parties —

Ferguson
Millaud } On motion to surrender the body of the principal debtor, in discharge of the present action upon payt. of Costs —

Stuart for Defdrs The action so far founded

as to preclude Defts objecting to the regularity of the demand — The present application is addressed to the equity of the Court & agreeable to the practice in England — 1 Tidd. 148. The power of this Court without precedent in England can afford this to give relief to the party according to the original intention of the obligation — To show that Courts in England have entered into this equitable construction cites 1 Raym. 156. after 2d Scire facias — the form here is not by Scire facias as the bail, but by an action — that when an action has been ~~past action~~ brot and dis cont. the delay of 8 days granted under the Rule established in Queen Anne's time only counts from the last action — cites — 7. T. Rep. 356.7 — 8 T. Rep. 422 — H. Bl. Rep. 118 — 6. Mod. Rep. 133 — and by rules of practice of this Court, the delay has been so extended up to the very time of Judt. as the bail to the Sheriff, and the same principle ought to apply in this case when D. Judt became Def. bail —

1 Ray 156

7. 356.7
8 T.R 422
H B. 118
6 Mod. 133

Boston for Pltff — The surrender cannot now be made, not being made within the time limited by the Provt. Order of 1785 — Hunt v. Cop. Burr. Rep

Rep. 3 Vol. — When the surrender must be made before return of non est inventus by the Sheriff on the Ca. Sa —

Ross for Plff — as counsel — The surrender must be made within the time prescribed by the Ord. of 1785 — The Sp. bail given five years ago — this action brot — one year ago, during all of time no offer to surrender — if no time be considered as fixed in this Cause for surrender Sp. bail is a mere name, as such surrender can be made even after Judt. & upon all the bail thereunder —

Stuart in reply — altho' the Ord. of 1785 says that the bail may surrender the debtor within a certain Specific period, but nothing is said in that Ord. that a Surrender after this period shall not, nor cannot be made, on the contrary it is consistent with the principles of the Law of this Country that if a party do not perform what he has undertaken or is bound to do within a limited time, yet Courts of Justice will after such default give a further day ex gratia to comply wt. the terms of the original agreement — agreeable to this principle

in

in England after the forfeiture is incurred yet relief is given by the Courts upon motion by allowing the surrender — this equitable power being thus admitted, how can it be applied in this Country — no time is fixed here, the parties must apply to the equity & discretion of the Court, in England the time has been fixed to 8 days after the return of the writ of Ca Sa and when such rule shall be settled by the practice here, the parties will be bound by it but till such rule be made there is no other rule but the equitable jurisdiction of this Court —

Perreault
vs
Hidden

Jugt to be given for one half demand as Hidden wd full Costs —

Roi
vs
Bourdon

Exception withdrawn —

Shuter Exp
v
Jones

Excep. - That Pltff. is not resident in Montreal as stated in the declaration but resides in England -

Stuart for Pltff - Demurrs to exception - The momentary absence of the Pltff does not alter his domicile - settled in case of M'Donald v M'Leod & others - It is not denied by Deft that the domicile of Pltff has been altered -

Ogden for Deft - The fact of the domicile has been always sought to proved -

Bechard
v
Perrault

An Exception - submitted to Court nothing said.

Turgeon
v
Lefevre

Action upon 2 notes -

Rolland for Deft - objection to 2d note for £10 proof not sufficient by Pltff - Note has been paid - Chapleau undertook to pay it - this note produced from 1809 when he purchd the land upon which the rent was due -

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Lawis for Pltff – The admission by Defnd ought to condemn him – The debt for rent in 1809 and Chaplain was bound to begin to pay in 1810

—

Leprohon & Marié } On rule to shew cause why execution shd not be granted to Pltff –
On Defnd's application to plead in virtue of the rule –

—

Leprohon & Patenaude } On Rule Nisi. for new Exon –

Bedard for Defd – The Defd. made an assignment of his property to James Finlay on behalf of his Creditors, who on the atty of the Pltff gave Defnd a discharge from the debt now claimed which he owed to Pltff –

Hart
Winter

On Plff's mo. to reject the exceptions filed by Defendt as express no special ground but being general —

Boston for Defdt — the exception not good but grounds stated.

Philips
v
Conant

On defendts mo. to reject two depositions filed in the Cause —

Boston for Defdt — The depts were taken before the Cause was returned into Court, & the Defdt thereby deprived of every means to cross-examine them —

Stuart for Plff — The Witss were examined under the Prov. ordr of 1785. —

Marion
v
Doré

On rule to shew Cause why Rule for enquete on the 13 shd not be discharged and a Com. Rog. granted to the Defdt returnable the first day of next Term —

The Plff contends that affdt not sufft & if discharged ought to be at costs of Defdt

Friday 10th October. 1817.

Pearson vs Newell } Pltff. mo. granted; as Defd had appd. & pleaded —

Hart & Winter. } The matter pleaded considered as a bar to the Pltff action, in toto — mo rejected —

on mo. to hearing ex parte —

Drean vs Dawson } Sherwood — The other Counts have reference to P. Not. [see 1 Bur. 371.] not evidence on the Counts — Court cannot consider it otherwise —

Bridge del vs Warner, } The pleadings filed by the Defendt. considered as pleads. to exhibits and argumentative matter therefore Pltffs mo. to reject it, granted —

Shuter vs Jones — } Order for proof on the exception —

The counsel for the Pltff, contended that a different opinion had been held in the Court of Appeals on this matter, considering the residence of the party as immaterial, the domicile being the only plea necessary under the Code Civil to be stated —

Smith
vs
Cuvillier
&
Mrs Cuvillier
Oppt

On hearing on opposition of Mrs Cuvillier — & on motion to reject the acte of partage ~~filed by~~ produced in evidence by Pltff —

Beauboin for Oppt — contends that all the effects acquired by Oppt. since the Judgt. of the 20 Oct 1810 — those effects have been seized & Oppt. is entitled to claim them —

Cc. Com. ~~195~~ art. 234. ~~p 195~~ p. 307. Sepn. to be reckoned from day of Judt — when followed up —

Rolland for Pltff — The separation in this case is null — as obt'd without enquête. 1 Dupless 432. ch. 2. sec. 2. only proof was the acte — & attornoyement between Cuvillier & his Creditors which does not shew that the Dot of Oppt. was in danger —

That the Renunciation was not followed up nor produced in Court until Febr. 1817. — nor was the Judt. of Sep. executed as the law requires — 1. Bourg. 605. No. 4. — 1. Dupl. 433. — Poth. Comte 518. 519. — & 523. — 2 Pigeau 194. 195 — 2 Argou 213. — Lacombe Vo

separation No 8.— There is no proof of the execution of this Instrt. nor any diligence on it.—

There is no proof of any separation, the parties live together, & the presumption is that the property is the husband's 1 Pigeau. 617 — proof of separate property — 1 Duplessis. 433.— 2 Pigeau 197.— The property not identified as belonging to the Oppt—

Beaubien in answr The Instrt. of separation was pronounced avec connoissance de cause — and the evidence upon wh the Instrt. was rendered cannot now be looked into, and if it could, it is sufft.— There is now no question touching the property of the Community wh subt. between the parties, but which has been acquired since the separation —

The authorities cited as to the non-execution of the Instrt. do not apply, as the Oppt. does not claim any rights under that Instrt. art. 224. Dom. 18. Claus 2. p 183 — Renon. was equivalent to execution of Instrt — as it liberates her from the debts of the Comty

That Instrt. of sep. is final between the parties — nothing remained to be done but-Making the Renonciation wh was done — That it was unnecessary for the

Oppt

Oppt. to proceed to ascertain her rights under the Sepn — as she had not to ascertain, & hence, there remained no property upon which she could exercise such right — Cp. Com. 224. p. 195 —

That the insinuation of the Rem. is not necessary nor required by law — That as it appears that the moveables of the Defdt. were seized sold, all further proceedings after them by Oppt. became unnecessary — and as to Dbt the Oppt. had none to claim, & was not thereby bound to institute any demand for what she would not obtain

That the proof after acquisition of the moveables by the Oppt. is sufficiently made out — It is proved that she gave public notice of her entering upon business on her own acct — & on her own responsibility, and that she carried on trade in this way — the purchases by her made were upon her account — It does not vary the case that the Defdt. continued to live with her — She has sufficiently proved that the effects seized are her separate property —

Rolland in reply — No proof that any of the articles seized, was purchased by the Oppt. on her account — That every renunciation ought to be made public, if the parties mean

to

to follow it up, and intimate to the world the separation which has been obtained — The want of execution of the Instr. is proof of collusion between the parties — That to ascertain that Defendt had no moveable property, there must have been a proces Verbal de Carence. —

M. Pherson
v
Jones — .
&
Jones Oppt

On the opposition of Wm Jones Defendr en Cause —

Grant for Oppt — The land sold by Pltff to Oppt is mortgaged to the amount of Debt claimed by Pltff, and therefore the Exton shd be staid —

Boston for Pltff — This cannot be rec.d as an Oppn to the Instr. is too late, he ought to have pleaded this to the action, but cannot be received by way of opposition. —

Wilson
v
Clarke

On mo. of ~~Pltff~~ Defde to obtain a Comn Rogr to ex. Witnesses in England. —

Stuart for Pltff. the affidavit grounds the application is too general, his saying that he acted as an agent, the Defd. does not deny having rec'd the goods for q. he is sued.

—

Lebert
&
Mathurin

Action for loans rent &c.
on Exceptions pleaded by the Defend.

Roi for Defd. — the demand for Dequestrat is primature, as the day at q. the dequestr was to be made had not arrived at the time the proces was sued out —

—

Raymond
&
Metras

action for rente & pension viagere

Roi for Defd. — The Defd. was not put en demeure before institut. the action and it appears that the Defd. offered the objets due as soon as he knew of the demand

Vigé for Pltff. — No previous demeure necessary where action is hypothecair, & Defd. bound without any demand —

50)

Marot
vs
Monplaisir

On Defdts mo that the alimentary allowance granted by the order of this Court of the be paid to him without Security, from the inability of the Defend. to procure such Security—

Stuart for Defendt The Court does not possess the power of granting such an order

—

Aylwin
vs
Cuvillier

On mo. of Plff to shew Cause why Defdt should not be contrainct par corps, for having opposed the seizure of his effects—

Stuart— The return of the Sheriff, upon certain certificates made to him by one Geo. Barnard, a bailiff — which is not sufficient to ground this application.—

That Defendt is exempted by reason of his privilege as a member of the House of Assembly, is not liable to arrest in any case except for a breach of the peace—

That

That same principle, as of public law must extend to Memb. of H. A. here as would apply to Memb. of Parl.t in England, the reason of the thing being the same, — That there appears no charge of the Defend.t here of having committed any breach of the peace

That even if the Sheriff had returned that of his own knowledge the Defr. opposed the sale of his effects, yet Defr. wd. not upon that proof alone be liable to any arrest, no such power being allowed by law to the Sheriff — nor does the words of the law grant such power to the Sheriff, there must be due proof of the fact stated in the return more particularly where the liberty of the subject is in question — It is therefore necessary that the parties ought to go to proof before any Judgt. can be given. —

Rolland for Pltff — The return of the Sheriff is sufficient, & must be taken to be true, if it is not the party can have his action agt. the Sheriff. — There is no proof of the Defendants privilege before the Court

In England there is no privilege for an Escape nor for a Contempt — Com. Dig. Vo Prerog. The practice is to grant such motions upon the return of the Sheriff alone without other proof —

—

Lacombe
v
Buckston
&
Buckston
Intervr Appt

Or Intervention of John Buckston ~~Opposition claiming the effects seized~~ — and exception taken thereto by the Pltff.

Ross for Pltff — the Intervention is insufficient as no Indgt can be given on it, the party claiming a part of the effects without specifying the part —

Roi for Intervening party, contends that the Intervention is sufficient —

Saturday 11th October 1817.—

Wilson & Clarke } Mo. for Com. Roy. granted.—

Mezieu & Pastens } On Plff's mo. for arbitrators being named Rolland for Plff — cites. Poth. Soc. Nre Rep. Ve Société —

Sherwood for Defdt — The action here is that the Defendt has refused to comply wt his contract to wh the Defdt has ans. that he was always ready to do. This not a point for arbitration an amicable arbitre is diffte from one ordered by the Court — in the first instance they act as amiables compositeurs, but in the latter case they must act according to the rules of Law

Rolland for the Plff, the plea of the Defendt justifies the application — but the action is not merely that objects of contest be referred to arbitrs but the injury sustained by Plff is stated and the whole referred to the Judt of the Court — and the only question is whether we shall proceed to examine the facts before the Court or send the parties before the Arbitrators according to their covenants —

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Drean
vs
Dawsons

The Plff rs. rejected. —

Legault
Leduc.

action petitoire —

Viger for Plff — The Defend. has pleaded several points, but that in issue upon qr. the parties now proceed is that by qr. the Defend. claims the property of the piece of land in question as being part of an Island which belongs to him — the only point to be ascertained is whether such Island exists or not — The Plff contends that there is no such Island, nor proof of it, unless from the contradictory ~~reports~~ reasonings of Mr Grey, who on his second report says that there is such Island — this report and the deposition of Mr Dezery are the only grounds upon qr. Defd. rests his defence — Dezery in some measure interested — is Surv.r & granted the Concess.n of the Islands to the Defs. upon qr the contents runs, & is called to explain his own deed — The Surveyors united in the first report which contains a true statement of facts but in the second report he refused to unite, and made a separate report — in qr he took up a reasoning in favor of the Defend.rs —

Bedard for Defend.rs — complains of the irregularity of the first report as having been signed by Mr Grey in

q.

of the Surveyors by surprise practised upon him by the other Surveyor Sinè — by this report the whole object in dispute is included as being a part of the Plff's land — The objection agt the first report was that the Interlocutory Judgt of the Court had not been executed, and upon this it was set aside — and the Defr alledges that it has not yet been executed — The Plff has refused to shew the boundaries of the land so as to enable the Surveyors ~~from~~ to ascertaining the true extent of it — this is the reason that this part of the Interlocutory has not yet been executed, and yet the defendr contends must yet be executed before Judgt be given — The affidavit of Mr Papineau shews that the Islands in question were not comprehended in his P.V. of bornage — The title of the Defendr is anterior to this P.V. and his property thereby respected by the Surveyor — There is no proof of any act of trespass by the Defendr on the land in question The evidence before the Surveyors does not support the Plaintiffs title — The plan of Mr Gury & of Mr Papineau shew that the land in question is an Island —

Moves to reject the affidavit of Mr Sinet —

Nigé in reply — The case is ripe for Judgt and the point in issue is the property of the land in question —

Lapierre dal vs Forsyth } On Exceptions — noths said —

Pothier vs Mathe } action for arrears of Rente Constituée and also to make a division Wall between their respective properties in the St. L. Sub.—

Bedard for Plff — The offers made by Defr are insuffr as he did not offer to pay the Costs & also interest up to the time of making the tender — The Plff is entitled to a wall fence by art. 209. of Coutume

Pigé for Defr — contends that he has made a suffr tender, as to interest none can be allowed for arrears of a constitut — That many parts of the Cout. de Paris were never in force in this Country, refers to Guyot on his treatise of the laws of the Country — That the ordr of 1774 permits the builds in Wood in the Suburbs — & by the evidence adduced the Custom of the Country in regard of division fences —

Bedard in answer — That the 209e art: of the Custom of Paris was in force at the time of passing the St. 14 Geo. 3. ch. and now makes the law of the Country — No usage can avail agt a positive law

No 704

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Pierson
v
Newell

action by Indorsee agt. maker of a Promy Note —

Ogden for Defdt — Pltff has not proved the indorsment of the note to him by the Payee — the deposition states name in full of William W. Gage, the indorst — states no such name — The Defendt has shewn by note he has produced that he has paid the amount to the original payee &c — by the law of Vermont he is entitled set off. agt the demand made by Payee —

Boston for Pltff — The debts are not mutual and cannot be set off agt each other Montague on Bill — Aft — 1. Chitty on ~~Plead~~ Bills 148 Bull. N. P. 275. Bailey on bills. 142. The indorsment on the bill is proved — the Wn speaks to the signature to the Indorsment — The Defendt has not proved that the Gage whose note he sets off is the same man from whom the Pltff got his note —

1 Chitty 129

58)

Mc. Crae.
vs
Tobacco
&
Goodsell claimt

On claim of Goodsell for horses seized.—

O'Sullivan for Claimt— The Inform.n charges the horses to have been illegally imported into the Province — there is no such law, the St. on wh. the Seizure is made is 35. Geo. 3. ch. 6 — prohibits the importation of the tobacco, but not of the horses, unless it had been charged that these horses had been instrumental in bringing in the tobacco —

St. 35. Geo ch. 6.

The claimants are common Carriers, and as they were unacquainted wt. the articles they were hired to carry, they are entitled to the indulgence of the Court as they were in good faith. — refers to the testimony of the Witnesses adduced by the claimant. —

Ross for the Inform.t contends that the Information is correct, & that the horses & Sleds were illegally imported into the Province, and refers to the evidence to shew it — Refers to the evidence to shew that the claimts were in bad faith

M^c Crae
v.
Tobacco
&
M^c Callum
claim^t

On claim of M^c Callum for a Skiff seized by the prosecut^r with certain quantity of the tobacco —

O'Sullivan for the Claim^ts the Store of the claim^ts was broke open & the tobacco taken out and put on board the Skiff and brot into this Province & found on board the Skiff in question

Ross for Informt^r the transaction is a concealed mode adopted for imports the tobacco. — the proceeds sold by consent.

—

Charles
v.
Bangs

Action by Indorsee agt Defd^t. as maker of a Promissory Note —

Ogden for Defd^t. Note indorsed long after due, and was P^d. before indorsed to person who indorsed it — refers also to the Law of Vermont — where Note was made —

Boston for Pl^ff. The testimony of Mack does not prove the pay^t of the Note —

Meloche dux &
Monsciau }

On action hypothecaire —

Peltier for Deft— The lot of land in question is mortgaged to the dower of the Pltffs wife who was wife of Pre Haille

1. Pigeau. 591— Is entitled to use same defence as the person from whom he purchased —

2 Cout. 246 p. 121. That the lot of land being the propre of the former husband, is in a more particular manner bound for the Dower— The dower of the Children is attached upon this property — & Deft— cannot safely pay the demand —

Lacroix— There is other property on which the dower is secured—

Lanoutz vs Thibault }

Action on a Promissy note endorsed to Pltff on Except—

Grant for Deft— not shewn that note was ever indorsed to Pltff— Chitty 529— form —

McMillan for Pltff— The transfer is sufficiently stated —

Court

№ 714

Pierson
Newell } action by Indorse of a Promissory Note
ag.t the Dep.t maker —

Borton for Plff — an Inod.t demand founded on a note w.ch he purchased after the action was brot — but debt must be due at time action was brot — Mont. Litt Mf. p. 17.
Poth. Ob. №238. 239. 3.d T. R. 182. Evans. v. Pom — No demand made for payt — at the place when it was payable — at the house of the maker —
Bailey on bills p. 96 —

Ogden for Defd — The note upon wch the Incidental demand is founded was due when the plea was filed, which is sufficient to maintain the Incidental demand — Demand at place when note made not necessary as ag.t Plff who is the maker of the note, only necessary when the action is ag.t the Indorser —

Monday 13th October 1817.—

Sauvé
v
Viret

On Sheriff's mo. for evidence to morrow
over-ruled.—

Tuesday 14. October

Witness-day—

Wednesday 15th Oct. 1817

Mezzin
v
Paslew

4

Mo. granted.—

M.Pherson
Jones
&
Jones

Appeal dismissed—

Brennt
v
Legault.

Interlocutory, naming Expert—

Sylvain
v
Cuvillier

Order that the Sheriff do make a
sheriff's return to the writ of Error—

Pourrier
v.
Proctor.

On mo. to file 2 pces. of written evidence
before the cause be considered as closed
upon to case of McKenzie et al. v. Beaubien

Ross for Defend.— The Pltff. had closed his evidence
in last vacation, and is now too late to make
his present application — the evidence has also been
closed by the Defendt — The acts to be filed were at
all times in the poss. of the party ought to have been
produced at time he filed his replication at latest —

Smart in reply — It is never too late to file any
auxiliary evidence in support of the demand not
referred to in the declaration, at any time before the
evidence is closed —

Bridge & Penn
v.
David Hyndman

On trial by Special Jury. —
action of assumpsit for goods sold.

The Pltffs having closed their evidence, the Defendants
offered to prove a paper in evidence purporting to be a receipt
for the Pltff's demand — It was objected to this that the paper
had not been filed &c. the Plea could not be given in evidence
as the rules of Prac. req. — p. 24 — The Defend. on the contrary
insisted that

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Leprohon
vs
Marston

action for goods sold &c

Rolland for Plff – evidence made out by Clk
The Defdt examined on facts admits sale, but says
he has paid them – relies upon the other evidence –

Bender – The confession of Defendt cannot be divided –
the action is for goods sold about fifteen years ago and
therefore the stat. of limitations will take effect – which the
Defendt has specially alledged –

Rolland for Plff – The

Lebeau
&
Bergeron

action of debt on deed of sale –

Bourré for Plff – The defence that the Defdt was
not bound to pay by reason of the incumbrance by reason
of Plffs wifes Dower –

Stuart for Defdt offers to pay the money on giving
security for the Dower of Plffs wife, for qch it is mortgaged

Bourré in answer – the Plffs wife has signed the
deed, therefore no such security necessary –

Stuart the parties must first go to proof – in
the State of the cause as it now stands —

Sauvé
vs
McDonald

action of damages for Trespass —
Stuart for Defdt — The evidence not sufft
to maintain the action —

Bertrand
&
~~Abbaire~~
Fontaine

action to rescind a deed of sale —
Bender for Plff, — action ground upon two
principles — Demens — & Lesion d'outre
moitié — cites Lamy vs Beaumont in 1794
20 Jun — Gobb. v. Hérigault — The evidence
for Plff is clear —

Quesnel for Defdt The interdiction not
having been made according to Law, could not
affect the Defdt — nor can it have a retroactive
effect —

The interdiction is informal — the wife cannot
prosecute the interdiction of her husband — cites —
The Plff ought to have been authorized to proceed to
the interdiction by the Judge, before proceeding to take
the opinion of the relations —

2°. That the answers of Adarmier, are such that he
ought not to be interdicted —

3. That the interdiction if at all to have effect
ought to be considered as made for cause of prodigality

66)

4. The Wt produced, not of a character to warrant the effect of the evidence they are called to give —

5. The evidence for the Defendt is shows to shew that the Pl. Marmier is not an imbecil, except when he gets drunk, qr. is not a question before the Court & as to the Lesion d'outre moitié — The buyer has no such action, it is given to the Seller only — cites — Rep.re de Jur. Vo Lesion — Poth. Vente. Nr. 373 — There are no offers to return the thing sold, qr according to Pothier must be made to support the action — The proof of the Lesion is not made out —

Bender in answer — The sufficiency of the Interdiction cannot be set up to this action — cites Bertrand v. Major

—

Lepailleur
Marmier } action on Pet of Sale — for balce of money due on Sale —

Bender for Defendt — pleads the incapacity of the Defendt to contract from mental imbecility — refers to the evidence adduced —

Lacombe
Buxton
&
Buxton
Intervs

Ore Exceptions pleaded to the sufficiency of the Intervention—

Roi for the Inter^{rs} Party contends that the Intervention is sufficient in all its parts and it is not requisite that he should have stated in his Intervention from whom he purchased the goods he now claims, whether from the Defend^{r} or from any other person— That fraud cannot be presumed, the parties must prove it—

Ross for Plff. The Intervs party has stated a title which is vicious, & under it he claims a part of the effects without stating, what part, this is insufficient as Party cannot go to evidence upon it—

Douglas
v
Lanctot

action for goods sold & deliv^{d}—

Grant for Plff— claims Jud^{t} on evidence adduced— The answers of the Defend^{r} to the Interrogatories ought to be divided, because contradictory to the other evidence The Defd^{r} says that he rec^{d} the money on acct of rent which was then due, whereas there is proof of the payt 1. Pigeau. p. 248. — Serpillon. 704.

Ross for Dfd^{t} The Defend^{r} answer ought perhaps to have been, devoit, instead of, "qu'il me devoit alors" but at all events the answers of Defd^{r} cannot be divided

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Ermatinger et al
vs
Perrault

On hearing on exceptions filed by Defts
action as assignees of R. Armour et al—

Stuart for Defend. action stated to be by assignees of the Estate and effects of Armour & Co, but not stated to be the assignees of a Bankrupts, as this would give all the actions of the Bankrupt would have had, but assignees of the estate & effects, generally, without stating that those effects & estate are vested as a bankrupt estate, as otherwise the assignt. ought state specifically the debts & effects assigned as under a particular title.—

Ogden for Plffs. The Declaration states suffts to entitle them to maintain their action—

—

Lotbiniere
vs
Bourdon

action for Lods & Ventes & Cens & rentes—

Stuart for Defd. on exceptions to the sufficy of the declr. — the action is personal & hypothecary, and the conclusions are irregular, — as he prays that the Defts do pay by abandoning the land — a thing incomprehensible

—

Cardinal
vs
Daubrexilles

action Exception withdrawn —

—

Dodge
v.
Pickle

Action for tobacco sold.

Stuart for Defd. The evidence is insufficient to support the demand, objects to the legality & sufficiency of the Verbal testimony adduced by Pltff. 1. Case not a Commercial one - & that not so proved - not sufficient to state parties as merchants, it must be proved, otherwise the general rule of law must apply - under the ancient laws of the Country - the Court cannot presume the parties to be traders - and therefore no legal evidence before the Court - 2. That if the parties can be consd. as Merchants a great part of the evidence adduced must fail even according to the Laws of England - refers to St. of Frauds &perj.- there being no delivery of the article at the time, nor any memorandum in writing made at the time - There is an admission proved of Defendts having rec. 26 kegs of tobacco - nothing ascertained of the weight or price of these kegs. Court can give no decn. on this evidence - The other 30 kegs, no proof of -, except the admission of one Barlow, who is no party to this suit - & Defd. cannot be bound by such evidence -

Boston for Pltff - contends that evidence is sufft - refers to a written order given to Pltff by Defd - to deliver tobacco to one Barlow -, and to the other facts proved - 1. Str. Montague. v. Maxwell. p. 240.

Dutelle
vs
Pastorius.

action for the board & lodging of certain minor children—

Rollaud for Pltff. the monies of the minors have been in the hands of the Defend. for these last two years and therefore Pltff is entitled to have it—notwithstanding

Beaubien for Defend— The Pltff not entitled to more than the Interest of the minors property,— owes only one year's interest— That Pltff ought to pay costs as his demand exceeds much that Demand, she now offers to accept the offer made by the Defend—

Bender
vs
Foucher

On rule obt. by Defend— to shew Cause why certain Interrogs— proposed by the Pltff to the Defend— shd. not be suppressed, namely, the 3. 4. 5. 6. 8. 9. 10 11.—

Ross for Defts— action for medical assistance &c in 1801, to this Defts. has pleaded prescription— The Pltff in this case has only the serment decisoire of the Defts— see art. 225. Art. Comb. Glose unique N. 4.— As to the new undertaking the party may be exam. upon Interrogs

then

these the Defendant admits but no more, the Plff cannot go into any fact touching the nature of the debt or the original obligation of the Defendt - until he shall have established a new undertaking, if he makes out no new undertaking. the Defendt is bound to answer only on his Serment decisoire -

Beaubien for Plff - The Defendt being in contempt is not entitled to make this motion - The action of Plff altho' not instituted within the year is not destroyed, the only diffce when action is not brot within the year he cannot prove his demand by his own oath, but must ask the oath of the adversary.

On the Plffs mo. that the faits & articles be declared confessed & saved as Dfdt. did not appear to answer -

Ross in answer to said motion, it was prematur to make a 2e motion in the Cause until the preceding motion shd be determined; it was therefore irregular sought to be dismissed

Thursday 16th October 1817

Lacombe v Buxton & Buxton } Order for proof

=

Poirier v Proctor } Mo. for filing written evidence rejected —

In this Cause the Pltff moved to examine the Defendt on faits & articles —

Ross for Deft — The Pltff moved last vac. to ex. the Deft. on faits & art — but this was waived by not havg been made on the first day of Term —

Wheeler v Winter } on Pltff's mo. to proceed ex parte. —

Boston for Defdt — no Judgt. on his rule to shew Cause why Process shd. not be quashed. —

Grant for Pltff — The Defdt. did no diligence on his rule on the day fixed, when Deft. did not attend —

Roi
vs
Vincent } on question of Interest on Judt. of Distribution of it ought to be granted beyond the day of Decret.

Deligny
vs
Moreau } On Exception of mis nomer —

Bourré for Pltff — The exception is ill founded There is no variance alledged between writ & Declaration —

Lacroix in answer — the variance stated is complained of

Rolland
v.
Mailloux } action for fees —

Stuart for Defd. — No suffi. evidence to support the demand agt. the Defendt. — There is no Solidité amongst a number of persons who join in employg. an Attorney to defend their interests — Only appce. of evidence is agt. Ls. Mailloux — The other Defendts. recognize no right of action agt. them —

Rolland in answer — The person who employed the Pltff must pay him — all Defendts. who knew that Pltff was employed, must be held to pay him, as they made no disaveu. —

Stuart, — The action must be adjudged according to

to the demands, which is stated to be of several
but the undertakings of one to pay for several —

Grignon
vs
Beaudron
et al —

action for damages by Defnd^r. digging
a canal, in q^l. Pl^ff. fell & sust^d. injury —

On Exception —

D. Vigé for Beaudron — Pl^ff has no right of action
as the Defnd^rs jointly or severally.

Rolland for Ant. Lasonde & seven others — Action is for
a quasi-delict, and founded on negligence in
not complying with a Ord^r. of this Court in
making a ditch in the road — whether the Defd^rs
have complied or not with the Ord^r. is not a
matter which interests the Pl^ff who is no party to
it —

Mr Ross for Franc Rochon — not alleged in the
declaration that the Defd^r. was in default — or that the
injury arose by the negligence of the Defd^r — That
Defendants cannot be joined in this action as jointly
& severally bound —

Sullivan for Plff. — The stating of the P. Verbal and Indt. shews only inducement to the action, and under which the injury complained of was committed. The exception taken at all events will apply to the first count in the declaration

Lacombe & Raymond } Noths said —

Vandandaigue & Verzina — } action hypothecaire —

Bedard for Defd — has not filed any Plea — submits whether Plff has any Mortgage on Defds. land — Cusson pere made over land to Cusson fils on condition of paying a Rente to other Children of them transfer their right to Plff. who procured the Donation Jac. Cusson fils, & afterwards at the fond donné now in the hands of the Defendrs. & Gen. Cusson who transferred their right to Plff had no right of action at the Donation —

The demand is for Rente, & carries a mortgage

Viriet & Deschamps & Pilat oppos.

on Oppos.

Sullivan for Oppt. refers to the oppos. made by him –

Lacroix for Pltff – the Deft. made his oblign. after Lease to oppt. –

Berthelet & Norton vs Gravelle

action for sale of flour –

Sullivan for Pltff – the receipt filed by Deft. does not apply to the transaction before the Court –

Grant for Deft. – contends that the first article in Pltffs acct. is mentd. in the receipt produced, refers to Depn. of Mr. Rumney – No proof of the delivery of the other 50 barrels – admits a balce. of £15 – due to Pltff – but ought not to have Costs –

Sullivan – in answer Credit is given in the acct. – for the 28 barrels of flour – refers to evidence of Gaudet to shew delivery of all the flour –

Fraser vs Smiles & Deshautels oppt

Pltff admits that Deshautels has made out his opposition – As to the rent not due the Pltff

Pltff agrees that the effects be sold subject to such priviledge of the Oppost. upon the proceeds as by law he may be entitled to —

Cadron
v
Cadron } action of acct —

Rolland for Pltff — on debats de Compte there is a balance of 404.lt — qd. Pltff accepts — wt. costs —

Bourré for Deft. — the Deft. ought not to pay Costs as he has never been in default —

Perrault
v
Ferguson } Exparte case —

Deft. objects that faits & art. cannot be declared confessé & averé, because Deft. is out of the Province the Pltff. acct. not proved —

Beaubien for Pltff. contends that proof is suffct.

De Niverville
v
Marston — } Acc Contract for fee on bonds Defdr as Clerk to late P. Lukin.

Davis
v.
Castleman } An action for value of muff & tippet. —

Stewart for Defend.t contends that the evidence shews that the articles were left w. Defend.t to sell for Pltff. & were never bot. by her — Defd.t willing to return the articles —

Grant for Pltff — contends that the evidence is sufficient to support the demand — proposes the serment supplétoire —

Lapham
v.
Forsyth } An action of acct —
On Exception

Stuart for Defd.t — There is a conclusion upon each of three Counts in the declaration for £500 each in damages — and the conclusion only for £500 — so that it is uncertain upon which of the Counts the Pltff means to insist upon — It is therefore uncertain —

O'Sullivan — Declaration is suff.t and in the usual form —

Charles Ball & Hoyle opp^t

On motion by Mr Stewart to enter appe^a for Defend^t — on the writ of Error returned —

The Defend^t was represented by other attornies until the rendering the Judg^t and Defend^t has left the Province, and has given no authority to make the motion — the attorney already in the Cause shd be first set aside — application also too late after Oppos^n ready for Judg^t — There is collusion between Defe^t & Oppos^t being both represented by same attorney —

Stuart in answer — The Defend^t allowed to come in by any attorney after Judg^t Can produce the letter of attorney to warrant the appearance —

Bridges & al
Nairne

action for goods sold

Sullivan for Pl^ff — The Defe^t has proved something about delay to pay^t — This not pleaded — ought to have been done before going to evidence on the merits. 1. Peg rep 147. no proof of delay —

Vigé for Defe^t — The Defe^t could shew from the evidence without plea that the debt demanded was not due —

Mears v Curtis } action for goods sold —

Ogden for Pl^tff admits that last art. in acc^t of £722. has not been proved — asks to Dec^d. for bal^ce

Stuart for Def^d — many other charges in the acc^t — not proved — to Armour & Torrance

Ogden — has filed the acknowled^t. of Def^t —

Mears v Copp } same arguments —

Cartier v Roi — } Action to recover monies p^d. for Def^dt —

Rolland for Pltff — has excepted to the first part of the Defend^ts plea, as irregular —

Vigé for Defend^t — the action is founded on a Judg^t. obt^d. in the Inferior Court obt^d. by Pltff in his capacity of Syndic, in q^t capacity the action ought to have been brot —.

Chicouine & Dauplaise vⁿ Lozier } action en declaration d'hyp. for arrears of Rente viagère

Stuart for Defd.– the amended plea is insufficient – the conclusions of the declarⁿ. as they now stand cannot be granted – Not shewn in evidence that the property in qⁿ. the Defend. is in possession is the same land which the Donors gave subject to the Rente,

Rollin for Pltff – The action is not only hypothⁿ. but personal also – & the conclusions conformable thereto – Proof sufficient

Stuart – There is no personal oblign. arising to Pltff agt Defd.– for such arrears of rent, as in case of rent due to a Seignior –

Foucher & Duquet } act. of Debt on deed of Sale

On Excep.

Vezer for Defd.– The Pltff has not stated that he has done what he was bound to do before bring his action, namely, the delivering up the title

deeds

82)

deeds of the land in question — That Pluff does not allege that he ever was the proprietor of the land he sold — That the sale was never followed by possession, the Pluff himself having remained in possession of the premises sold —

Pluff said nothing. —

Plenderleath
v.
Burton.
&
Turnbull
& al — Opps

On opposition afin de conserver — on motion to reject Oppos^te last pleads &c Rolland for Pluff. objects to the new Conclusions in the Replication. that the same be rejected — as containg new matter not stated in the pleadings upon which any issue could be taken — demands that they be rejected &c to the exception to the exception filed by Pl^ff. Beaubien for Oppos^te — The opposition is different from that made last Term — asks £2500 ^tg to be paid to them out of the proceeds of the Sale — claims that this money be paid out of the monies of the Sale —

McKenzie sal
v
Surgeon —

On rule to shew Cause —
Lawrence for Defdt — there is no such
Indt — as that stated upon which
the Rule is founded — Pleads also payt — of debt

Friday 17th October ...

Wheeler
v
Winter

The previous mo. made by Defendt — to grant
proceedings not having been disposed of
and although the party was not present on
the day the mo. was fixed for argument on
the 6th — yet as the Cause was not then called, no any
order made on the said motion, the Pltffs mo. for
proceeding was considered irregular until the Defts
said motion should be first disposed of —

Deshaulds
v
Bonnet

On exceptions — submitted to the Court

No. 620

Clement v. Malbouf ~~Marguillier~~ } On action of trespass for expelling Defdt from a pew in the Church

Lacroix for Pltff — refers to the evidence to shew his right, and asks for Judgt. refers to Ordce of 1737. adjudging certain disputes between the habitants of St. François — Reg. of 27. ap. 1716. — regulating the honors to be paid in the Church to the different individuals — The Pltff enjoyed the pew as oldest Captain of militia — That if the Pltff held the pew without any title. the Defendt. could not turn him out of poss. by force — Lacombe. Vo Droits Honorifiques. Sec. 3. No. 3 — The fact stated by Wr are sufft. to support the action —

Bedard for Defdt — No person has a right to a pew in the Church without a title — The fondateur, & the Seigr. Haut Justicier, are the only persons whose title the law recognizes — the Pltff has no title — The preference is given to the Capt. de la Cote accordg. to the Ordce. of 1737 — but Mr De Rouvilliere never had authority to make any such Ordonnance, it appears never to have been signed on the Register, it cannot be considered as settling the law of the Country — But if it were, the Pltff has not brot. himself within that Ordce —, nor is he entitled to possess the pew in question, — That on 1 May 1816, the militia act ceased to have effect, — The Pltff has not proved having been put out of possession by force which is the only case in qh. he can support his action d'injure without

without title – this is the case referred to by Lacombe in the authority cited – There was no actual violence committed on the Pltff – The Defendt as marguillier caused the pew to be cried at the Church door for sale thereof without any opposition on the part of the Pltff and after it was adjudged to one Geo. Malbouf, the Pltff still persisting to go into that pew, the Defendt caused a door to be put upon the pew to enable the adjudicataire to enjoy it – The Defendt ought to have been prosecuted as marguillier en charge – this has been however justified – When the pew was cried, the Pltff was present, made no opposn on the contrary he – abstained from sitting in the pew till it was adjudged to another person –

Sherwood of counsel for Defendt – refers to Reglemt p. 55. respects honors to be pd to military officers in the Church – also to Ordce of 1737. – also. p. 434 – touchg Concession of pews in churches in Canada – no such right given to any militia Offices – There is now no such office now in existence as the Captn of the Côte – the militia of the present day are wholly different from the militia under the French System – The militia Laws of England authorize the Kings to name Militia Officers – the principle in this Colony is the same – the English Militia Officer not same either as to authority or appointment as the Captn de Côte – the powers & duties of the Captn of Militia are ascertained under the law of the land – The English Captn of Militia has no more

privilege

privilidge in the church than a tide-waiter, or any other Individual

Lacroix for Pltff. in reply – The Defendr. is not prosecuted as marguillier, nor was it necessary – the injury complained of could not be committed by the Defdt. as an Individual nor can he be justified as marguillier. – The injury has been sufficiently proved – The laws cited by Counsel do not apply – The Pltff hold his appointment from the Crown –

No 634
Clement
Malbœuf

On action for having refused the pain beni to the Pltff as Capt. of Milice –

Bedard for Defdt – The action ought to have been agt. all the marguilliers as representing the Church, not agt. one, who cannot be considered as representg the Church, nor can any Judgt. rendered against him be binding on the Church refers to Can. Digt. v. Burdon – in 1801.

That the Pltff is not, and never was Capte de la Côte under his present Commission he cannot pretend to such rights the Capte de la Cote exercised a certain Jurisdiction in the parish It is not ascertained that the Com. of the Pltff is the oldest in date – Under the French System the Capte de la Cote had a special Com. as such – The Pltff was never known or called by the name of Capte de la Cote – The Superior officer must be established before the Pltff to the honors he now claims in the Church and there being now superior officers to the Capte in the parish of Terrebonne, the pltff could not according to the spirit of the law

claim

claim the preference to these Officers, nor can this Court grant it — The Defend. has pleaded that he is not guilty and according to the facts proved the action ought to be dismissed The Pltff not having possessed the banc de Capt. since May 1816 and having refused the pain benit d'honneur since that period, the Defend. cannot be considered liable to this action —

Sherwood for Defd. — The only corporation under the old law is the Fabrique, and one of the Corporation cannot be sued as such, the whole corporation must be made a party to the Suit —

Lacroix for Pltff — The Defend. was the person bound to do the act which he has failed to do in this instance, and the action is rightly brot. agt. him for not doing what he was so bound to do. — That the honors of the pain benit, is not granted to the Officers superior to the Capt. — nor is it disputed by them in this case. The law in this Country is similar to the laws and usages in France. In Oct. 1796 —

Herigault
Dignard

On Defend. mo. to be allowed to take off the two defaults obt. agt. him on pays. costs. and enter appe. under circumstances of his absence when the process was served —

Osullivan — contends that when Defd. goes from home he ought to leave some person to attend to his business —

Sherwood

Stuart for Defendr It has been consistent with the practice of the Court to grant such motions where there were good grounds shewn for it —

Worthington dal
Lamb. dab — } action for goods sold.

Ogden for Pltff. the facts dant. proves that the debt is due except a small part of about £30

O'Sullivan for Defdts the Pltff. ought to pay Costs

Fisher dal
D'Rose — } Barton for Pltff — only question is touchg Costs

Grant for Defendr The taxation

Belgish
vs
Roger — } On Pltff's mo. to discontinue without payt of Costs —

Rolland for Pltff — The Pltff having proceeded under a competent authority & has since ceased, his costs ought to be allowed him —

Vigé for Defdt. the Pltff having proceeded illegally

and obtained any appointment to which he was not entitled, & when this appointment has been set aside as irregular, the Pltff must pay the Costs, as having proceeded at his risk —

Roi. — }
v. } Action on Sp. assump. for making 20
Trudelle. } pairs of Cast wheels —

On report of Experts —

Roi for Pltff — asks for homologation of the report the only question is touch & Costs —

Lacroix for Defdt — The Report of Exp. cannot be homologated, as the Expert of Defendt was intoxicated at the time — the report not sufficient — The Pltff ought however to pay Costs, as having lost one half of his demand, and by the articles he has furnished he has reduced the other half of the Pltffs demand to £5.5.2

Roi; the 20 pairs of wheel spokes ought not to be deducted, as having been furnished by his own wheels —

90)

Latour
vs
Ducharme
&
Ducharme
Garn

action petitoire – to obtain poss. of a lot of land which Pltff purchased from one Dominique Ducharme –

Stuart for Pltff. The Defds refused to deliver up the estate to the Pltff under pretence of a prior purchase from the same Dominique Ducharme under an act sous seing privé, which can be considered as a mere proposal of sale, being signed only by the Vendor, & not formally accepted by the Defendts – cites Pothr. Vente. Nos 31–32. No 478. the facts in the Case also shew that such proposal to sell was never accepted by the Defendts – but on the contrary was wholly renounced but has acquiesced in the sale made by the D. Dom. Ducharme to the Pltff, by proposing certain conditions in his Defendts favour –

Bedard for Defendts – The land was sold to the Defds by his brother Dominique Ducharme, before the sale to the Pltff, and this sale was carried into effect by a prior possession – The sous seing privé produced by the Defds is an absolute sale of the property, and not a proposal to sell – the terms of it are express that the sale was then made as to a part, and that the conditions under which a reserve was made of the other part are also arrived which entitle the Defendants to the whole – refers to Testmr. of Fr. Dumais – Jos. Allard – The testimony adduced on the part of the

Pltff

goes to shew that the Defendt had given up his right to keep the land under the sale made to him - to this Verbal testimony the Defendt has objected as not being admissible; cites 1. Pigeau. Proc. Civ. 266. 4 where there is an act in writing whatever the value of the thing may be, verbal testimony touching it cannot be rec'd - contends that Court, in adjudging on the objections taken to this testimony, will reject it - The testimony also adduced touching the passing of the act or deed of sale to the Plff is illegal & contrary to the acknowledged principles of law - The attempt by D. Duchamin to deliver the poss. to Plff is ineffectual - cites case of Lecheip. v. Labadie, & Legnay. Gart - decided in this Case - Bourassa. & Dineau -
Potb. Vente. № 313 - Rep. Vo Tradition. 221 - Potb. Vente № 33. - Lacombe. Vo Vente. Sec. 5. № 16 -
That taking the writing here to be only a promesse de Vendre, D. D. should have been discharged from his promise, as there was no limitation of time to the Defendt to accept - Rep. Vo Vente. 484. Potb. Vente № 480. - the acte sous seing privé can be considered only as a promesse de vendre in so far as regards the buildings, & that in this respect the right of the Defr is still open to him - The declaration & testimony of the Notary and his wife cannot be admitted to affect a notarial act, nor any act in writing -

and the consent of the Defend. to that act cannot be proved by witnesses. —

Stuart for the Pltff. — The defend. never had a title to the land, the mere proposals of one of the parties, gives no title — This sous seing privé is not even a promesse de Vendre, it was a consent, but not that kind of obligation which arises from a promesse — The Defend. never had even possession under this consent to sell, it was a possession of mere suffrance, and in the name of M. Dom. Ducharme, who had some years before purchased the property from the Defts and had given the Defend. permission to possess it. — The Cases cited by Defend. do not apply — in these there were absolute Sales, not mere pourparlés — The sous-seing privé has never been ascertained as to the authenticity of its date, it may be admitted as to its contents without that carrying proof of its date, nor can it be used aft. a Stranger in the Cause the Pltff. — The principle of law referred to in regard to what passed at the notarys, does not apply — it could not have been admitted aft. the Deed which was then passing ~~that~~ such Verbal testimony could be rec. but it would go against other persons; and the consent of the Defend. to the Sale made to the Pltff is evident from his proposing to include certain reserves in the said Deed which was then made — the motives upon wh. the Defend. assented to this Sale, not being made known, the Pltff could take no notice of them and had the Defend. been the absolute proprietor of the land

such

such consent would have bound him — the only outlet with regard to this consent is that not having signed the act, but his answer on faits & articles ascertains the fact as effectually as if he had signed the Deed — The not having the possession is no bar to the Pltff's action here, as with a title translatif de propriété the Pltff can bring this action agt. the man in possession — cites case of Normandeau v. Donegani. 2 Dupéré. Cas. But here the Defendt had no possession in his own right & name under any title, it was the possession of Domenegue Duchesne, and therefore livery of saisin given by him to the Pltff was a suffit transfer to the Pltff. —

Bridge & al
2
Thomson — } action for goods sold & deliv'd —

Ross for Defs — There is no sufficient evidence to support the demand — No sale or delivery was ever made to the Defend. the sale was made to one Nichols who lived at house of Defs. but not sale was made to Defs — There was no evidence within the St. Francis & Sorel to bind Defend.

O'Sullivan for Pltff. The goods were sold to Defend. and delivered to one Nichols as his clerk — There is no undertaking charged agt. Defend. of having promised or being bound to pay the debt of another, or of paying the Debt of Nichols

94)

Taylor
vs
Turrenberger

On Report of arbitrators —

Ogden for Defdt — There were three arbitrators named, and two of them proceeded without notifying the third —

O'Sullivan for Pltff — The award has been made in conformity to the submission which was by rule of Court —

Seers
vs
Sewell

action hypothecaire —

Rolland for Defdt — No debt appears to have been ascertained against the principal Debtor, nor that his property has been discussed — That the Contract between Seers and Bragg, could not ensure to the benefit of the Children of widow Seers — nor is it even alledged that the Pltffs is one of the heirs of the late Widow Seers, and they have no right of action but as heirs — There is no discussion of the principal debtor

Beaubien for Pltffs — The reasons alledged by the Defendr are more suitable to the merits and not as an exception to the Plaintiffs action — Poth. No 57. Obl. — but the payt was stipulated to be paid to another, it was not contracting for another — Id. No 61 — 62. The bringing of this action is making an acte d'heritier — That although there be no discussion, yet this not a bar to the present action, the discussion is a plea of dilatory exception which would have

suspended

suspended the action, upon his furnishing money to effect such discussion, but as this is not such Dilatory Plea, the Court cannot take notice of it — That besides the Debtor Bragg sold the property to the Defendt — on condition of paying the Debt demanded — this is not stipulate for another — Ps. Nº 58 —

Payet
vs
Payet

On report of Arbitrators —

Rolland for Plff. asks homologation of the report —

Nicol for Defendt., offers affidavit to shew the irregularity of the proceedings of the arbitrators and prays that same may be set aside. —

Rolland in reply — such affidavit is not sufficient to avert the Demt. —

Lagrandeur
vs
Doré —

Action to recover monies rect by Defdt on act. of Plff.

Bedard for Defdt — The Plff cannot maintain the action, but ought to have brot an action en reddition de compte. Poth. Mandat. Nº 37. to 41 — can have but one action agt the Defendt. for all the acts done by him as her attorney, and not for every separate act —

96) No 6

Burton
v
Wilson

Def mo. for Judgt. same as entered in the other Causes –

Rolland for ~~Defts~~ Pltff It is impossible that any Judgt such as demanded can be given, as the evidence will not bear out the demand – Case not similar –

Worthington
dal
v
Henderson dal

Action on Bill of Exchange –

Ogden for Pltff demands Judgt. on evidence adduced –

O'Sullivan for Defts – No proof of partnership – The affidavit before the Lt. Mayor is made by one of the Pltff and cannot be rec. in this Court as evidence

3. B. P. Whitworth Bennet

2. B. P. Wilson q. t. v.

Wheeler q. t.
v
Wilson –

On Defendt mo. to quash process from irregularity, & from want of a true copy of the Declaration not served –

Boston for Defend – name of Informt is called Winters, in copy of Decln – Court is irregular –

Charron v. Lapierre } action for arrears of rente & pension — Lacroix for Plff — after Deft —

Saturday 18th October 1817.—

Mozier v. Parker }

Bunker v. Lalley — } On Plffs. mo. that faits art. be declared confessés avérés —

Stuart for Defend.— the Defd. absent from the Province at time of service of faits art.

Boston for Plff — It ought to appear by — affidavit that the Defend. has left the Country

Worthington Parker & Co v. Cook — } on mo. that the faits et art. be declared avérés — withdrawn

98)

Black
vs
Yule

On question, whether intent is absolutely due from the Judiciary demand, & if this

Stuart for Plff —

Dic. Droit Vo Intent —

Repse — Intents Judiciaire. 416

1 Despeisses. 214. 215 —

Institutes de Loisel. p. 231 — upon to Court —

upon to can. Davis. v. Allison & Hamilton —

on award of arbitrators — when no intent

was granted — but awarded by the Court —

Sullivan for Defendt — upon to can of Cardinal

v. Bibiagnet — decided in appeal when intent

~~was~~ allowed by the Court below, and Judt. reversed

in appeal — It was a can for damages for assault.

The whole matter was left to the Jury as well the

principal as the Intent — and they having had the

whole matter in contemplation have given the Verdict

and this Court cannot know what the Jury had

in contemplation in giving their Verdict —

1 T.R. 401 — Lee — v. Lyon for fa. pt under from Intent

having been added — Selwy. N.P. p. 392. 3 Wils. 365 —

Blaney. v. Hendrick — upon to can of — Johnson

21

v. Walker — Court refused Interest — It would be interfering with the right of the Jury to add to or alter their Verdict — upon any matter over which they had Jurisdiction —

Stuart in answer — The power of the Court is not taken away by the Jury — as well might it be argued in respect of Costs, as of interest — the Jury have no power of nothing of Interest, it was not left to them, the only question they had to consider whether the debt demanded was due — the Interest was a legal consequence — In England now Judgt carry interest, the Interest then forms part of the damages, & is included in the Verdict — The Case of arbitrators is stronger than that of a Jury, as arbitrators can determine Law and fact —

Douglass v. Carter — } On rule to shew cause why a writ of Ha. fa. po. shd not be granted on a Judgt. rendered in this Cause in the Court of Appeals — —

Ross for Defts. sworn of rule made on the

Sewell

Scott who was the Attorney of the Defend. in this Court in the Cause, but since Def. was given cannot be considered to be so any longer — must be considered insufficient — the service must be made on the party himself. —

Monday 20th October 1817.—

Present
The Ch. Justice.
Justices Ogden & Reid.—

Mazine.
v.
Pasteur.

On mo. to prolong rule of reference — Granted

Monday 2d. February 1818

Present
The Ch. Justice & J. Reid

Pothier v. Foucher et al. } Defendt. filed extract de mariage of his Daughter & prayed act thereof

Pltff moved for a continuance of Enquête

Defendt. objected that Pltff cannot proceed until Miss Foucher & her husband are made parties —

Bedard for Pltff — The parties have pleaded separately & the enquête cannot affect Foucher —

Stanfield v. Cooper et al } action on note agt Drawer & Indorser —

O'Sullivan for Defdt — The Indorsement on Note by Berthelot is special, that if Drawer does not pay in a certain time, he Berthelot will — The conclusions in the Decln. are agt. Defendts jointly & severally as if there had been no such special undertaking — The claims agt Defendts are therefore distinct & separate one of Defendt. is the principal obligé, that of the other is accessory only — Poth. on obl. touchs. principals & accessories

The demand joins a joint & separate right, with a separate right —

Ogden for Pltff — The words put on the note by Berthelot, ~~as that of~~ 3d hand here as a principal — . —

Ogilvie v Letang & Roux opp. } on Pltff. mo. to reject opposition as irregularly filed — " over till to morrow

Tuesday 3.d Febr.y 1818. —

~~Perrault.~~ ~~Carter~~ &al v Martin &al } action on Prom.y note — Heard on Except.n —

Ogden for Defend.t — proof necessary — as fact of separation must first be ascertained —

Beaubien for Pltff — The exception is not founded as a Debtor of Marie Claire Perrault is nowise interested in this question, they have acknowledged the debt, & ought not to be allowed to contest the point of separation —

That

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That the rights of third persons cannot be brot. into contest, —

Ogden in reply — The Pltff states herself to be a married woman, La marchande publique — this point is contested —

Lebert
v
Mathurin

on Pltff. mo. to reject a pleading as irregularly filed —

Rolland for Pltff — cites art of Bill. v Kempt that pleadings must be on the same paper —

Rei-for Defdt — The exceptions pleaded were to the form of the action, & he concluded to the dismissal of action the action not having been dismissed — he ought to be admitted to a plea to merits — That at all events the Incidental demand ought to stand, as it may come in at any stage of Cause —

Brown
v
Byrne

On Defendt mo. that process be quashed as have been served on a Sunday —

Mr. O'Sullivan — the bare allegation of the party

ought not to be admitted, nor any proof admitted thereon —

The Court held that as no affidavit had been filed to ground the motion that it ought to be dismissed —

Pickle
&
Norman

On mo. to quash process from regular service —

Rolland for Defd. — The service at dernier domicile not legal — no other service known but as known by law ordr 1785 — The service made at the house of Defendr mother, where Defendr had a temporary residence only. but — no domicile —

Vigé for Plff. — The domicile of Defendr is sufficiently made out — the fact of Defendr having a domicile at a different place from that where the process was served —

Phillips
&
Conant

On mo. to qp. a wit. about to leave Province Objn — The man to be qp and swears that he is a Wit. for Defendr — this is regular — Not sd. in the affidavit that Defendr will be deprived of his testimony by his leaving the Province —

Wednesday 11th Feby. 1818.—

Stansfield dal
v
Cooper dal

Exception admitted as to the 2 first Counts in the declaration—

Pickle, Shr
v
Nora

Rule discharged. Does not shew where the domicile of Defendt was, q. whether to be done on this motion, same as on plea of Mis-nomer or any other plea of abatement—

Perraut dal
v
Martin dal

Parties ordered to go to proof on facts stated in plea—

Lebut
v
Mathurin

The Plea rejected—but Incidental demand allowed to stand—no time fixed by rules for filing Incid demands—

Philips
v
Conant

The motion rejected—as the affidavit does not state that the party was deprived of the benefit of the evidence—

Bechard v. Perrault. } action for monies paid for Defend.t —

Stuart for Defend.t — Demand is irregularly stated in the declaration, faute d'avoir negligé — means that Defend.t had not neglected to pay the money. —

Clement v. Bouc } On evocation —

Bedard for Defd.t — action is du complainte as it demands to be restored to the possession of the piew — with defenses to Defend.t — to trouble him in future — ~~This~~ action lies w.t letter — Lacombe. Droits. Hon. p. 2. sec. 3. No. 2 — Loiseau. Traité des seigneuries —

Lacroix. The action is purely an action d'injure and ought to be sent back to the Inferior Court —

Ogilvie v. Brunet & Roux oppt } On mo. to reject the oppositions as filed too late —

Stuart for Pltff — The affidavits produced by the Officer ought not to be received to explain their act, particularly

months

months after the fact – the act of the officer at the time must be the legal evidence of the fact – and no affidavits ought to be received to contradict the act – No evidence can be received from affidavits as the parties must proceed by regular enquête on the fact –

—

Robertson
Hoyt } On Dispr mo. to quash process – as irregularly issued –

Boston for Plff – No affidavit to contradict the Sheriff's return – & cannot be received – refers to case of Brown v Byrne, which was so held yesterday –

Stuart for Dispr. There is no rule of practice requiring an affidavit to support such a motion the proceedings wd. have been by plea, until the rule of practice, which requires no such affidavit –

—

Thursday 5th Febry. 1818.

Clement vs Bouc — Evocation admitted &c.

Ogilvie & Brunet & Roup & al Opps — Ordered that the Probs do make their certificate of the hour at which the oppos. was filed —

Robertson vs Hoyt — The motion dismissed, as no affidavit accompanies it —

Porter & al' vs Ab. Hagan — Action of assumpsit on bill of Exchge Trial by Sp. Jury —

Pothier vs Foucher — On question touching the examination of Doucet, a Notary, —

Be dard for Plff, Notary is bound to answer in all cases — the authority from Pand. Nat. 82. means only that the Notary is dispensed to give evidence touching

touching acts they have rec^d, in certains rencontres but this is not a general principle, nor is it laid down as such —

Vigers for Def^t — Not bound to answer as the situation of Def^d. Fowler is now changed, being no longer the tutor of Miss Fowler his daughter, she having intermarried since the last Term — all the parties ought to be upon the Court, as the parties are sued as heirs, and the conclusions are taken against them jointly — Notaries bound to keep the secrets of the parties — cites Nouv. Part. Not. 1 Vol. p. 45 — —

Langlois appears contra 21 Oct^r 1809 — ch. 47. p 148 — refers to case of Dubas Poulin v. Duplessis — when Boundages the notary was dispensed to answer upon what passed in his office between him & the parties

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Phillips v Conant — } On Def^d^s mo. to ex. a witness about to leave the province —

Stuart for Pl^ff — affidavit does not say, that the person is a W^t

Shiuter
&
Thayer

action of Debt on Sale.—

Sherwood of Counsel for the Defendt—
The danger is for a purchaser being injured by a mortgage of Seller — By deed of Annuity of 1811 the Plff mortgaged all his property to a Mrs Phillips — & thereby the premises sold became bound — This a bar to Plffs action — Lacombe Vs Condition —

Poth. Obl. Nr when cause of engagemt. is repugnant to good faith or — it is void — Dr Vente Nr 233 — Concludes therefrom that Plff should give security to save harmless Defendt —

See Poth. Vente Nr 234 &

Stuart for Plff — Court must judge according to principles of law — The plea not founded in law — as no Seller could recover — unless the Defdt shews a trouble, and this annuity is no trouble unless Mrs Phillips had brot. her action agt Defdt — Defendt does not ask for Security by Plea — & therefore Court cannot enter into that consideration, the Plff has demurred to the sufficiency of the Plea & this is the only point before the Court —
refers to case of Leblanc. v. Burgeron — Plea over-ruled
Hurlean. v. Robitaud same decision —

Wilson Jab
Clarke } on mo. to discharge rule for a Com. Ros. obt. by Defnd. last term —

Boston for Defnd. asks for a day over to answer to this rule —

over to Monday —

Ayer. —
M'Dowall } Action for recovery of balance due on a contract for sale of timber —
Jab

Stuart for Pltff — contends that he has made out his case by the evidence adduced — The timber having been received by the Defnds, they are bound to pay the price — The only difficulty is as to the quantity of timber — upon the evidence that 20,000 feet are proved — must be taken agt. the Defnds as the bill of measurement was deliv. to the Defnds — The answers of the Defts on facts cert. that he did not know the quantity of wood, when he had the means of doing so — by being in possession of the wood and of the bill of admeasurement — in this case the Interrogs should be taken as the Defnds — The Court may yet put the question as to quantity to Defnds —

The Plea of payt. too general — Last plea
award — but it is insuffo & illegal —

Sullivan for Defendt — No evidence to support
the Plffs claim — waives his plea in bar as to
the award — The Plff has declared on a Contract &
must shew he complied with it to entitle him to recover
by it — None of Plffs wits prove any delivery
of wood agreable to the Contract — no proof as to
quantity — nor that the timber was ever proved
to have been approved by Gill — which he was —
bound to do — Thos the Defndt never gave up —
No 2 & No 4 — only Wits who speak to quantity equably
but it is very uncertain — The evidence on the
part of the Defndt however shews that Gill did
ex. the timber & condemned it — Millar proves
that Gill condemned the timber — the Contract was
then at an end — The Plff therefore only entitled to
a quantum meruit for it — and it was agreed to be
delivered up at 1/ ℔ foot — This a good price — no
evidence of Mandego — The price £ by Govt. to Defdt
was as an indemnity for losses, but not a value of timber
The wood is still in existence — Cullen may yet
examine it —

Stuart in reply — It is too late to quarrel with the
timber after the Defendants have received it, — Gill

examined only a few sticks of the timber & would not judge of the whole — If a quantum meruit be taken into consideration, the sum q^t Defd^s rec^d from the Govt — is the best rule — Evidence suff^t in favor of the timber. — medium quantity of timber may be adopted — As to pay^t. the exhibit N^o 1 filed by Defd^s. was on acct of another Contract — it is s^d to be for timber delivered, whereas at the time no timber was delivered — dated a few days after Contract The receipt for blankets not applicable —

Brunet v Legault. } on Report of Experts. —
submitted — looks to appeal —

Friday 6^th Febry. 1818

Witness-day.

Saturday 7^th Febry. 1818

Witness day

Burton v Allan } on mo. for Security for Costs —
Objected

Objected — that the Cause was entd on the 2d. the default taken off on the 5th — and no. fr security for costs on 6th — application too late — not being within the 4 days after the entry of the action —

Monday 9th Febry 1818

Clement
~
Malbouf } 620 Judt — H

Clement
~
Malbouf } Dismissd — Parchment — H

Vve Valois
~
ant. Leduc } Dismissd —

Bertrand
~
Dantaine } Action dismissd

Lepailleur
~
Marmen } Judt —

Rolland v Mallows — Dismissed —

Mitchell v Clarke & Mitchell — on Defendts mo. to discharge rule nisi obtained by the plff in this Cause — because not determined during the term in wch it was obtained, the rule being, that every rule nisi should be declared absolute or discharged during the Term in wch it is obtained — The Rule has been moved out before the old exon returned. —

Platt v Brook — on mo. for part & part. on 13 — Obj. too late —

Hammond v Wilson — On mo. to set down cause for hearg — as Defend. has not shewn sufficient Cause to the contrary under the affidavit produced by him —

Wait v. Seurs & Spatz — } On rule to show cause why the widow of Decesd. wife of Defend.— should not take up the instance in consequence of death of Defend.

Beaubien for Mts. w. cause — proceeding as he ought to be by writ — object withdrawn

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Sills v. M'donald } on Rule nisi for Exam —

Joseph v. Stanley } action for goods sold —

Borton for Defend.— The Pltff accepted a draft for the amount except bal. of 5/5 which Defd. offered to pay — The Wr. for Pltff does not [illegible] the Demand — Chitty. 155 —

Beaubien for Pltff — The Defend. did not return ret the bill to be accepted —

Heter & Heter } action en bornage –

Rolland for Pltff – there must be an order for bornage & Defend. condemned in costs –

Stuart for Deft – The Defend – admitted the right of bornage, but denies the encroachment – upon this point the Pltff has adduced testimony, but unnecessarily – there can be only an Interlocy for bornage, but the subject of costs must stand over. –

Rolland for Pltff – The Defend. having denied all the facts in the Pltff decln – the proof was necessary –

Charles vs Bell & Hoyle opp. } On Defend. mo. to quash writ of Expon sued out by Pltff as irregularly issued –

Stuart for Deft. The Pltff sued out Expon agt Defd. body, and under arrangement wt. Pltff he was discharged – but Pltff could not suspend the expon of that writ – if he has it was a novation of the Pltffs right under that writ – The Defend. was afterwards arrested & put in Gaol under this writ, & escaped from Gaol – The pr. pr. was afterwards sued out – this was null, as having been sued out after such expon

agt

against the body of the Defdt – There has been a novation of the Pltffs debt under his own agreement – 3ly – The fi. fa. was sued out the year & day after Judt. without any previous rule to shew Cause –

Borton for Pltff – The suspension of the writ of Ca. fa for 6 months was by agreemt. between the parties & therefore the Court cannot take up any principle as Pltff on this act – That Defendt. has escaped from Gaol, the Pltff is entitled to an exton as to his property

On oppos^{n} of Hoyle –

Borton – the oppos^{n} is irregular – moves to reject a certain paper writing brot forward by a wit^{s} who was the Clerk of the oppt – The evidence is besides insufficient to support the oppos^{n} the transfer to oppt. was fraudulent – refers to case of 16 Ap. 1812 Wagner & Ritchie v. M^{c} Donald & M^{c} Quaque & Forbes oppts

Stewart in reply – the proceedings under Capias are irregular – The opposition of Hoyle is founded no allegation of fraud in the plea of the Pltff to the claim of oppt – the only question made is the right of property – This sufficiently made out by two witnesses –

Smith v. Aylwin dat. & Cuvillier opp.} on rule to shew cause why faits & art. proposed to the Pltff should be declared acknd. & confessed

Rolland for Pltff — no due signification of papers to him — no hour mentd. at which Pltff ought to appear before the Judge to answer — refers to case cited in appeal of Tavernier v. Aylwin — The default qt. is given agt. the Pltff for not appears is on the 28th. instead of the 26th. Jany. the day on which he ought to have appeared — The avenir to appear was put upon the Interrogatory to the witnesses — The Interrogatories not of a nature to be taken for avérés —

Beaubien for Defdt.— The hour is set down at qt. Pltff was bound to appear — The change was regularly made from the 26th. to the 28 & so recognized by the certificate of the Judge in the default given agt. Pltff — The order of the Judge was for the Pltff to answer upon the preceding Interrogatories on faits & articles, & there being only one sett of Interrogs. of this description, it is sufficiently clear to what the order refers — the service of these is also clear — The Pltff ought to have appd. and made his objections before the Judge —

Jones v Henderson } on mo. to quash process from irregular process — Plea to the Jurisdiction —

Stuart for Defdt — Domicile of the Defendt not within the jurisdiction of the Court — This the point in issue — does not raise any question as to service of process at last domicile, but actual domicile —

Boston for Pltff — The proof is sufficient. —

Wilson v Clarke } on Pltff's mo. to discharge rule for a Com: Rogr. obt. by Defendt —

Boston for Defendt — There is still time to have return to Com. Rogr —

over

Tuesday 10th Febry. 1818. –

Etie & Etie – } Interlocr. Answers ordered. –

Hammond v Wilson – } a day given to hear Defdrs. W –

Jones &c. v Henderson. } Declinatory Exception dismissed – considering the service at last domicile to be sufficiently covered under the pleading of Pltff. in his answer to the Plea –

Plenderleath v Burton & Tunstall Lux opps. } Both pleadings rejected – decrees to determine on the merits of Exception remains of record –

Black v Yule. – } on mo. for Judgt. on interest. – The Law had Jurisdiction over the object. – In Chancery from the day of the report of the master the Chancellor gives Interest. –

Latour
vs
Ducharme
vs
Ducharme
Gar

H

Judgt

Shuter
vs
Thayer

H

Judgt. on giving Security

Delisle
vs
Roi dal

H

Judgt

Curtis
vs
Bump

action on promissory Note —
Trial by Sp. Jury — Defd. in Default
Verdict for Pltff. —

Adams
vs
Clarke

action on Promissory Note — " — "

Lacombe
vs
Monarque

action on deed of Sale —

Bourré for Defd — ads up Incidental demand
for maintenance of Catte. Hogues to gt. Pltff was
bound by Judgt

Lawrie for Pltff — The parties bound by Instr to
were not liable jointly & severally — Pltff willing to pay
his proportion — No proof of the maintenance
alledged —

Oldham
Bill } on peremptory Exception — submitted

Wednesday 11th Febry 1818

Oldham
Bill } Exceptions dismissed —

Charles
Bill
&
Hoyle } W Rule to shew Cause discharged
and opposition dismissed —

Joseph
Stanley } W Judgt —

Brunet
vs
Lespinet } Judgt

Lacombe
cur vs
Monarque } Judgt. —

Pothier
vs
Fouchet } W The examination of the Notary Court rejected —

Kirig
vs
Sanguinet
&
Sanguinet
mis en Cause } on motion on the part of the mis en Cause to file a plan — rejected —

Fisher
vs
Dubeille } action for goods sold
Rolland for Defd — the contract proved is different from that laid in declaration —

Frost & Porter
vs
Moreau } action for goods sold —
Bourré — Proof of demand in chief —
Incidental demand admitted
Judgt to be entd for balance

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Nichols & Sanford
Dutelle — } action for goods sold & deliv

Bottom for Pltff — Insist. demand for 36 gal. brandy q. Defend. sent to Pltffs for sale Defend. contends that he was entitled to 6/ ℔ gal. whereas it was sold for 4/2, the Pltffs not being limited to any price, & it was illegal to limit articles to any particular price — Esp. N. P. p. 16 — Comyn. R. 395 —

Bourré for Defend — admits the demand in chief — but contends that on the Incidental demd — he is entitled to the sum for which he had limited the sale of the brandy, namely 6/ — The Pltffs had a right to limit the sale of the brandy to what sum he pleased, and Pltffs were answerable for that sum, if they have taken upon themselves to sell it for less —

—

Gates. }
Lester. } On Pltff's mo. to reject Defend's plea as filed too late —

Gale for Defend — The plea filed within three days after appearance entered, q. is conformable to the rules of practice —

Ogden for Pltff — The Dfnd^t does not distinguish between cases on Sum^s and on Capias —

—

Ferguson
Millen & al } action on bail bond —

Stuart for Defend^ts on a transfer from Nelson & White to Pltff — It was necessary in this Cause to shew a writ, a return and security entered into. Now there is no proof of any return to the writ of Capias — nor any proof of any return of such writ in court — There ought to have been a transcript of the proceedings to shew that Court had power to compel Dfnd^t to give bail — Exh. N^o 2 — The special bail given do not correspond with that stated in the declaration — The copy of the Recognizance filed not proved, nor regularly certified — There is variance between the bail said to have been entered into and that stated in the declaration variance also between the assignment stated in the decln from Nelson & White to Pltff, & that produced in evidence — The assignment produced is in the name of one of the parties only — White —

Ross for counsel for the Pltff — The demurrer of the defendant q^r has been over-ruled has covered all

all the defects now alledged. — There is now no question touching the return in the original action; the Court was seized of the Cause, and it must be presumed legally — The Special mo. of the Defendt to surrender the debtor in discharge of his bail, waives the objection now made, & if there be any defect in the bail, it was cured by it — There is no variance between the transfer stated and that proved —

—

Allison Turner & Co
vs
Wisely — } action for goods sold —

Rolland for Defend — The Curator does not shew that the persons he represents are the heirs of the late John Allison — no proof that the persons, called the father & mother of John Allison are so, or that they are his heirs —

Boston for Pltffs — The Defend. ought to have stated by pleading, the objection he now raises —

Thursday 12th Feby. 1818.

Lee v Jones &c. } Mo. granted for first 10 day after term —

Gates v Lester } Pltff's mo. granted.

Turner &c. v Wisely } Judgt. — the Pltff to give security that Defendt. should not be troubled for any demand by heirs of late.

Lepailleur v Turgeon } order to call in Creditors —

Smith v Cuvillier dal. & Cuvillier oppt. } I this day intimated to the parties concerned that having since last Term seen the proceedings in the original Cause, by which it appears that I was the attorney for the Pltff, until the rendering the Judgt. in the Cause — in case any of the parties should have any objections to my taking cognizance upon the contests now between the parties

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Richards
v.
Sheldon

. action for Goods sold —
Trial by Sp. Jury —

Bridge & Penn
v.
Forster

action for goods sold &c —

Sullivan for Pltff — balce proved except as to a sum of about £1 — for which Defdt is entitled to credit —

Grant for Defendt. The Defendt re-delivd goods to Pltff beyond amount of balce demanded — Those goods were sold by Pltff for a mere trifle, whereas they were delivd back in discharge of Defendt —

Sullivan in reply — denies that pltff ever recd the goods back, but one ant of Defendt — The exhibit No 24 produced by Defendt contradicts the belief that the pltff took back the goods in discharge of the Defendt —

Hamilton
v.
Davis } action on foreign Judgt –
Noth. said –

The King
v.
Sanguinet } on Report & Survey ordered by Judt in appeals –

Sullivan for Defendt – The Judgt. of the Court of appeals has not been complied with – no surveyor appointed on the part of the Crown – the nomination by Mr Ross on the part of the Crown, as King's Counsel did not warrant him, without special power, to make such nomination –

There is an error in the plan and survey of the two Surveyors, as pointed out by the plan & survey of Mr Archambault –

Ross for Plff – contends he has a right as acting for the Attorney Genl – to conduct the cause, in the same manner as an Attorney would do for his client – The Judgt. of the Court of appeals has been regularly executed by the Surveyors

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Smith
vs
Storrs

on Rule for attachment of Defendr for not having rendered the act demanded
The Defendant did not appear—

Sauvé
vs
Viret.

action petitoire.—

Sullivan for Pltff contends action is founded and he is entitled to his conclusions of Defendr—

Rolland for Defendr— no proof that Defendr purchased from Dubois— or had knowledge of any law suit of him— That Pltff is not tutrix of her minor children— no proof of it— was named upon the nomination of 2 parens which is void, as the law requires the nomination of 7 parens.—

Sullivan in reply— there is no law that positively requires the nomination of 7 relations the appointment of the Judge, if irregular, ought to have been set aside, but must subsist until it is attacked—

Hall
&
Noro.

On exception to the regularity of process—

Rolland for Defend— The service of the process at the dernier domicile, which cannot be done by Ordre of 1785, which is the only law regulating the service of process— That if such service can be admitted, yet the place where such service was made was not the last Domicile of the Defendant, he never has had any domicile at the place when the process was served—

Ogden for Plff— The Ordre of 1785, on the english part does not exclude the service at the dernier domicil

M.Kenzie
&
Chevallier

action for goods sold & on Obligation

Sullivan for Defend— Interest calculated every year— & runs through all the accounts so as to constitute a large capital agt Defdt

Ogden for Plff— business comt

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Poitras
& Clute

action for balce on deed of sale —

Grant for Defendt — contends that there ought to be a previous day for enquête for proof — That Pliff has not had the deed confirmed by his wife as he was obliged — It appears that there is a dower in favor of the Pliff wife —

Lemoine. The deed was obtained at the instance of the Defendt to give him a good title — and the bailleur de fond being prefered to the wife of the Pliff for her dower. There was no burden on the land in question —

Hall
& Stanley

action of debt on obligation —

Boston for Defendt — The action will not lie as Defendt for the whole demand without he has been put en demeure, as the obligation in this respect is penal — bonds Pliff ought to have followed up their Judgt if they were entitled to a demand for the whole

Friday 13th Febr 1818.

Saturday 14 Febr "

Witness-days.

Shuter
v.
Thayer

on Defendt objection to Interrogt
13. 16 & 17

Ogden for Defe. The 13. rejects to a criminal matter - the 16th & 17th do not regard the point in issue.

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Monday 16th February 1818.

Shute
vs
Thayer

Mo. as to 13d. Interog. granted —

Hall.
vs
Novo. —

Proces - aft — Do. Nov. dismissed

Brook
&Penn
vs
Jackson

Judt — debents. 2 nonpts —

Poitras
vs
Delisle

Interlocy that Pltff type Ratification of deed of sale by Pltff. wife. — —
su final Judt —

Bechard
vs
Renaud

Judt for Pltff — the extra words considered as surplusage in the Decln —
"faute d'avoir negligé"

Hall
vs
Stanley

The peremptory exceptions dismissed

Smith
vs
Stokes

Mo. rejected, as there was no personal service of rules — Party agreed to serve rule anew

4

Nichols & Sanford
vs
Dubelle and Costa — Judgt —

Smith
vs
Cavillier & Cavillier. & al oppts —

Rule to declare the facts & articles confessed discharged
=
& the opposition of Mrs Cavillier dismissed the separation not carried into effect —

4

Whitcomb
vs
Curtis — action dismissed —

4

Ferguson
vs
Millaudon — Do —

Mitchell
vs
Clarke & al

Rule to shew cause discharged, as Plff had not done diligence to get a return on the old execution issued out of the Judgt — upon which the rule was granted —

Drean
Fraser
& King Intes

action de revendication for goods of Pltff, which came to hands of Defendt—

O'Sullivan for Pltff—contends that the proof of the demand is made out.—On the Defendts plea that the goods in question were prize goods, the King intervened and claimed the goods as seized in contraband trade with the public enemy—

Boston for Defendt. contends that the Pltff has not made out his evidence of the identity of the goods—

Ross on behalf of the King—the goods were seized by the enemy in upper Canada, & carried into the United States—and were after wards retaken by the King's troops and deliv? to the Defendt—as prize goods for sale—
ante 2. Br. Cv. & Adm. law. 257—The goods were carried infra praesidia of the enemy & thereby Pltff's title was gone—Id. p. 252—supra to
2 Doug. 614 a case in L. Rob. Adm. Rep. 60—also. 51. 252. in

in the Note — The Pltff admits in his answers to the facts & articles, that facts sufficiently —
cites 4. Rob. 285 — case of Countess of Lauderdale — The owner must prove that he was not divested of the property. p. 286 — refers also to 2. Bur. 690.

Sullivan for Pltff. refers to 4 Inst. law. tit. 15. p. 569. when the right of post liminii when things taken from the enemy resume their former condition
Grot. 3 bk. ch. 16. p. 2. Vattel. bk. 3. ch. 14. p. 206. 209
Bynkershoek. — Azuni on maritime law. p. 2 ch. 4. art. 4 — 1 Rob. 139 — no general principle of law as cases of capture — 2 Bur. 694 — Govr. Bal. v. Withers & Hamilton. v. Mendez — a sentence of Condemnation not always sufficient to operate in future —
Goods taken by a highway robber or pirate if retaken must be restored — Vat. bk. 3. ch. 15. pars. 226. 7. 8. 9
Bynk. book. refers to evidence of Stacey to shew that he was not employed in a pub. cap. to act agt. King's Subjects took goods as an adventurer — This Pltf produces two papers — a Sentence of condemnation and a Newspaper contg a notification — but the manner in wch he came by them papers do not entitle them to any credit — but if they prove anything they shew that these goods were actually sold & cannot be the

came

as those now claimed —

Refers to Burns on Ins. 43 Geo. 3. ch. 66 — Sec. 41. the right of post liminii is recognized upon part. of Salvage Chitty on Law of nations cites same Stat. 43. Geo. ch. 160 — This stat. applies to ships — but the same principle ought to apply to goods taken on land — the principle of Justice seems to point this out as liberal & consistent with that Statute — The goods here were taken on board Vessels — Chitty on pub. Law. p. 16 — adopts the principle that law ought to apply to property taken on land as well as on Sea —

Sherwood of counsel for Plff — the case cited from 2 Doug. does not apply — the only question whether the Court of admiralty had or had not jurisdiction — It is only a question of Salvage how. ~~St.~~ 12 Car. St. 2. ch. 18 it applies to the dangers of navigation not to capture by enemy — but by an equitable construction of this Stat. it has always been extended to subsequent cases —

Wood. Vin Lee. 429 430. 431 — case of property captured by Kings frigate & had been captured by pirates —

In case of Salvage nothing is said about the right of the Crown to claim it, except Sts.

19 Geo. 3. 67

19

Com. Dig. Prerog. (B) 4 refers to Stat. on Salvage
no instance where Kings former capture property but
this belongs to the Crown — it belongs to the Captors
no difference between property taken at Land
or taken at Sea — the Crown has no right to interfere
here — The Court must consider here whether
the Defendts plea will justify him — he claims no
salvage — the Court cannot grant it, if the
goods are delivered up — The St. 29 Geo. applies
to captures from the Kings Enemies not recapture
of the subjects property —

Ross in answer — cites Br. Civ. & Ad. Law. 263.
all booty taken belongs to the King — the cases
of Salvage do not apply to goods taken on land
refers 2 Rob. adm. R. note 51. — to shew this was
booty — —
The evidence of the sale of the goods, shews further
that pltffs' title was completely divested —
The Stat. 43. King does not apply —

McVey
v
Taylor

Process quashed.—

Archambault
v
Sine.

Same Ruled.—

Shuter
v
Jones

On Defts. mo. to dismiss action
as Plff being out of Province, and
has filed no power of attorney to warrant
the prosecution of the action —

Stuart for Plff — Plff resides in Province —
but will produce power of Attr Lmore till
to morrow to produce it —

Ogden for Defts — application now too late to
file power of Attys — if not too late, yet
ought to have been inscribed on the list of Exhibits —

Stuart — There is no such penalty as that demanded
attached to the not filing the power of Attys —

Bellanger v. Henry } On Defd. mo. to be permitted to make verbal proof on having made a commencement de preuve par ecrit — from Pltff. answer on faits & articles

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Dupré v. Riendort } action to rescind a Donation pour cause de survenance d'Enfans. —

~~Rolland~~ Beaubien for Defd —

Pltff has no right of action, having sold his rights to another person — Jn. Bte. Gendron — the Defend. admits the principle upon the action is brought

Rolland in reply — Pltff notwithstands. deed of sale is still propr. as there has been no transport or tradition of the thing sold — & therefore Gendron could not prosecute the action — cites. Leprohon v. Sarault — 3 or 4 years — 2 Bour. p. 146 147 — Sect. 5. ch. 2. Rep. vo Don. 8. p. 84 —

Young v. Turcot — } Action for non-performance of certain Covenants — respects 100 cords firewood —

Beaubien for Defd. — Pltff asks for money, whereas it was wood qd. was due — no demurrer the Defd. to deliver —

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Plenderleath
Burton
& Turstall
oppt

On opposition, après de Conserver

Beaubien for Oppt — The opposition is founded upon the last Will & testament of the late Genl Christie, bequeathing a sum of £250 to the Oppt. — —

Rolland for Plff — The Instr. already given in this Cause must determine the right of the Oppt — in this instance — By the transaction with Genl Burton the Oppt has consented that the sum now claimed should remain in his hands during his life time — The mortgage in favor of the Oppt has not been endangered

Stuart in answer — The Instr already given cannot affect the rights of the Oppt — The transaction entered into by the Oppt w. Genl Burton was solely to enable the parties to execute the Will of Genl Christie, and to give real Security for the legacies to the Oppt — Genl Burton could not stipulate in favor of Mrs Turstall's children — The

money

money is not given to Gen.l Burton in form of a covenant with him, but as intimating the intentions of the Appt.s for the moment —

Tuesday 17th Febr.y 1818. —

Papineau & Papineau } on report of arbitrators —
Vezi' says, that the arbs have deducted a small sum from the amount — consents as to costs —

Lefevre & Desgroseliers } on Inscription en faux — reasons on merits —

Rolland pr Pluff, has made an inscription en faux agt. the testament produced by Defend.r — on motion made by Pluff to reject the evidence of the Witnesses who were present at passing the act — Nouv.au 5. 6. Rep.re vo Temoins, p. 58 — to 60 — Two of Witnesses are produced by the Pluff — but they were not exam.d by him on any part touching the execution of the will — It is in proof that the Witn.s were not present during the making of the will, but only when the will was read —

The

The reproaches to Wit. may be supplied by Mr. Judge Pupill or 425.

The facts of Testator falling into a Syncope & of suggestion, are also partly made out—

Nigé for Defendt. There is no proof of weakness in the testator, nor of suggestion — There is a motion on part of Defendt to reject the depositions of 2 Wit. No 1. 3 — on acct. of the relationship of the Witness to the parties — as to the Plffs mo. to reject the testimony of the three Wit. produced by him, it cannot be admitted as it would be allowing him to exculpate his own Wits In the Case of Robin. v. Fagnan — the Wits to the Act were admitted to give evidence — cites also Comp. Dorn. tit. 10. art. 13. p. 117 — That no test ought to be admitted when Wit. are relations, the same rule ought to hold in regard of all civil rights, as the criminal part of the Inscription en faux is not admitted in this Province — But if the depositions No 1. 2 3 should not be rejected, yet nothing is proved after the will — That Dan. Poirier alone as to any material fact, his testimony cannot avail after the Act —

Coutlée v. Gagnier } on Action for exhib. of title

Pltff. claims Judt. that in default of exhibiting title the Defendts be adjudged to pay a certain sum in form of damages —

Range v. Genius } a deduction on price of pièce desolate —

Bouthillier v. Cuvillier } action in revendication —

Sullivan for Defendt — all that is charged in the decln is for acts of simple trespass, but there ~~conclusions~~ is no continuance of the trespass, or that Defendts remain in the possession of the property —

Beaubien for Defendt — same point —

Debartzch v. Finlay — } action for Lods & Ventes —

Rolland for Pltff — asks for Judt. & that faits & art. be declared confessed

Ross for Deft — Papers have been irregularly ~~submitted~~ annexed to the faits & art — not being exhibits in Cause — proof not sufficient —

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Rolland in ans^{r} The Defend^{s} cannot make any objection to the regularity of the facts & articles without appearing personally & making the objection —

Stansfield & Woolrich

action for goods sold & delivered

Ogden for Pltff — The Defend^{s} entrusted this son James H. Woolrich to do business for him & in this way the goods in question were furnished to him —

Beaubien for Defts — In 1814. the son of Defts did business for himself — The Exh. of Pltff № 1. is discharged by Defts exh. № 8 — The amount of goods charged in Pltff. Exh. № 2 amounts to £787.1.10 sold in Nov. 1814 is the object in dispute Exh. № 10 of Defts shows payt of Item № 2 in Pltffs' Exh. № 2 — The exh. № 9 of Defts shows Pltffs' dealings wth Defts son on his own acct — In proof that Pltff sent after Jas H. Woolrich to New York to receive the money — no demand on Defts till Sept^{r} 1816 — The accounts of Pltff have blended the transactions between him & the Defend^{s} this son

+787. 1. 10
due 354. 11. 8
£342. 10. 2.
demanded

Stuart for Defendt— objects to credibility of David Stansfield, the Plff. wit— The day goods came to the shop of Defendt— it was intimated by him to the Wm that he Defdt did not assume any responsibility for the goods— after this no demand on Defendt— other transactions took place between Defendt and Plff. which were closed without any mention of the goods in question— In Septr. 1816.— first demand. ~~The evidence of~~ D. Stansfield is only wit who appears to substantiate Plffs demand— not entitled to credit— his ans. to quest. 79— see test. of Roy Moore contradicts it— see ans. to 63. 65. 66. 67. 69 70 71 72 73 & 75— see testmy. of Jas. H. Woolrich ans. to 10. Interr.— & other ans.— see also testimony of Scott— Testimony of D. Stansfield ought therefore to be rejected— sufficient evidence besides in favor of Defdt. Scott— Sprague & Clarke besides Jo. H. Woolrich shew the contract was never entd. into between Plffs & Defendt— The written evidence— see Defdt. Exh. No 9. receipt 7 Feb. 1815— from Jo. H. Woolrich for £354. on acct— The act of Plffs. compound the transactions between the parties by blending different transactions together—

Ogden for Plff— The evidence shews that Jo. H Woolrich acted as clerk of Defendt up to the day of the purchase

purchase of the goods in question — It is proved that the goods were sent to the Store of the Defendt with a bill of parcels in the name of Defendt — the observations of the Defendt to his own Clerk that he would not pay the goods is of no avail agt Plff — The receipt produced by the Defendt for money p. on acct must be considered as on acct of the Defendt — That testimony of Jo H. Wolfe is contradicted by testt of Moore in regard of the bill of parcels —

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Poitras
vs
Freeau

on action petitoire —

Rollins for Plff — action by Plff as representg heirs of late Poitras to recover half of a land belonging to the Community of late Poitras — Poth. Prop 291 the moitié indivise may be demanded —

Rollin for Defendt — The Defendt claims property under title from Jos. Poitras pere & his wife — in a marriage contract 12 Feb. 1816 — which refers to a deed of donation made same

day

day — here no amplation was necessary — That
insinuation is not necessary, where the donation is in
direct line — Dic. Droit. Vo Insinuation — 1. Argou.
Donation 290 — Pothier. Don. entre vifs — p 90. 12e
Ricard. 252. — 2 Bouj. p 132. 133

Rolland for Plff — The donation by Jn Pothier was
accepted by Cousin on behalf of Defendt — This ampln
not valid — Repo Vo amplation p. 99 — The Co
marriage refers to the deed of Donation, but does not
ratify the donation — neither of acts have been insinuated
which ought to have been done — The certificate of
insinuation is not proof of the fact — no proof
of any Insin. of the Mar. Contract — The ord. 1539
requires insinuation of the marriage Contract,
the ord. of 1731 exempts this formality — but this ord.
is not in force — The Donor is not the Grandfather
of the Defendt — to bring him within the exemption

Rollin in answer — no amplation of Donation from
father to son necessary — 1 Argou 285. 286 —
2. Bouj — 223. ampln may be made by the Minor.

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Taylor
Sullenberger } action of account

Sullivan for Plff, demands homologation
of Report

Ogden for Defendt — The arbitrators have not proceeded anew to hear the Witt. of the parties — the presenting a different view of the Case from that upon which the Court has adjudged, and which would have induced the Court to have homologated the former award, is not complying with the last Interlocut —

Foucher & Pothier } On motion on behalf of Mr Henry desire to take up the instance in the room & place of Mr Foucher the Plff

Bedard for Defendt objects, That there is no sufficient authority to entitle the attorney to make the motion — 1 Pigeau 346 —

over till to morrow —

Park & Stuart } Action for goods sold —

No defaut having been obtd agt Defendt the rule for hearg discharged —

Dorions
& } action pr.
Labrie }

Bedard pr Pltff. demands that as Plaintiff's demand is made within the Year he be admitted to be heard on his serment supplétif to make out the number of visits & medicines furnished

ORr —

Platt
& } On mo. pr Dept. of Garnishee. &
Tessayman } on application of Garnishee to be
& } permitted to answer —
Pratt. Garnishee }

Campeau
& } On motion pr an alimentary
Paiement } allowance —

To be cont.d to last day of Term

Drolet
& } action pr negligence & a Cause —
Villars }

Stand Exception — no suff.t agreement shewn —
no name of the person w.h whom the Contract was
entered into on behalf of the Defend.t — no that Peace

wgr

was not damaged while on board the batteau

Whitney v Johnson } action on indorsed Note —

Ogilvie. The declaration insufficient none of indorsements stating that they were made for value recd — Pltff does not shew himself within the law —

Brignon v Bleau — } action for delivery of legacy —

Bourré for Defend^t — submits Case

Dorions v Trottier } on Exceptions — submitted

Gale v Hawley } on Rule Nisi —

Lacroix for Deft. — Pltff on faits & articles admits having rec^d. certain sums of money from Deft. q^d he applied to

a

a different debt from that demanded — submits to the Court whether such application can be allowed —

Bourré — comments that the money ought go on and of Costs, & that Rule be made absolute as to principal & interest —

Lafore
Gillis } action for house rent —
Motion said

Hagan
Mills } action for bill of Exchange —
Defend. pleads payt. except as to a sum of about £7-10. — on suits in defn. of Saml Mills —

M'Callum
Countermanded
Countermanded
oppn } On opposition of Countermanded
the claim claiming certain effects
seized —

Stuart for Oppt — contends that
sufficient proof is made out to support the

the Opposition —

Sullivan for Pltff — shews that there is collusion between the parties, as they live in the same house, — and each claims the right in the property —

Stevenson v. Hartel & Legrasse opp } on opposition — Qu. as to sufficiency of proof

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Longuefosse v. Montreser } on Defend mo. to be permitted to take off default entered ag him last Term — on an affidavit of Defend —

Sullivan for Deft. refers to case of Herigault v. Degenard where Defend. was allowed to come in after a second default —

Stuart for Pltff — It is a question of law

law whether a defendant can be let in after a 2d default — cites case of Oldfield. vs Park where it was refused —

Wednesday 18th Febry. 1818.

Longueposse vs Montrisor } Defendr motion granted —

Platt. vs Brooks. } On defendants mo. for hearg on merits Objected that Defend. has not yet been examined on fait & articles. —

Mc Callum. vs Boyer. } action ~~pluitorio~~. possessoire —

Stuart for Plff — the only question is the possession for the year & day before trespass committed &c

Vigé for Defend — there is no proof of Plff possession the possession must be presumed to be in the Defdt from the titles as well as the Verbal evidence produced at all events there is no proof of any damage

Stuart in answer – the right of the Defendr – to a coupe de bois in a land, is a mere personal right – gives no right in the realty – nor could the Defendr. maintain any action possessoire in regard of that coupe de bois – the Defendt therefore ought to have shown that the person from whom he held the coupe de bois was in the possession – Pouliot the man who had the right to the possession has voluntarily given it up. –

Dumenil
Chenier } action on promissory Note which has been lost

Nizé for Defendr – The only Judgt the Pltff can have is for the amount acknowledged by the Defendant on the faits & articles, which is about £15 – denies that ever any Note had been made – has objected to the Verbal testimony as insufficient to prove any contract above 100 £ – offer made to pay £15 – before action or receiving a discharge –

Stuart – The defendt admits in his answers that there was a written contract, but only for £15 – this is a commencement de preuve par ecrit, and lets in

in the plaintiff to the proof of all the circumstances of making that Contract— there are other Counts in the declaration for work and labor, under which the Pltff is entitled to recover

Guerrion } Martin } Action on promy Note.—

Rollin for Defendt— has made an Incidental demand for articles furnished to Pltff—

1 Pigeau 407. Incidt demands admitted—

This demand is proved by evidence of Defendt— Patt. & Boggs—

Bender for Pltff— Incidental demand is not admissible the presumption is against the demand of Defendt—

Lagrandeur } Doré— } on action for money rect by Deft

The Defendt showed the return to the Com. Reg. for the ex. of the Pltff on faits & articles, by which it appears that Pltff is unable to answer from sickness— & moved that

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Smith
vs
Sylvain
&
Cuvillier

mo. granted —

Cartier
&
Martin

action on promy. Note — heard on exceptions
Ogden for Defendt — evidence not suffte —

—

Henshaw
vs
Dwight

On report of arbitrators
nothing said

—

Poutré
vs
Letourneau

on report of Arbitrators —

Bourret for Defendt — the report not made within the time limited by the rule of reference — cites case Monden & Archambault & Cartier — The report has determined nothing as to the Incidental demand — at all events Defendt. ought not to pay Costs — —

Stuart for Plff — If the report was made before the rule was expired, it is sufficient, altho' not returned into Court —

Rochon
vs
Lyons

On Report of arbitrators

To see papers - hearing only on the report, but not on the merits, as the parties have not had occasion to communicate with the parties. -

Arnoldi
vs
Brown
vs
Brown

Pltff to enter discontn.

Bridgeford
vs
Flynn

On rule to shew Cause why Judt. shd not be arrested -

Sherwood for Defendt -

The verdict is conditional - not sufficient Bac. abr. tit. Verdict - 5. Com. Dig. 513. 514. Verdict. 514. 518 - 519. 523. 525 - 2. T. Rep 281. Jackson v. Williamson - The Court may order a Venire de novo. - The Defendt. precluded from offering the rumpo, because it was not pyled - ought to be - recommend -

Sullivan for Pltff - There is no repugnancy in the verdict - It is at most but surplusage - Com. Dig. tit. Pleader (S.) 26 -

Ruy[d]. Rep. 66q – opened to in Bac. Abr. –
2 Saunders. Rep. Hurs. & Norris – surplusage
will not vitiate – 1. Trial & Pais 316 –

Logan
vs
Spence

action for Work & Labor

Boston demand for £12. 15 –

Bourré for Defend[t]. The notice of demand
is for £11. 19 – Plff's proof not sufficient
the acknowledgment of Defend[t]. cannot be proved
by verbal testimony –

Philips
vs
Conant

action of revendication –

Sherwood for Defend[t] – action between 2 Cit[ys]
of America – action is local, & not transitory – it is
a cause ex delicto, which must be tried where it
arises – Denizet Vs Etranger. no. 23. – acts in a
foreign country cannot be considered of same weight
as in country where made – 2d. Vs Jurisdiction –
3. Bl. Com. Jurisdiction. as to local actions –

By

By evidence the Defendt. was in possession of the property within the State of New York — and that possession ought to be considered as a title not liable to discussion in Courts in this Country The Court here cannot judge the right of the Pltff without judging that he was wrongfully turned out of possession in a foreign Country by one Mr Ogden, which they cannot do —

But were the Case within the jurisdiction of this Court, the evidence is insufficient —

Dep. No 1. shews that 3 trespassers cut down the wood, and it was seized in the State of New York not sold to Pltff

The vendors here ought not to be believed — one of them had given an ex parte evidence — There was no release from pltff. to render them Witnesses —

No 5. Defendt. Witness states that Pltff proposed to buy the timber from Mr Ogden after he had seized it

Stuart for Pltff in reply — this action can be assimilated to the english action of Detinue — all personal actions are of a transitory nature except when connected with the realty — If the Defendt. had any title under the laws of the Country when he got the possession, he could have pleaded it & proved it, & this Court would have attended it —

The Pltff here traces the timber up to a time when he had a better title than the Defendt — this he proves, and it was the duty of the Defendt — in this Court, as he would have been obliged in the Courts of N. York to shew a better title than the Pltff —

Marot — }
v. } action for rents & pension —
Monplaisir. }
& al. —

Stuart for Defendts. By the contract between the parties the Defendts became bound to pay to the Pltff & another person, his wife — Pltff has not proved any existence of community between him & that wife — & the fact is otherwise — The contract is not to pay money to Pltff as demanded — there ought to have been a demeure of the party before obligation of the party can be converted from doing a specific thing to pay in money —

Ross in reply, Community is presumed by law and Defendts could have tendered the arrears in nature

nature — —

M^c Callum
v
Binet } action possessoire —
same argument as in case of Boyer —

M^r Callum
v
Lussier dit } action of Complainte — for cutting
hay on Pluff land

Vigé for Defendt no proof of the
Defendants — no damage — the possession
of the Pluff not made out —

Thursday 19th Febry. 1818.

Dorion
&
Leblanc
&
Jobert
Opp.

on question of costs on opposition —
The opposition of Oppt. has been admitted by Pltff. — but he contends that Defendt. ought to pay costs, —

Jones
&
Henderson

on mo. for hearg. ex parte, after plea & declaration has been dismissed
Defendt. is entitled to 15 days to plead the Cause not having been returned into Court on the first day of Term —

Portras
&
Delisle

On ratification of deed filed by the Pltff. — parties heard —

Friday 20th Febry. 1818

Lagrandeur
v
Doré } Judt. –

Poudret
v
Letourneau } Judt. – report came in after return day but
& was made before the rule expired,
E Contra the demand for £ and
Incidental demand for £ – the
arbitrators having reduced the pltff. demand on the
mutual accounts between them to £ – the
court thereupon divided the Costs between the parties –

~~Nichols & Sanford~~
~~Dutelle~~ } ~~Judgt~~
~~E Contra~~ –

Allison & Co.
Wisely } Judgt – 12th – int – ent

M. Cantillon
Gagnon } Judt. for tiers of ecu & quart d'ecu
salvo that Defend. exhibit his letters to Pltff
in default to pay £10 – dam. –

Poitras
v.
Décisle } Judgt

Asplwin.
&
Cuvillier. } Judgt
&
Bardet &
al. T. Saisi.

Plenderleath.
&
Burton. — } Opposition dismissed. —
&
Turnstall dus.
opp.te

Marotte
&
Monplaisir } Judgt —

Sauvé
v.
Venet — } Judgt — Levé —

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Lafontaine