3. 4
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Kings Bench Montreal

Civil Pleas.

April Term 1818.
June Term. "
Oct[illegible] "

April Term. 1818.

Wednesday 1st April. 1818.

Present
The Ch. Justice & J. Reid.
J. Ogden - absent from indisposition.

No. 644.

Poudrette
vs
Letourneau
&
E contra - } Judgt on award -

Poitras
vs
Freeman - } To stand over till to morrow

Perrault dit
vs
Martineau } Exception dismissed. -

Stansfield
vs
Woolrich } Action dismissed. -

2.)

Debartzch v. Finlay. } Action dismissed. —

Taylor v. Surrenburgher } Report first made homologated —

Philips v. Conant. } Judgt for Pltff. —

Dumesnil v. Chenier } Judgt on Count for quantum meruit —

Budge & Penn v. Hyndman } Mo. in arrest of Judgt overruled and Judgt for Pltff. on verdict.

Drean v. Fraser & The King Interv. } Action dismissed —

Thursday 2d. April 1818.

M.c Callum
v
Boyer } Judgt for £12. 10

M.c Callum
v
Deserre } Judgt for £15.

M.c Crae
v
Probables goods
&
M.c Callum claimt } Judgt. on claim

Platt
v
Brookes } The Cause being called – for hearing on the merits –

Mr Stuart for Pltff stated that the Cause cannot be heard until the party Defendt shall have been examd. on faits & articles – Moved that the faits & articles should be taken as confessed as Defendt. has not answered to the Interrogats served upon him –

Ross for Defdt – No return of service of the rule nor of the Interrogatories on the Defdt – does not appear to have been filed –

4)

Lanclot
vs
Dugas

On mo. that the entry made in this Cause in Vacation, whereby, the Plff discontinues this Cause, be expunged from the record –

Rolland cites Case of Bell v Kemp, and when a discontinuance in Vacation was permitted is similar to a discontinuance – Pig case. –

Sherwood for Defendt – There can be no discontinuance in Vacation, nor any act granted thereon, nor can the Defendt have the benefit of his costs under such proceeding –

The Court held it to be settled in practice that a party may discontinue his cause in Vacation as thereby no injury can arise to the parties, but on the contrary they will be facilitated thereby, and a Judgt may be thereon entered for the Costs at any time in Court –

Allison & Turner
vs
Barril & Hamer

Action for goods sold

Boston for Plff – only question is in respect of a receipt for £5 – but this has been amended for –

Rolland for Defts – submitted Case –

Berthelet
v.
Stanley

On motion to quash writ of Saisie Gagerie without having obtained the order of one of the Judges

Bender for the Defend.t refers to the rules of practice in regard of Saisie Gageries, & contends that there ought to have been an affidavit to ground the Saisie Gagerie —

Mr Peltier for Pltff — contends that there is no such rule in regard of Saisie Gageries. —

Friday 3.d April 1818. —

Platt.
v.
Brooks

Pltff — mo. dismissed, as no default had been taken agt. the Defendant for not appearing and answering, and as the Cause had not been inscribed on the register on the day on which the Defendant was ordered to appear and answer. —

Berthelet
v.
Stanley

X Prudie

The Defends motion discharged. —

(6)

№106

Millar sal
v
Chesser Jr

Action for goods sold & deliv^d
Trial by Sp. Jury

Wm Edmonton — proves sale & delivery of goods

Verdict for Pltff

Bancroft
v
Dabin

Action of assumpsit on a bon & other counts —

L. M. Vigé for Defend^t contends that Pltff has not made out his Case — The W^n state that note was given for a debt due to Lester Taylor & Co and not for any debt due to Pltff —

Ogden for Pltff — It is in proof that the Pltff was agent of Lester Taylor & Co & gave Defend^t a discharge for the debt he owed them, in consideration whereof the Defend^t made the note in question

Whitney
v
Johnson

Action by Pltff as Indorsee of a promissy Note —

Sullivan for Defend^t — The indorsement not sufficient

Indorsment—
"I order the Contents
"of the within note
"paid to Joshua
"Whitney or his
"order, at his own
"risk and cost."

sufficient to give a right of action to Pltff — the indorsement is not stated to be value rec.d — the words — Pay to Pltff or order, — but this not sufficient under the Statute, wch requires a full indorsement, The present indorsment can be considered only an authorising Pltff as the agent of the payée, but gives no right in the note —

Ogden for Pltff — Here all the parties are traders and a blank indorsment would have been sufft to have conveyed the right to Pltff, the additional words cannot be considered as restraining the operation of the indorsment.

—

Charles
vs
Mann

On merits of plea of abatement —

Sullivan for Defend.t — whether the addition of Esquire, be proper — submits case —

—

Hall
vs
Stanley

Debt on Obligation —

Boston for Defr — The Defend.t had a delay for payt. of a part, & in case he failed in payt. of that part, he was then to pay the whole sum now

now demanded, and Pltff ought to have shewn a demand on the Defendts or a refusal on their part before he can be entitled to the present action for the whole money.

Grant for Pltff — refers to obligt — by wt it is agreed that no demand is necessary —

Sweetman
Pattie dal } Action of Conspiracy, in charging Defts not Crime of having murdered his own Son

Stuart for Defendts — The Defendants have not been actuated by malice — There was ground for the charge under the Circumstances — The action is not for words, nor for a malicious prosecution, but for a conspiracy — The Pltff does not shew how the prosecution terminated — Esps. N. P. on malicious pros.n —

Scott for Pltff. The Pltff was never arrested and never had any means to procure any discharge and this was done under the conspiracy among Defts

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Rochon
Lyons } On award of arbitrators —

Ogilvie for Defendt — states that the arbitrators refused to hear the Defendt or to allow

allow him to be present when the witnesses were examined —

Saturday 4th April. 1818

Charles vs Man — } The Plea of exceptions dismissed the proof on the part of the plaintiff being satisfactory, no proof whatever being made by the Defendant in support of his exception. —

Whitney vs Johnson } The Court held the indorsement to be sufficient the parties being traders a full indorsement not ~~being~~ necessary —

Bancroft vs Dabin — } The Court considering that it had been made out in evidence that no value had been given by the Plaintiff for the note in question

Action dismissed

Sauvé vs Vinet } On hearing on Report of Experts

Nothing said —

Shaw & armour
vs
Barril & anor } On action for goods sold —

Rolland for Defend^t — discontinues his Incidental demand — & submits case to the Court refers to a receipt for £5 — w^h he conceives ought to be credited to Def^t —

O'Sullivan for Pl^ff — sum not p^d. to Pl^ff — who were not at time partners —

Bates
vs
Chase
& al } On action ag^t Defend^t — for a conspiracy.

Stuart for Defend^t — submits case — from length of time parties have left the Country, he is not prepared with any instructions on case —

Consigny
&
Demers } Action on Promissory Note — lost

Lacroix for Pl^ff — asks for Judg^t. for balance acknowledged by Defend^t to be due, but as Def^t has never made any tender, he ought to have his Costs —

Vezé for Def^d. The costs must be given accords to sum adjudged, & the surplus ought to be paid by Pl^ff —

Johnson
vs
Brown

On mo. as to regularity of service of proces

O'Sullivan - The objection by motion, that the place of residence of Defendt is not at St Andrews but in Montreal - The domicile here is the domicile natural - qt is at Montreal, the residence at St Andrews is only transitory - cannot constitute a domicile - admits that Defendt is a Consitaire of Plff - but this does not affect the question as to an exploit d'ajournement - refers to Prov. Ordre of 1785 - refers also to V. Domicile. Repre 106 - first domicil always prefered in case of doubt - 1 Journ Palais. -

Boston for Plff - refers to the evidence adduced

Wheeler
vs
Winters

Action of Qui Tam. for practising physic without a licence -

Boston. for Defendt - There are three Counts in the declaration. - Defendt not guilty - it was only patent medicines qt he sold - excepted by law

12)

Platt
v
Brookes

On Defendt motion that the Interrogs proposed by Pltff to him be suppressed

Ross for Defendt — action of Separation, where facts & articles cannot be admitted — The Interrogs tend to affect a Judgt rendered in favor of a man not before the Court — and also a fraud on the Defendt — to cheat and deprive the pltff of the rights in the Community which subsisted between the Pltff & Defendt — No evidence of conversations since the institution of the action ought to be recd — No 15 — has nothing relevant to the cause —

Lacombe. Vo Interr in Fact & articles

Repsse Vo. Interrogs 482 —

Stuart for Pltff — The Interrogs are pertinent — do not tend to criminate the party — tend to bring out answers wh may shew dishonesty — wh are not irrelevant — as to the Credits on the Judgt his rights cannot be affected the question is just as a ground upon wh a separation ought to be granted — refers to case — Mc Cord v. Langan — Baroness of Longueuil v. Carter, and same wh. Brogsean — The objn to No 4 not founded. admissions of facts may be received in evidence altho' made subsequent to the institution of the action

action, when the facts happened prior to the action — agrees to withdraw the 19th Interrogs.

Ross in ans. denies right of Pltff in a case of this kind to demand interrogatories upon facts & articles — Refers to Destrismaison v. Hunter

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Monday. 6th April 1818.

Hunter
v.
Durit

On Pltffs mo. that appearance on part of Defendant be rejected, as second default has been entered on the 1st inst. The writ of Summons was returnable on the 20th Febry last on which day a default was entered at the Defendts. On the 27th Febry last a Capias was issued at the suit of the Pltff on the same demand, and the Defendt was arrested — The Ca. ad resp. was returned on the 1st inst. and the parties having been called a default was entered, on the 4th inst. the Defendt gave sp. bail, & cause has been again called, entered appearance by attr.

14)

Platt v. Brook } Judgt - on motion for rejecting faits [illegible]

Tuesday 7th April 1818.

Liftondal v. Berthelot et al — } On Defendt mo. for a detailed acct —

Brown v. Parten } On hearing on exceptions. —

Pothier v. Foucher et al — } The Court rejected the application of the Defendt Barron, to examine witnesses on his defence, as it contained no point upon which evidence could be admitted, being an admission of the plaff right of action —

Wednesday 8th April 1818.

Shuter v. Dewitt

The court were of opinion that the Defendant was not entitled to enter any appearance on the original action in which a second default had been regularly entered agt him, but admitted Defendants appearance to stand on the proceedings under the Capias —

Debartzche v. Roquez

action for Lods & Ventes. —

Rolland for Pltff, there was a sale & resale between the parties, and as both the contracts have been complete, the Lods & ventes are due upon both contracts — That there was no tradition reelle on first sale, but this does not affect the right of the Seigr — 1st contract for 8000t — on acct of 300t — pd. content — ~~reception~~ of a part carries contract into effect by purchaser — & tradition feinte executes it on the part of Seller — Poth. 313. Vente. retention d'usufruit — amounts to a tradition reelle. No. 318 — 322. 322 — when credit is given to purchaser it is executes the Sale — But in regard of Lods & Vente

& Ventes, a Sale without tradition réelle is sufficient Dec. des Dom. Lods & Ventes. No. 3. tradition feinte is enough — 3 Desputes. 85. 2 Bouy. tit. 4. No. 102.3. des Censives — Do. De l'acquisition des Immeubles liv. 3. tit. 4. No. 27 —

1. Journ. Palais. 209. 10 where credit given on sale Prudh. Fiefs — 3. Guyot-Fiefs — ch. 12. p. 479 — retention d'usufruit tantamount to tradition p. 489. — Resolution volontaire — pour l'avenir carries lods & ventes — different if it had been for the passé — refers to authorities p. 501. 502. —

Repr. de Jur. Lods & Ventes. 712 — retention d'usufruit p. 714. 716. 717 — when parties prefer the form of reventes instead of resiliation, Lods are due —

1. Delaplanche — tr. Fief — 827 — Despeisses 168 —

Stuart for Defendt. — Plea — 1 nil deb. — 2 No tradition of the property — No evidence of mutation of any Land in the Seigniory — The name of the Seigniory altered — not same as originally granted — this produces a fatal variance between the statement in the declaration & the evidence adduced — if qt. lands are described in both deeds as being in

the

Seigniory of St Hyacinthe – The Seignior cannot change the name of his Seigniory – There must be a perfect mutation of the property to entitle the Sup. to Lods & Ventes – This has often been determined by this Court – The fact is that up to 25 May when 2d act was made there was no real tradition or perfect mutation of the property – There is nothing in deed of 24 May to show any thing like a tradition fainte under a retention d'usufruit. – the reserve of the crop – does not amount to this – as to the buildings reserved the usufruit cannot be considered to extend beyond the objects reserved Dumont. v Parry – Montarville v Brunelle cases where mutation was held necessary to give rise to the 2d Lods & Vente – If there was no tradition under the first sale, there can be no Lods whatever either upon the first or second Sale –.

Rolland in reply – In all cases of resiliement volontaire, double droits are due – the present case is not a mere resiliement volontaire, but a double Sale of the property – delay to deliver

The

the possession is same as delay for payt. of consideration — Has not changed name of the Seigniory, but has added another name

—

Longueuil
vs
Frichette

action of complainte. as Defendr for having erected a wind mill within the Seigniory of Plff.

Sewell for Plff — The droit de bannalité is a real right, and the Plff is entitled to her action en complainte for disturbance therein — Ordre of 1675. of Consil Supr on a suit brot before it — 2 Edit. 266 all Seigniors are bound to erect banal mills within their Seigniories failing which the Censitaire may doit — but this cannot be done until the right in the Censitaire shall be ascertained under sanction of a Court of Justice refers to Fr. de Eugnet — The land of Defendr is liable to bannalité under the original deed of concession Rapr de Jur. Denzt — Right of bannalité is a real right —

Bedard for Defendr — Case is of importance

of first impression — The right of bannalité
altho' granted to the Seigr by anct 1686, yet
is modified, and they are bound to build Mills
within a certain time, the Censitaires have the
right to build them — the anct was not published
until 1707 — prior to that time the right of
bannalité was a droit reelle, but since then it
must be consd as modified — That on default
of the Pltff having erected sufficient Mills
on her Seigniory to warrant Defdt, having
built the Mill in question — The Defendt
was not bound to apply to a Court of Justice
to have this declared as the Pltff, as the law
is sufficiently explicit on this head, but if
there shall appear to be sufficient Mills on
the Sr Seigniory then the Defendt Mill ought
to be demolished, but if the fact be otherwise
the Defendt is justified in what he has
done & the bannalité will belong to him

Sewell in reply — no man can take the
law in his own hands in this nor in any

20)

other Case – and in this case, there arrets
2 Arrets. p. 72 80. 85. q[t] shew that there must be
a Judg[t] p[r] t. the Seignior before he is deprived of
his rights – No case can be cited where a
habitant has attempted to build a banal Mill
without a prior Judg[t] of the Seignior – That
the infringement here complained of cannot
be estimated until the time when the Mill
was so far perfected as to make plaintiffs
toll –

—

Griffin dus.
vs
Fraser et al

On Interlocutory Judg[t]. ordering statement
of monies laid out by Pltff – to be laid
before the Court –

Rolland for Pltff –

1. Proved by deed
2. £14 – not p[d]
3. 4. 5. 6. 7 for deeds – proved
8. Lods & Ventes – were due & presumed they were p[d] –
9. £245. – proved by receipt on deed –

Stuart for Defendt — The Pltff cannot be entitled to any benefit under the Interlocutory, having made his proof — prior thereto & set down his cause for hearing on the merits ~~prior thereto~~ — The Court would not have assisted Pltff by giving another opportunity to make out his case — at all events no pay^{ts} not within the Interlocutory can be admitted — nor the lands & rents claimed, as the deeds were rescinded ex causa antiqua. The costs on the appeal by Pltff, being at his own instance, he cannot recover it from his garant — Costs on appeal to the King & Council were awarded only to M^{c}Cord The assessed sums followed the possession of property q^{a} the Pltff held —

Vaseur & Catudal } On pertinency of facts & articles on Inscrip^{n} in part

Rolland for Defendt — are not admissible, as the answers of the party here cannot make any proof in the Cause inasmuch as a great many more persons are are interested in the will besides the Defendt —

22)

The admissions even of the party cannot in such a case ~~warrant~~ be received to destroy an act ags. the interests of other persons —

Bedard pr Pluff — Faits & articles are admissible on Inscrip. en faux — The interrogatories proposed are of a nature to affect the decision of the cause + 1 Pand. Not. 95 — party is entitled to examine his adversary on the contents of every act he produces —

—

Dubord
v
Crepeau

On action negatoire —

To ex. if issue be complete —

—

Perrault
v
Beaubien

On hears on oppos.

—

Pothier
v
Fonchereau
&
Heney

On mo. to reject Interrogatories as not pertinent. —

Vizé for Marie Julie Fortier & Marie Amable Fortier —

on just 9. arts. — 1. The writing & signature of the late Mr Fortier are not contested & therefore interrogats to that point are irrelevant —

Repⁿ Vᵉ prem. 587 —

The Court has determined this by rejecting testimony to prove the copy of the will filed.

Jacomb. Vᵉ Inter. sur fait cant. to what are faits pertinens —

1. Pig. com. p. 137 — 137. note —

on the fait. Questions put to the parties, as to acts done by their co-heirs, & other facts done by them, not regarding the party personally — cannot be admitted upon faits & articles. — This objection goes to all the other articles except the 11th

Bedard for Plff — the facts different from what is stated by Defendr as the last will & testament of the late Mr Fortier has not been admitted by them, but on the contrary denied —

24)

On objections made by H. Heney and wife —

M Bedard objections to the motion made by M. Vigé — this was over ruled —

Vigé The party cannot be examined a second time upon the same Interrogatories to which he has already answered —

Bedard — The Defend. Heney is another character by coming into the Cause as the husband of one of the heirs — and besides the facts upon which he has been interrogated are not same as those now submitted

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M Lacroix for M. Heney, objections to the faits & art. proposés to her, as the Attys had no authority to that effect —

M Bedard in answer — objection comes too late — ought to have been made when he obtained ord. for her examination — contends that the power filed by him is suffte —

Thursday 9th April 1818.—

Johnson. v Brown } Plea of Exception dismissed.—

Wheeler v Winters } Judgt— for penalty —

Lepton Lad' vs Berthelot &a — } The Court granted the Defendt motion grounded on the principle of right in Defendt— to obtain a bill of particulars see Tidd's Prac.

Roi v Perrault Lad — } On Pltff— mo. to examine Mr Lawless on faits & articles— he being the husband of the defendt— and conducting the affairs of the Defendant,— altho' separated from her as to property, yet as he cannot be a Witness in the Cause, injustice might otherwise arise to Pltff—

Beaubien for Defendt— There being no Community between Defendt & her husband, he having therefore no interest in the Cause, cannot by his answers bind the Defendt—

26)

Shute
v
Dewitt

On Plff's mo. to proceed ex parte for ~~examination~~

Grant for Defendt a plea has been filed —

Bridson
v
Dutelle

On Plff's mo. to compel Defendt to alter his conclusions from country & conclude to the Court — Defendt being a Tavern keeper

Bourn for Defendt. — Court has decided in case of Spatz. v. Huntoon 12 June 1816 that the nature of the transaction must regulate the condition of the parties & their right to have a Jury under the Ord —

Sullivan for Plff — The parties must be traders and the transaction also commercial —

—

Bowen
v
Porter

On mo. to change conclusions to country —

Gleeson
~~Gleeson~~
v
Goodsell

On action of ass umpsit — wages & work & labour —

Grant for Pltff — contends that a balce of £16 —

Sherwood for Defendt — The demand not within the Cognizance of the Court. Pltff having no right to more — The Pltff was a servant to Defendt — entered into his employt — without any previous engagemt — and the service rendered were of a description not to merit but a small consideration — The Pltff does not appear to have lived more than 3½ months w. Defendt — and only proof of quantum to be allowed to Pltff. is an admission made by Defendt — in talking to some of the Mrs, but this cannot be binding, as it was not proof of any agreemt — The ~~Defendt~~ Pltff conducted himself improperly in the service of Defendt — see dep. No 6 — objects to the nature of evidence adduced as not conformable to law, tending to prove an agreement above 100th —

Grant in answer — the admissions of Defendt. as proved by several Wrs — as to wages of Pltff — The quantum

quantum meruit is besides sufficiently proved— As to the charge raised by the Defendt of the Plffs having driven two of Defendts horses so as to cause them injury, cannot be received, as not having been pleaded — and moves that this prof be rejected —

—

Lonquenil
Malbouf

On Defendt motion to set aside writ of Execution issued out in this cause —

Bidard for Defendt — action of complainte & reintegrande, & Insp: in favor of Plff, upon it a writ of Possession issued regularly, as By ordre of 1785 art: 29 & 30 — points out what kind of Exön must issue on Insp: given — In this case it ought to have been an execution par provision en baillant Caution. Tit. 18. art 7. — cites ~~auth~~ of redaction of Code Civil p. 50. to shew that this article has remained in force in this Country — That the execution

issued

issued here without any such Security have been given. — Sic Bonin mat.

Scott for Plff - The law cited by Dyde from Ordre of 1667 never existed in Canada at all events it only meant that a provisional execution might be had in matters Sommary on giving Security, notwithstanding an appeal - This law has been abrogated by the Ordre of 1785, where on an appeal all proceedings are suspended whether by execution or otherwise, but if no appeal is made that execution shall issue — That the present application is irregular as it appears that the Plff has been put in possession under the Writ of Extion —

30)

Friday 10th April 1818.

Roi
vs
Perrault
et al

The Court rejected the Plaintiff's motion for the examination of the Defendt's husband on faits & articles, inasmuchas no sufficient ground was stated or shewn from the evidence adduced that Austin Cuvillier the person to be examined was in anywise interested or concerned in the business carried on by the Defendt or acted for his wife in conducting her business.

Bridge et al
vs
Dutelle

The Court considered that the character of Defendt merely as Tavernkeeper would not entitle him to trial by Jury as a Trader under the Ordre of 1785.

Shuter
vs
Devitt

The Defts. mo. granted, as the plea was made to the original demand as stated in the declaration, to wh. Defendt had no right to plead.

Galernau
vs
Croteau.

To be heard to morrow

Meers
v
Hagar
& al

On action on Recog. & Sp. Bail —

Stuart for Defdt no sufficient proof — as neither the original Capias nor return appears in proof, this is a material fact, alleged in the declaration —

Ogden for Plff — The Recognizance into by Defendt sufficiently admits the fact —

—

Uniacke
Attn. Genl
v
Tetro
& al

On Information agt Defendt — as Debtor to the Crown, for damages for breach of Contract. —

Ross Kings Counsel states action to have been brot by him under instructions from the Attn Genl — and signed by him —

Stuart for Defdt The Inform.n is irregular as on the face of it, it is stated that the King is represented by Mr Ross Kings Counsel — Kings Counsel has no rights to represent the King in his Courts, hold only precedence at the Bar

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The appointment of Kings Counsel creates no office, but is merely an honorary title —
4. Bur. 2553. The Crown can be represented only by the ~~Crown~~ Attr Genl & in his absence the Sol. Genl —

In this case the Information is stated to be filed by the Attr. Genl — as being represented by Mr Ross a Kings Counsel, which — representative character cannot be admitted — The conclusions of Information are irregular in demanding payment to the Attr Genl in the name & behalf of the King —

Ross for Informt — says, that he has a right to act for the King under his Commission, and to represent the Attys Genl — without any particular authority from him in all matters where the interests of the Crown are concerned — refers also to a letter from the Governor touching the manner in which the Powers prosecute, is to watch over and conduct the interests of the Crown — That the Defendt have no right to contest the right of the Prosr here, if the Crown does not dispute it,

Stuart for Defdt — The Defendt contest the right of Mr Ross to assume the right to represent the Attg Genl more than he has a right to represent the Crown duelty —

The Situation of Kings Counsel confers no right of representation of the Crown, nor does the appointment as such convey any office or any right than that of being merely honorary — a Counsel or advocate cannot represent any person in legal proceedings —

Deshautels
v
Phelan. } action for house rent —

Sullivan for Defendt — The objection taken to this demand that the plff has failed to fulfill her part of the agreement by enabling the Defendt to occupy the house let, having thrown down the gavel end of the house, and taken off part of the roof — This occasioned

a

34)

a damage to the Defend^t as all the lodgers in the house left it, and the Defend^t and his family exposed to the inclemency of the weather Thinks that the damages ought to be left to Experts to be assessed —

Bourret for Plff — The rent asked for is in consideration of the inconvenience suffered by the Defend^t during the repairs of the house as the rent was worth much more than is demanded — This was the agreement also between the parties — The disturbance was not occasioned by Plff, but by Michel Caird the neighbour in building up the Stone Mitoyen — That during all the time the repairs were making no complaints was made by Defd^t — who remained quietly in the house, —

Bertrand
vs
Beaudron

action of Complaints — for cutting wood on a reserve belonging to Plff —

Ross for Pltff — states that he has proved a right to nominate damages, & will satisfy the Court — Pltff demands & establish his title —

Defendt has filed no plea —

Bowden of Counsel for Defts contends that there is no proof in the Cause. —

Saturday 11th April 1818. —

Sanclot
Duncas } on Defendants mo. to reject the Repa filed by Pltff to the exception filed by the Defendt as the same was in the nature of an exception à la forme to the said exceptions pleaded by Defendt and as the 2 guineas were not pd. at time of filing said Reply. —

Rolland for Pltff, the payt of 2 guineas does not apply to Replications —

Sherwood — the rule of practice applies to all pleas of exception whether pleaded by Defendt or Pltff — —

36)

Platt
v
Brooks

On Pltff's mo. to discharge order for hearing to day, in as much as insufficient answers have been made to several of the Interrogatories proposed to the Defndt- and that Defndt- do appear and answer de novo to the said Interrogatories —

Ross for Defendt- objects to the motion as too late — as it was duty of Pltff to see that Interrogt- were sufficiently ansd before the cause was set down for hear — —

The Court were of opinion, that in case there was sufficient ground shown to discharge the rule, it would be done on payt. of costs by Pltff., if such sufficient cause was shown the cause wd go over to 15th — if not shown, the hearing would come on —

Dubord
vs
Rivard

On an action negatoire —

Ross for Pltff. — The Pltff sets up title as Seigniory of Isle du Pas, and action against Defr for having wrongfully cut down wood upon that Island — The Plea is insufficient. it is attempted to plead prescription, but this is not only insufficiently pleaded, but if it were the party cannot set up a title by prescription to a servitude upon the Estate of the Pltff —

L. N. Vigé for Defts — The right of Pltff as Seigniress is denied by the plea — and claims right as a Censitaire with title to an enjoyment of Common & cutting of wood on the said Isle du Pas — That a right of Common may be acquired by use only, and this right the Defendrs allege to have acquired under the prescription possession and usage of cutting wood and pasturage on the said Common —

Rep. vs. vs. ap. S. 384 —

Ross for Pltff — no title is pleaded by Defts to the right of cutting down wood, & a right of prescription cannot be acquired thereto from use.

38)

Galernau
~
Croteau
Sal

Action on Recognizance of bail —

Orig' for Pltff — The fact pleaded by Defr of a surrender to the Sheriff is not sufficient to discharge Defts — There ought to have been an act drawn up of such surrender, and notice given to the Pltff — 1. Tidd. 241. Comyns. Bail Bac. Abr. Bail in Civil Cases —

Ross for Defendr. The Defendr surrendered the Debtor to the Sheriff as far as he could by offering him — This is all that was requisite to be done — no notice to Pltff was necessary as the time for suing out the Ca. Sa. had elapsed

—

Brown
~
Pasteur

On Pltffs mo. that Defend. be held to change his conclusions to the Court —

Defend. in person — The Pltff has joined in the conclusions to the Country. Issue of Cause is Commercial —

The Court ordered Conclusions of Plea to be changed on Monday next —

Monday 13th April 1818.—

Platt
v.
Brooks

The Court ordered the Defendant to appear and answer over to certain of the Interrogatories —

Maior
Dufrisne

on Plffs mo. to reject an opposition made by Defendt. to sale of his effects seized under a Writ of Expon —

Bedard for Plff — A Defendt cannot be permitted to arrest the execution of a Judgment obtained agt him —

Bourré for Defs.

Dewitt
v.
Wildgoose

On Defendts affidavit to discharge rule for Enquête. —

Beauvais for Plff. objects to sufficiency of the affidavit. —

Tuesday 14th April 1818.

Pothier
vs
Foucher

On Defend.rs mo. for rule on Plff to shew Cause, why testimony of certain Witnesses exam.d on the part of the Plff shd. not be rejected from the proceedings as inadmissible

Bonin
vs
Boucher
&
Dumas
par reprise d'instance

On mo. to be permitted to plead in writing or rule ruled out by Plff.

Granted on the grounds stated in the motion.

Pothier.
vs
Foucher.
&
Henry

Judgt. on motions of 8th inst.

Rejecting such of the faits & articles proposed to Marie Amable Foucher & Marie Julie Foucher, as regard the acts done by the other Co-heirs as third persons, inasmuches the answers of the parties to such Interrog.s cannot affect the rights of others. They considered the power of Attys given by the Plff to Mr Bidard to examine Mr Foucher, the Tutor of his daughter, not sufficient to authorize him to propose faits & articles to Hugues Henry & his wife, the daughter of the said Foucher, as she was then acting for herself & in a different

1 Pig. Rec. 232 235

different capacity, by her "changement d'etat" — and lastly they dismissed the motion made by the Counsel of Mr Henry in his individual capacity who appeared for him before his marriage with Miss Foucher, inasmuchas Mr Henry and his wife appeared by Mr Lanoux another attorney in the Cause, and as the Interrogatories proposed to Mr Henry by the Pltff respected Mr Henry, as the husband of Miss Foucher & her as his wife, and therefore their joint attorney regularly was the person in Court to represent them as he had appeared for them when they were put into the Cause as Defendants therein in the lieu & place of Mr Foucher, the late of his Ld Daughter. —

Wednesday 16th April. 1818. —

Macon. & Dufresne } V

The Opposition made by Defendr — dismissed.

The reasons of opposition were —

1. That the formalities of the law not observed
2. Two neighbours not called as witn. to Seizure
3. No Record assisted the bailiff in makg Seizure.
4. No Gardien, appointed to take charge of effts
5. No copy of Seizure served on Defendr —
6. That Pltff had promised to suspend Execn till after 20th April —

42)

Galernaud & Croteau — Parties admitted to proof —

Lefevre dit Desprosliers — Inscription de faux, dismissed —

Lamotte vs Dugas — The mo. rejected — does not apply to objections raised by replication —

Vaseneuil vs Catin dit — The Court admitted the faits & articles, on the Inscription en faux — qst. tho' a criminal proceeding qst in its application here would be considered only as producing Civil effects —

Longueuil vs Malhiot — The Defendr mo. rejected —

Southmain vs Pattie dit — Judt for £200 damages —

Bates vs Chaine dit — Judt for £125 —

Lancelot v. Dugas }

On mo. by defend.t that all proced.s in the Cause be stayed until the Costs of a former action be p.d

Rolland for Pltff – The Defend.t is too late hav.g pleaded to the action, since the order for pay.t of costs was granted – nothing filed with the motion to shew any Judg.t – or a taxed bill of Costs – That the merits of the exception pleaded by Defend.t would be incidentally determ.d in favor of Def.d by this mo. being granted This not an action where the application can be granted, there being no vexation in the proceed.s of Pltff – 1 Tidd – p 480 –

Sherwood for Def.d – It is enough that the Defend.t has alledged the existence of a record in this Court to bring the same before it – refers 1 Pigeau 29. Costs on first proceeding must always be paid – refers to Wilson. Rep. Tit. Costs –

Dewar v. Dewar }

On mo. by Pltff to declare interrog. on faits & art. acknowledged from Def.d failing to appear & answer Defend.t filing affidavit to shew his inability to attend. Pltff contests sufficiency of the affidavit –

44)

Stevenson
vs
Craig
and
Craig opp^t

On mo. that the opposition be dismissed as no moyens have been pled to support it —

Grant for Opp^t moves to fyle the Pl^ffs receipt for the amount. —

Borton for Pl^ff — the motion irregular & application too late —

Plenderleath
vs
Burton
&
Plenderleath
opp^t

Bedard for Pl^ff, moves that Sheriff be held to bring into Court a sum of £321 - in consequence of the sale of certain Lands & Tenements under the writ of Execution issued out in this Cause — amount of £21 — of which he has returned the Sheriff retaining the difference for his fees —

Stuart for the Sheriff — The motion not calculated to bring the point in contemplation regularly before the Court, as it affects the fees of Office of the Sheriff The return of the Sheriff is conclusive — he cannot be bound to alter his return, if he makes a wrong one he is liable in damages at the suit of the party —

The

The Case stands over till to morrow

Shuter vs Thayer

Def. mo. for delay to plead till the Plff shall have filed a statement of his demand

Sherwood for Defd — refers to exhib. No 3 filed by Plff, without giving any particulars to shew the balance —

Stuart for Plff — The rule is an infringement of the general course — as Plff is bound to state all the particulars on his side, but this is not the case wt. regard to Defd — The putting down payts. made by a Defd — is doing something in favor of a Defd — The construction of the rule ought therefore to be strictly taken — & be confined to the bill of particulars ingrafted in the Court in England

Sherwood in answer — The rule has now must be complied with, and the motion is made in conformity thereto —

46.)

Hervieux & Salaberry

Oe action of account—

Rolland for Pltff—

Stuart for Defend— The action is not brought in the quality in which the power of Attorney was given by him to the Defend— namely as one of the heirs of the late Mr Osborne—

Rolland for Pltff— The action is founded on a contract between the parties, the Contrat de mandat, & defend is bound to account under that contract, without consideration to the capacity in which Pltff acted — refers to Poth. Cont. Mandat. No 17. No 62. — also No 11.—

No 17 Mandat 62.—

—

Hetu & Hetu

action en bornage—

Rolland for Pltff, asks for Jud on the report of Mr Guy w. Costs—

Stuart for Defd. The Surveyor gave no notice to the Defend. of his proceedings — Service of notice not suff. to the wife, not d. at the Domicil of Defd—

Lacroix & Manchester } action for non-performance of Covenants & Damages —

Lacroix for Pltff — the matters have been submitted to Exps — the only question, whether a point raised by Defnd: should be submitted to them, namely the right of Pltff to build other Mills within his Property during his lease to the Defnd — as it is a right of the Pltff never given up —

—

Sauvé v. Trottier } action of debt on deed of Sale —

O'Sullivan for Defnd — pleads payt — the Defnd — not bound other proof required to the oath of the Pltff? neither who admits part — The admission of the mother of Pltff ought not to be admitted, as her answers would have been those her husband who is the father of pltff — and who now stand in the shoes of the late — Their father — Exemption 100 —

48)

Rolland for Plff. The proof made in the Cause is insufficient — The ~~widow~~ answers of the widow cannot bind the heirs of her late husband — her answers can only avail as her self

See Potts. Obl. N° 773. 12°

Legris & Legris & Contra

Def^d^. mo. to reject a Paper filed by Plff. to the plea of Def^t as it contains no conclusion and is not signed by the party —

Hammond & Wilson

action for work and labor done in building a house for Def^d^ —

Barton for Plff — Plff is entitled to £57.11.4 under nature of evidence adduced — upon to Bull. N. P. 139. in addition to the authorities already cited — Esp. N. P. 140. — The special agreement is here not in question — the quant. meruit is the only evidence on q^ch^ the action now is founded —

Stuart for Defdt — 1 Esp. 130 — where there is a Special agreement, the party cannot recover on the general account of Indt: atk — Id. p. 138 — No distinction made between what was done within the written agreemt and that without the quant: meruit —

The evidence on the part of the Defendt shews that there was a specific agreement it ought to have been set out & declared upon as otherwise the line of distinction between what shall go upon the contract & what on the quant: mer. — Id. 140 — The Plff cannot recover for a quant: mer. when Defdt has proved that a certain specific sum was stipulated by a contract to do the work. —

The Incidental demand for board, is sufficiently made out —

Dorion in reply — This case within the authorities cited — The Incidental demand admitted to extent of £45 —

50)

Roi
&
Dugas
&
Carmel
oppt

On Plff's mo. to dismiss opposition as not having been filed within the 24 hours after the return of the Exon—

Pothier
vs
Foucher
&
Henry—

On Plff's mo. to ex. Defts Henry & wife on pats Articls—

Lemoine for Henry & wife — all questions from 1 to 9 are not pertinent, as they tend to prove the handwriting of Mr Foster, and same pats have been answered by the Testor & Mrs Henry — from 9th to 17 — as they ~~do not~~ tend to draw answers touching third persons — as to Mr H — not bound to answer over to questions he has already answered. —

Poitras & Friland } on question as to Insinuation of Marriage Contract —

Rolland for Pltff — By Ordce of 1539 all Don. by mar. were liable to insinuation — That the obligation de dolo does not exist in this case — Rec. 1 part. ch. 4. Sec 3. Glose 1 Nos 1104. 1105 — personnes etrangs — he describes all persons not bound to dolo — Repertoire v° Insinuation. Cent. p. 143 — in avancement d'hoirie — Rep. de Jur. v° Dot. Ordce of 1731 — excludes donations only en ligne directe — not bound to furnish aliments — Rep. v° aliments 304 — 313 1 Desquiers. p. 313 — Rep° de Jur. v° Ascendans - art. 283 —

Rollin for Defdt does not admit the fact that Poitras is not Grandfather — That Pltff cannot take advantage of the non-insinuation as being heir of Poitras the Donor, as he is presumed to be acquainted w. all that passes in the family

1 Jour

52)

Jour. du Palais. p. 429 – 1. Ricard. Don p. 250.

Thursday 16th. April 1818.

Shuter v. Thayer — Defendr mo. granted

Stevenson v. Craig & Craig oppt — Pltffs motion granted —

Roi v. Dugas & Carmel oppt — The Pltffs motion rejected

Dewar v. Dewar — Defendrs mo. granted —

Sanctot v. Dugas — Defendr motion rejected as too late The Defendr having pleaded in the suit, & no bill of Costs exhibited –

Fournier
& Prefontaine
vs
Bouthillier

Service of the faits & articles must be on the person of the Defendant, where he is in default, and a motion to declare the faits & articles confessés & avérés, on a service made to another person at the domicil of the Defdt will not be granted —

Shuter
vs
Devitt

On Pltff mo. for Judgt —
Grant for Defdt observes that the evidence in the Cause is not sufficient —

Platt
vs
Brooks

action of Separation de Corps de biens —

Stuart for Pltff. action founded on two grounds. 1. for ill-treatment of Defendant. and 2ly from the fraudulent disposal of the property of the Community —
1st Ground — The evidence not so full from the length of time since the facts happened, owing in some respects to the temporary insanity of the Defdt —

54)

There is however sufficient evidence to shew the degrading manner in which the Defendant treated the Pltff— The Defendt. has always shewn a fixed determination not to live wt. Pltff which is a sufficient cause of separation — on 2d Ground — This was effected by a Sham Judgt being obtained agt the Defendt — in order to have his property sold — The evidence here is not so full as it must be expected, but the circumstances shew collusion between Defendt & other persons — There is no proof that Defendt ever owed any debt to his father — The examin of Dfts does not go the length of proving fraud, yet shews this collusion — property much beyond the debt has been sold

Ross for Defendt — The proof in cases of this kind must be strong and satisfactory and so enjoined upon the Court — Here there is not sufficient evidence upon any of the points — The Pltff has lost all her rights by having abandoned her husband — She brot a suit in separation in 1805. & it was

dismissed

dismissed, and no new fact have been
law proved — . a

Smart in reply — The fact of the Pltff
having been turned out-of doors by the Defts
is such a strong fact as will alone substantiate
the demand —

Laquerre
vs
Ballenzat } action on promissory Note —

Ror for Pltff asks for Judgt. on
the evidence adduced — action —

Ross for Defdt — The Note was given for
fraud and surprise, the Note was for the
demurrage of a Small river craft of the bro
up goods from Grenville to Montreal, the
Note was given upon a certificate of two
persons unacquainted with the nature of the
transaction, and thus imposed on the Defendt
who upon this certificate signed the Note in
question —

56)

Sherwood for Counsel for Pltff — The plea of no consideration — to a note is an improper plea — Bath. N. P. 172 — 275 — Chitty on bills 88 — If Defend. had pd the money could not have recovered it back — The Defend. admits on his fait sart. the detention of the vessel 24 days — Lex Mercatoria is part of law of Land — Bl. com. Beaves. Lex Mercatoria — points out what demurrage is — If the consideration be looked to, it will be found that the sum demanded is not unreasonable The Defend. was not bound to submit to the opinions of the merchants who signed the certificate but he has done it, and must be bound by it — The Defend — has rec. the money as appears by exhib. 9 accompanies depo. No 1.

Raymond
v
Ballingal

action for demurrage in detaining Pltff. vessel for 29 days —

Rai for Pltff — has produced Witn to prove the quantum meruit, 9 — is contained

to

to be reasonable - time of demurrage admitted.

Ross for Defdt - There can be no demurrage when there is no agreement when it shall commence - The Pltffs Wt shew that all the days in question were not too many to discharge such a vessel as that of Pltff - If demurrage be due, the Pltff must shew when it is to begin a thing not easily to be ascertained - Defendt has made a tender - deposited money at rate of 6d. ℔. ton ℔ day -

Sherwood in reply - contends evidence is sufficient to warrant Judgt -

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No. 645

Dumas dit
v
~~Samson~~
Grant

Action by the Heirs Samson of Defendt on a promise to pay the Debt of his brother to the Succession of late Samson -

Rolland for Pltff - rises to answers of Defendt on fait particulier -

Default Cur -

Rochon
vs
Lyons

On award of arbitrators. –

Rolland for Pltff. moves for homologation of the award of two of the arbitrators – the 3d having made a separate and different report

Sullivan for Deft. – The two arbitrators have been guilty of misconduct – therefore asks that their report be set aside – and name new arbitrators –

Jacques
v
Jacques
&
Tremblay
Oppt

On opposition afin de conserver

Bedard for Oppost. cites – vo. Creancier. Rep. 156 – cites case of Freeman & Co. v Bowen Bagsley – Selby & Borton. v Rainié –

Rolland for Pltff – The wife of one Gendron bo. of one Duplessis is an emplact. subject to a rente constituée of pt. the opposant is the

Creditor

creditor — This hypn: is in favor of Duplessis only to save him harmless — after Marie Gervais had sold the land the Oppt. takes her in part. This changes Duplessis — Poth. Ob. Nos 85. 87. conventions binding only on those who are parties to them — The hypoth: in favor of Duplessis cannot extend to Oppt Remission. Sub. ch 2. No 11 (6). If even he a delegation — he ought to have stipulated the continuance of the mortgage of the old Creditor over the new Debtor — 2. Argou liv. 4. ch. 8. p. 452. — The delegation is a novation. — Duplessis is not before the Court the Opposant is not his Creditor, nor is he subrogated in his rights — That the Oppt has sold his right to the Children of Jos Bte Gendron and has thereby no right to his present opposition — The only reason the oppt. alledges for his present demand is, that the Children of Gendron have not pd him, — but this is not enough — he reasons thus — I am their Creditor of their Children, who are the Creditors of Duplessis, who has the mortgage under which he

he now claims _ but to ascertain the fact, the parties must be before the Court _

2 Bouv. 541 _

There must also be a discussion of the ~~Bedarrid~~ property specially mortgaged to the Constituent in question _

Bedarrid in reply _ Is not bound to make any discussion when he has a mortgage on a property sold by decret. _

If the opposant, or his debtor had a mortgage on the Estate when sold, he is entitled to the present opposition _ The oppost. were the Creditor of Marie Gervais in same manner as Duplessis was under the act of 30 ~~March 1817~~ June 1815 That the Sale by oppt. to the Children of Gendron does not destroy his mortgage until he should be paid _ If the Children of Gendron could have made the opposition, the Oppt. their Creditor can also do it _ It is not necessary that the Debtor be before the Court to entitle his Creditor to use and prosecute his rights _ ~~Gr. Cout.~~ Domat p. 240. " on Subrogation d'hypothèque

Friday 17th April 1818.

№ 314

Macon
&
Paquet

On Pltff's mo. for an order on a Surveyor for making a plan & survey of the premises before hearing on the merits.

Borden for the Defendt contends that there is no necessity for such proceeding as the evidence adduced is sufficiently clear & positive on all the points in Contest —

Brown
&
Pastem

action on promissory Note — ex parte Sullivan for Pltff asks Judt

Soubert
&
Lainé
&
Surrogate

On motion on behalf of the heirs of Pltff. for payt. of residue of monies in hands of Shff.

Beaupré
&
Gosselin

On opposition of Madame Gosselin for her Dower & provisoire

(62)

Bender for Plff — The wife of Defendt having signed the obligation is not entitled to set up this claim as Plff, as any other of her Creditors —

Bourré for Oppt — The opposition is well founded — The wife of the Defend. was no party to the Indt. as her husband, and is entitled to set up her claim of dower as the Plff. — That the opposant is equally founded for her preciput

—

Roi
to
Perrault

Action for goods wares &c delivd to Defdt as an auctioneer to sell for Plff

Roi for Plff — The Defend. by their exhibits admits having rec'd all the articles except 5 pr. glass the only question is only in regard of the price at wh. the articles were sold — It is proved that when Plff sent goods to sale to Defendt were home, he sent an Invoice of them with the prices at which they were to be sold —

Beauvais for Defendt The action is

irregular

irregular, as the goods in question were delivered to Marie C. Renault when she carried on business alone, since 1 Janv. 1817 She has been in partnership wt. J. Bapt. Carbin — The Defendr. shews by ant. undertakes that a small balce only is due to Plff —

Roi for Plff — By the accounts filed by the Defendr — it appears that a great part of the goods in question were sold subsequent to the 1 Janv. 1817, and the Defendr. acknowledge themselves to be accountable by rendering the accounts in question —

Brown
Lay
&
Ogden
Dal —

On mo. for Folle enchere on purchase made by the purchasers —

Gale for himself, states, that there is a conflict of Jurisdiction between the Court at Three Rivers & the Court at Montreal as the Township of Eli where the lands in question is alledged by some to be in the district of Three Rivers, & by some to be in this district:

the

(64)

the purchasers therefore are not secure in paying the money until the fact be settled as to locality of the lands sold, nor ought the purchasers be bound to go to the expense of ascertaining this point, as they ought to get a sufficient title for the money they pay to the Sheriff –

Ross for Mr Davis – The Plff ought to give security for the title, as he is to get the money

Beaubien for Plff – There is nothing to shew that the lands in question are in the district of Three Rivers – the allegation of the purchaser will not excuse him, without some proof

Longueuse
vs
Montreson } Action on 2 Bills of Exchange –

Stuart for Plff – the only question is as to a balance due on the bill secondly stated in the Decl^n. drawn by Defend^r in favor of Plff

O'Sullivan – for Defend – admits the first bill as having been drawn on his personal account – As to the second bill it was drawn for His Majesty's Service – by Defend – in his official Capacity – This drawn in the form of the instructions from the Com. of His Majesty's Navy vizt to Case of M'Beath. v. Haldimand

Stuart for Plff – This case distinguishable from that of public Officers in general, the bill in question carries a private responsibility on the face of it, by its being a negotiable instrument and drawn by the special order of the Defendt the Plff, can know only what the obligation of the Defend – was from the contents of the Instrument itself, the particular forms of drawing these bills, cannot be known nor attended to by persons unacquainted with them to know what should and what should not be a good bill in this respect – The purser in this case must be considered as the Servant or agent of the Defendant, & acknowledged by him

him as such – this is a negotiable paper set abroad in the world by the Defend[t] – and his liability must attach to it unless by law he can show he is exonerated –

—

Plenderleath
v
Burton
&
Plenderleath opp[s]

On Pltff's motion that the Sheriff should amend his return, deducting a charge made by him for Poundage on a sum of £10,000 to which he is not entitled –

Gale for Pltff – 2 conditions are requisite to entitle the Sheriff to his poundage – a Sale – & pay[t] of money – but he sold the land subject to the charge of £10,000 – this charge was put upon the land by the Court, or by the act of the parties, not by the Sheriff – the money must be levied – upon this only the poundage can be demanded – he has levied only £360 –, & on this only is he entitled to claim poundage – When a land is sold subject to incumbrances, there

incumbrances

incumbrances cannot be considered as a thing sold upon which ~~no~~ poundage can arise —

Stuart for the Sheriff — The demand for an amendment of the Sheriff's return, can never be done but at the request of the Sheriff or by his consent — the return here is sufficient & conformity to the Kings writ — if it be false an action on that account will lie. ag.t him — if he does not return all the money levied, an attachment will lie ag.t him —

When there was a Sale and money levied the Sale must be considered to be for the amount of the charge as well as for the surplus of the money — not necessary that the money should be in the actual poss.n of the Sheriff, the word "levied" ought to be consd. as meaning made, raised & effected, under his Sale — it is a fictitious means of raising the money like that of a poss.n bona money of an estate sold — The advertisement here may have been

framed

framed so as to oust the Sheriff of his fees, and if admitted here, may materially affect the Office of the Sheriff, as estates may hereafter be sold subject to Mortgage claims, instead of being sold in a way as to require the payt. of the money to the Sheriff

Bedard in answer — The Sheriff as an Officer of this Court is bound by its orders and subject to its directions — As to the amendment it is not here material, provided the Sheriff be bound to bring into Court the monies which appear to be in his hands — It is not the Sale of the Estate, but the recovery & receipt of the money qt. gives a right to the poundage — Here the Sheriff could not receive the £10,000, it was contrary to the nature of the Sale, & certainly cannot claim poundage upon what he never received — as well might he claim poundage upon a Sale when the purchaser never pays, or refuses to pay the purchase money —

Chaboillez
&
Boudrias

Action to compel Defend- to execute a deed of a lot of land purchased by Defend- at public Sale —

Quesnel for Pltff — The Defend- on the facts & articles all the claim of the Pltff — but adds that the land is subject to the Servitude of a fossé — But the Pltff is ready to execute a deed to Defd without such Servitude — asks for a day for proof in case Defend- refuse to accept a Deed

Sherwood — The answers of Defend- first made must be rejected, he having been admitted to answer over — The Sale here cannot be proved by W- Sale by auctioneer cannot be proved by W- There must be something in writing by which the parties can be bound, nor can any such Sale be carried into effect without such writing —

Quesnel in answer, the proof of the Sale being sufficient, the only point here is the damage of the Pltff in case the Defend- refuse to accept such title —

70)

Chaboillez
& } Same case as last –
Lauzon }

Quesnel for Pltff. The Defend. has purchased 3 lots. only a small difference in the sum for which he purchased – his answers are not positive, and of a nature to admit Verbal testimony to prove the fact positively –

Journ. Jurisp. Canad. –
1 Pigeau 246 –

Lanctot
& } On hearing on exceptions
Dugas }

Rolland for Pltff. has excepted to the plea of litispendence, as insufficiently pleaded, not having stated, what law regulates. 1 Pigeau 198. The Plea of Minority is also insufficient, as he does not allege lezion in the Contract he made 2. Argou. 48A. Rep^re v^o Mineurs – Oblig^ns N^o 52. –

Sherwood for the Defend. the litispendence

is

is sufficiently pleaded —

As to Minority — all the authorities cited by Plff apply to case touching moveable property, not lands &c. — Tut. des Mineurs — not necessary to allege any lezion — Denizt. vo Mineurs. No. 1. 8.

Dr vo Rescision — here Defendr shews the nullity

Rolland in answer. lesion must be alledged to entitle the minor to restitution, by Act an not void, but voidable — Therefore it was necessary that Defendr should have pleaded lezion and demanded restitution, so as to — enable the Court to reinstate the parties in the same situation they were before the Sale made

Minor & Mard Woman.

Bangs v Berthelet } action on promissory note.

Stuart for Defdr — contests the sufficiency of the proof of Defendrs signature — even according to Plffs own Witnesses there seems to arise doubt particularly on the Cross-examination — As to the admission of Defendr to the note, it cannot be sup. unless it had been in writing — at most it depends upon the Plff having ascertained the signature of

the

the defendant, there can be no admission of any other proof depending upon the existence of a fact not ascertained —

~

Stansfield
Roi — } action for goods sold

Ogden for Plff — refus to answers on Depts on faits & articles —

Bourré for Dfts — The payments alledged by the Defendant to have been made, must be received, on the faits & articles, without any — Incidental demand —

~

Smith dal
Cuvillier } on Defendrs mo. that faits & articles proposed to Plff be declared confessé —
Cuvillier dft

Rolland for Plff, contends that the Record is incomplete — the Exon is not here, but before the Court of appeals — Therefore the Court cannot proceed — That mo. is always premature inasmuch as it can be granted only after hearing the cause — refers to Pigeau — Poth. Proc Civile —

1 Dousse p 121. tit. 10.

Poth. Proc. ch. 3. Sec. 6.

That the Interrogatories are besides not of a nature to be taken as acknowledged —

Beaubien for Defdt — It is not necessary that the record should be complete in all parts to entitle Defdt. to his present motion, there being only a question touching the regularity of a particular proceeding on [illegible] parties, not connected with the Exon in question —

—

Aylwin
v.
Cuvillier

On Rule on Sheriff to shew Cause why he should not comply with the order of this Court of last by making a sufficient return to the Writ of Exon issued out in this Cause

Stuart for Defendt — Submits our return on part of Sheriff —

—

Carmel
v.
Leduc

action on note — & the Court to wish Bender for Plff — The proof on note not sufficient, but sufft. as to pass wld to Defendt —

Bourré for Deft— no proof whatever of noti— as to the park, there appears to have been payts made on it—

McGillivray Labt. v Labranche } On this Case I made my declaration of being related to one of pltffs— upon which the case went on

—

McNider v ~~Parange~~ ~~Hagan~~ & Bangs oppt } On opposition of Bangs for a house built on the land sold—

Opsn for Pltff— to entitle the artisan to this privilege there must have been a marché in writing, and a procès Verbal of the reception of the work— he must also demand his money within a year after the work done, which has not been done here—

Boston for Oppt — the Oppt is entitled
Demt. to Privilege № 33 — in point —
Domat: liv. 3. tit. 1. Sec 5. §. 9. & art 170. of
Custom of paris —

Ogden in reply — The question here is whether the
Oppert. has put himself within the law to entitle
him to the privilege he claims, admitting the
general principle — Rep: de Jur. Vo Maconnois
Demt. Vo privilege.

—

Bouthillier
& Cuvillier } action possessoire —

Beaubien for Defend — moves to
reject the testimony of certain Wn exam: on
the part of the Plff. as interested Wn and on
as being the relation of Defend: wife —
1. Jur. Thomas — is interested — as the voyage of fait
complained of was committed by the Wn
Poth. Ob. 791. Soupçon or partialité — at all
events he proves very little for Plff —
№ 2 — same — Pothier de
Art. Perault —

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Sullivan for Butterfield — There is no evidence whatever ag^t. Defend^r Butterfield —

Rolland for Pltff —. The plea of the Def^ds contests the right of property of Pltff, which amounts to a trouble à Pltff — Rep^se V^e Revendication —

—v—

Campeau
~
Pciement } action en declaration d'hypotheque
for sundry articles, grants de
pension Viagere —

Stuart — for Def^ds —. There should be an alternative to pay the articles in nature, or on default thereof — The Court can give this Just^t — as to the Voiture, only 1 a 2 omissions are proved — & Pltff cannot have the value for the whole year on that act —

Bedard for Pltff — The articles here must be P^d for, no demand necessary — time of plaint — pay^t. stopped —

Harizault
~~Fourbeault~~
to
Desgarard

action on deed of Sale of 2 lots of land —

Stuart for Deft. The conditional clause in the deed of paying the money on the event of a Sale can be construed to mean only the hazard at the time specified in the first part of Contract the end of ten years &c. The word terrein applies only to one part of the property sold

Moss
Baldwin

action to recover a carriage & harness —

Grant for Pltff asks for Inst. on evidence adduced —

Defend. in default

Saturday 18th April 1818.—

Arnoldi
v
Brown
&
Brown
Intervr

action for medicines & attendce as Surgeon.—

Bourrié for Pltff— the only question here is what is the amount to wh the Pltff is entitled — The Pltff has made out his case by testimony adduced.—

Stuart for Defendts— The charges made by the pltff are exhorbitant — some principle on the subject should be ascertained — the quant. val. ought to be regulated by the value of the Medicines administered — the additional charge of a Physician's fee, is what cannot be allowed in a Court of Justice — at all events the opinions of Medical ought not to settle this point, being all interested—

On Intervention — claim Indf. with Main = levée in favor of Intervening party —

Bourrié for Pltff — Has moved to desist from the Saisie and on the Goods claimed by Intervenr's party & consents they be given up —

The same principle ought to be followed in this Case as in every other where a quantum meruit is to be ascertained, by persons having a knowledge of the nature and value of the services performed — cites case of Arnold & Renault, where this has been admitted & the Pltff has not proved all the articles of his acct but this may be made up by the Serment supplétoire of the Pltff — this is provided for by the Law — The Pltff has concluded that the Defendant render an account to the pltff of the monies in his hands —

—

Aylwin & Cuvillier } On new return brought in by the Sheriff, and on his application to withdraw the returns already made —

Rolland for Pltff. The Pltff is interested in having the return of the Sheriff upon the resistance of the Defendant, as a remedy is granted by

by him to the Creditor upon such resistance

Monday 20th April 1818.

Gleason vs Goodell — Judt. as prayed for

Minor vs Hazard & Bangs opp. — Judt. dismissing the opposition as to want of privilege from no contract

Dugas vs Gosselin & wife opp. — opposition dismissed

Bangs vs Berthelot — Dismissed — no consideration expressed or proved

Conroy vs Boudrias — Order for proof granted

Conroy vs Lawson — do do

Lanctot
vs
Duzes

The Plff's exception sustained & Judt

Poitras
vs
Freeman

Action maintained, as the Donnee did not hold under a deed from the Grandfather en ligne directe under the Law — Judt.

Johnson
vs
Hutchens

Judt

Etter.
vs
Etter.

Judt setting aside the survey from want of sufficient notice to the Defdt

Harrijault
vs
Desjardins

Judt.

Henshaw
vs
Clarke

The Court considered the service insufficient

McKenzie
et al
vs
Chevallier

Judgt. in both cases —

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Mc Dermid
vs
Mc Dermid
&
Cameron.
Oppts

Mo. granted —

Conroy
&
Dimes

Judgt —

Cartier
&
Cheval &
St Jacques

Papers handed over to the party to speak to the question, as to bringing a Suit or a Judgt. in the Superior Court —

Fish
vs
Church.

The admission of the attorney after debt was considered as insufficient to warrant a Judgt —

Longueuil
vs
Montreser

The Court rejected the 3d Count of the Declr as having been made by Deputy Capt. of Navy for behalf of the Crown

The King
vs
Tetrault —

Information dismissed —

June Term 1818.

Monday 1st June 1818.

Present
The Ch. Justice &
Mr J. Reid.

Judge Ogden absent on leave.

Wadsworth Ld
vs
Hedges Ld

on Defendt mo. that action be dismissed as to Hedges, as the Security for Costs had not been given according to the order of the 20th April last —

Boston for Plff, Security was given in Vacation now stands of record —

Sherwood for Plff — The Security not given within the time, that is 2 days after the order according to the rules of practice —

The Plffs moved that Case should be set down for

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for hearing on the merits, the Defend. being in default, not having pleaded—

Sherwood for Defts. Pltff. are in default, by not having given Security for Costs—

Lester Lal
to
Turrill

On Defend. mo. for cont. of injunc.

Ogden for Defend. objected that on 10th day for in vacation no 10th was produced by Defend. nor any diligence shewn to that effect—

Charles
vs
Hazard

On Defend. mo. to quash proceedings in as much as no copy of deb. was served on the original debtor—

Borden for Pltff. Defend. cannot take advantage of any pretended irregularity of original debtor—any more than Defend. could have done—

Ogden for Defts. The Defend. are entitled to take advantage of any irregularity of the original debtor, who was served with the writ, but not

with

with a copy of the decl^n thereon Debtor made default - not being bound to appear -

Tuesday 2^d June. 1818 -

Charles v^s Thayer & al } over to

Wadsworth & Nicols - t Hedges } The Security taken in Vacation ought to have been filed under a motion in the Cause, but as the Security had been made under notice, and a motion made on it as now given will be rec^d

Savary. v^s Pellet t Lapierre t Dupras. par Rep. d'int^s } On motion for Judg^t on Scire

86.)

Gatignon
v
Imbault

On Defend^{r} mo. to quash process as not having been served under the delay required by rules of practice — the Defr living out of town & having had but 2½ days notice, and for this reason to the return it off — cites case of Charbonneau v. Melo — in 1811 —

Roi for Plff — by return of service it appears there were 3 full days —

Gatignon
v
Gatignon

On same motion — — —
Vigé for Defend^{r} — files affidavits in support of the rule

Lesterdel
v
Turcot

Defr mo. for continuance of enquête —
Vigé for Defend^{r} refuses to affidavits filed —

Ogden for Plff — no subpœna issued for attendce of Wt — on 15th May last — that for diligence was not sufficient —

Burton
to
Cavely

On defendt's mo. for continuance of enquete
Cause was fixed for 15th May & Plff took
up all days of enquete, & at instance of
Court closing he called on Defendt. when no Wn. could
be exam'd this was good cause - Fyles affidavit

Rolland for Plff - refers to No 14. J. Sec. J
rules of practice -

Armin
et
Burton
&
Garant

action for rent & penalties
nothing said -

Wednesday 3. June 1818.

Gatignon ~ Gatignon — Parties admitted to make proof on the Defend^rs motion —

Gatignon ~ Imbault — Do — do —

Thursday 4. June.

There was no Court —

Friday 5^th June 1818.

Chaput ~ Marteau — action on promissory Note. — Rolland^e for Plff. refers to evidence addduced on faits & articles — The fact stated by Defend^r to avoid the note ought not to be admitted, as it has not been pleaded by him — refers to case of Alcot v. Curtis —

Alcot ~ Curtis — 17 Feb 1808.

Sullivan pr Defend – the answers of the Defendant cannot be divided – and as there is no other evidence than the said answers, they must be taken altogether –

Savary
vs
Meunier
&
Dupras
en rep. d'inst.

Over to the 10th –

—

vs

Hazeltine
vs
Stevens
&
Et contra

action on promissory note –

Bourré pr Defend – admits demand in chief, but contends that his Incidental demand is made out –

Ogden pr Plff – contends that demand is not made out – Note of hand was made after all the balls & parties & all amt settled –

—

Saturday 6th June 1818. —

~~Sexton tal~~
~~v~~
~~Turcot~~ } ~~Defend.ts no. rejected~~ —

Burton
v
Caverly } Same order —

McDowall
v
Turcot } refers to depositions taken on 14 April —

The King
v
Cuthbert } On certiorari on Conviction before Mr Cuthbert as Justice of peace in Sept. 1815 — agt. one Bazile Cournoyer dt Grandchamps for not having worked on the public road — on the pros.n of the Sous-voyer

L. M. Vizé for Cournoyer — The persons between the Riv. Lachaloupe & Berthier only, are bound by P. Verbal of 1808 within wh. limits the Defend.ts Land does not lie — The Just. after having ~~permitting~~ Defend.t to enter upon his justification, afterwards refused to continue it — Refers to P. V. — as not comprehends land of Def.t

Ogden for the Magistrate – the facts stated on the Conviction do not warrant the allegations of Defendt – there was sufft. evidence before Magistrate of Defendt – found a Judt of on of Defendants neighbours –

Mallet
vs
Richard

On Plffs mo. to amend on payt of Costs by adding name of Defendt John Richard Hay – in ~~writ &~~ Judt

Vizé for Defendt – The law allows amendmt only in Judt but not in writ – if Judt be amended but not writ, the irregularity will still remain in —

Séré
vs
Barbeau

action on deed of sale –
Hearing on exceptions –

Rolland for Defd – not alledged in the declaration that the Defendt was in default – The action ought to have been in the alternative to furnish the receipt or pay the money – No allegation in the Judt that Defendt even refused to

pay

pay to the person to whom he was bound to pay, but only that he refused to pay to Pltff, to whom he was not bound to pay –

Monday 8th June 1818.

Witness-day. –

Burton v Caverly } Defendt no. dismissed

Lister ... v Turcot } Do do do

McDowall v Turcot } Do do do

m Tuesday 9th June 1818 m

This day a Commission was read appointing George Pyke, Esq. an assistant Judge of this Court to supply the place of Mr Justice Ogden during his illness. m

Mallet
v
Richard

motion rejected — the proceeding irregular ab initio, in suing out a writ by the Christian name alone —

Pothier
v
Foucher

On question of admissibility of testimony on contested points & hearing thereon —

Sister Sol
v
Turcot

On Defendr mo. to ex. Plff. on fact sent. Ogden for Plff objects to it, as being too late — cites Cam. Smith. v Filer — when Defendt moves pr fact sent — next day after enquete closed, it was refused — here the enquete was closed 9 days ago —

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Burton
~
Coverly } on Defendt mo. to reject depositions of Pltff's witnesses, as their names had not been inserted in the Judges book —

Sherwood, for Defendt — The cause fixed for the 15th May — no inquiste held on that day — no writs were called on that day — nor their names inscribed on the diary, this was required by the rules of practice —

Wednesday 10th June 1818 —

Brown.
~
Lacy. —
&
Ogden for } on that Pltff to make proof —

Trottier
~
Pouement } Dismd

Roi
~
Renaud } Dismissed —

Hammond v Wilson & E contra } Judg^t

on to agreement touching boarding of Pl^{ff} men – no written proof necessary under the law – Jousse – Serpillon –

=

Plunderleath v Burton – & Tunstall opp^t } on Rule on Sheriff – Rule absolute –

=

Platt v Brook } Dismissed

Burton v Coverly } The Court sustained the motion & handed the papers down to the ~~parties~~ parties to make some arrangement as to admitting Defend^t. to bring up his evidence –

Lester & al v Turiot & } The mo. granted. – The enquête not closed – until Judg^t. given on Def^{ts}. motion for continuance of Enquête – when Defend^t. gave

gave notice of his motion for Judgt. was
then within time —

H. Dean
~
Munn

Action on promissory Note indorsed to
Plff — tryal Special Jury —

Objection to James Young as partner of
John Young who was bail for the Defts —
being sworn as a Juror in Cause —
over-ruled —
~~upon motion & consent~~ —
Edwin Cadwell - proved Indorsement —

Objection to any evidence on promissory Note
~~in question~~ - produced, as it does not accord
with the Note declared on — the Note laid to
be dated on 10th Feby. 1816 — that produced
16th Feby. 1816 — Bull. N. P. pp. 172
Fact denied — ordered to be left to the Jury —

The Plff produced no further verbal testimony
but proceeded to read the deposition of one
Thomas Gibb a witness exam^d by the Defts

de

de bene esse, as being about to leave the province
This objected to by the Defend^t, as the W^r. had
been produced by Defend^t and Pltff not entitled
to touch or read a deposition thus produced —

The Court admitted Pltff to read the
Cross-examination of Thomas Gibbs — who
proved the signature of Defend^t —

Pltff closed his evidence

Interrogatories on part Articles submitted to
Pltff. and answers —

2 The original bill of Exchange indorsed by
Defend^t

3 The Writ under which Defend^t had been arrested
in New York —

4 Deposition of Thos Gibbs —

5 Witnesses exam^d under Com. Roga^s

2 Doug. 276 — Low v Walker

Pltff ~~agent under~~ Legal demand — no duress — Bull. N.P.
Want of consideration must be proved by Defr
Date not essential — Bull. N.P.
Esp. N.P. 1st. Assumpsit

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The Ch. J. in charging the Jury held that the Defend. was liable to the damages on the bill endorsed by Defend. as allowed by the laws of New York, and the Defend. cd. have restrained the damages to this Country when the bill was drawn

The date, if there exists a variance between that and that proved, not material.—

Verdict for sum demanded—

Mathew Boyd
v
Dn. Montgomery
Jud—

} action on promissy note—
Trial by Sp. Jury—

Chas Forrest—proved admissions of Defendt to note by their admission.—

Thursday 11th June 1818.

Pothier
vs
Foucher et al

Def^dr application to suspend the hearing of Pl^ff's mo. of yesterday until the prin motion made by Def^ds touching the sufficiency of the evidence adduced upon points issued, and as to certain exhibits, whether regularly filed or not—

Savary
vs
Meunier
et
Dupratt
mis en cause

On mo. for a new Trial —

The Pl^ff has not adduced sufft evidence to support the verdict — only the confession of the Def^dt — under circumstances not to be credited — one of Wm. Paul Dupratt, has since married the pl^ff —
The Court ought not to have admitted the son of the pl^ff to be a witness for her — The child had not arrived at age of puberty — Lawrence. Vo Innocence. No. 4 —

The Pltff could have no right of action
of her servant in a case of this kind —

Demayt. vs. Grossesse — —

—

Reports de Droit Civile — 396 —

—

The principle of action, is that of personal
damage — but as no personal damage has been
found, the Jury could not assess damages for
maintenance of Child, or declare Defendt the father
being accessory facts to the principal demand
& must fall when the principal demand fails —

Bedard for Pltff — The question of seduction of
Pltff not before the Court —

— The acknowledgt. of Defend — was proved by
Duprat — & also by Madame Lemai & her
son Th. Lemai —

—

The Jury were Judges of the fact of seduction
& of the conduct of Defdt —

Dufresne
&
Legault
&
Larivière opp.
&

On desaveu —

The oppos. of Larivière having been dismissed
Exon was sued out thereon, when Larivière
opp.

oppos^{n}. the seizure and made a desaveu of Mr Stuart, in regard of the P^{s} Opposition — this desaveu was notified to Mr Stuart — Poth. Proc. Civ. Ch. 4. oppos^{n} an Imp^{t} —

Stuart — he rec^{d}. his instructions from the Plff to put in the oppos^{n} in name of Larivière — The desaveu is a formal proceeding, q^{t} cannot be rec^{d} hue by a simple motion — without any formal acte of desaveu having yet been made — there ought to be a petition setting out the grounds of the desaveu anompanied with the formal acte de desaveu — The grounds of opposition do not warrant a desaveu as the oppost. does not admit the identity of the person of Larivière —

Wisely
Dewitt

action for work done —

Rolland for Plff — Decl^{n} 4 Counts on different principles — question, how much the Plff is entitled to for the non-delivery of the machinery in question. q^{t} he considers ought to be £50 — equal to value of the materials, q^{t} have been much injured —

Ogden for Defend^t - The pl^tff was p^d for the machinery - He was to have the value of the use of it after eight weeks - The machine was offered - he refused to take it -

Rolland for Pl^tff - the count in the declaration for the value of the machine, will meet the proof for the agreement to pay for the use of it -.-

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Copland v. Bragg } on award -

Boston for Def^d - alledges want of notice of meeting of the arbitrators

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Pothier v. Fontenot } on admissibility of facts & articles -

On facts & art. proposed to Madame Vigé & M^lle Fontenot - as not sufficiently answ^d. - refers to art - 8. tit - 10 -

3^d. Interrog^n - answer evasive -

4. 5. 6 -

7^h -

as to Interrog. to Heney —

2. 4. 5. 6. 7. 8. 10. 14 15. 19. 20. 22. 23.

On Interrog. proposed in 1816 to Mr Vizer

2 —

On Interrog. to Mr Heney in 1816 —

Vizer for Defendt. The acknowledgment of the testament is not a point in dispute in this Cause —

Symmonds
v.
Baron

on Exceptions to Plffs declaration —
action on Promissory Note —

Grant for Defdt. note vacated, but not said Mot Defendt. deliv. note to Plff —

Friday 12th June 1818
and
Saturday 13th June — Wtn days —

Monday 15th June 1818.—

Derbeutel
vs
Philan — Judgt —

Dom. Rex
vs
Culhbert — a Procedendo ordered —
1 T. Rep. 330. —

Séné. —
vs
Barbeau. — The Defendt Exception dismissed —

Symmonds
vs
Baron — Same Judgt. —

Charles
vs
Thayer — over till to morrow —

"

Pothier
vs
Foucher
&
Heney — Judt. on motion for answering over
on certain fait & articles —

Chaboillez
Papineau
& Chartier
Gant

On demand en Garantie
as to quantum of damages to
be allowed —

Shuter
vs
Fraser

Exception withdrawn —

Mc Nider.
vs
Hagar.
&
Quittard
oppt

On rule on Oppt to shew Cause
why oppsn of Oppt should not be
dismissed, Same having been satisfied
over
~~L. M. Vigé for Oppt~~ —

Drean
vs
Munn

On motion for new Trial. —

Objected by Mr Sherwood for Plff. that
motion cannot be granted as it is not demanded
on payt of Costs — &c. is always the course under

Hyde

there be something extraordinary in the Case —

The Court permitted motion to stand
Boston in support of Rule —
1st Ground — No sufficient evidence to support the Verdict — the date of Note declared on not same as proved — 1 Stamp. 22, 1 Esp. N.P. 136 — Keyd on bills 187 — Chitty 365 — App. 529 — Com. Dig. Pleader. C. 19 — Poth. Change. No 30. 39. —

Indorsement also Variant — 10 Mass 1816 Keyd 191. Chitty. 303 — Esp. 138. Bull. 139 — Chitty. on pleads. 374. to 376 — Camp. N.P. 75 — proof that Note was indorsed on 6th March — from but of Exhibits filed —

2d. charged Jury that date of Note was immaterial — directed the attention of the Jury to the Issues complained of — how the date of Note is material — 1 Str. 201 —

The Sum awarded is greater than can be supported by evidence —

Sherwood for Plff —

The mo. ought to have been for Judt. in nature of a non-suit, and not for a new trial — as to date on note, it tallies w. Declaration & found by Jury to be on 10th March — but if on 16th if no imputn on money Counts —

Bull. Nip. 2 T. R. 370 — 1 Esp. N. P. 140

Statement of Defend. not correct as to sum amended. —

Ross in reply — The date of every Instrument material in declaring —

Misdirection. — 1 Raymond 735 — Bull. 145 — money Counts cannot be supported by insufficient proof on special Contract — Burns Dig. Tit. Ev. p. 158 — 1 T. R. 656 Green v Bennet — 4 T. R. 752 — Wilson v Rastall — It was necessary that the Court should have directed the Jury on the subject of the variance, and to find the note to be as laid in the declaration — but this was not done, the charge being, that the variance was not material —

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Monsiaux
&
Monsiaux

Action for recovery of rents & pension

Pillin for Pltff – only question is now as to the Costs, the Defendt. having paid all the articles demanded except a few, of which a list is now produced — discontinues dem. for 116[4] –

Rollit for Defendt – contends proof of demand sufficiently made as to what & therefore Costs can be only as in a Cause under £10. –

Hemsham
&
Fowke
&
Gregory &
al – Intervs

Our Intervention –

Sherwood for Interv[s] party – contends that proof is sufficient to entitle parties to have property claimed delivered up to them –

Stuart for ~~Defd~~ Pltff – The Int[s] Party does not demand that the attachment be set aside as to the property claimed, & therefore delivery of property cannot be granted –

The evidence is insufficient to support claim but the facts & articles of Defendt, but the issue is between Pltff & Interv's party, & the answers of the Defendt - cannot avail agt Pltff on that issue -

Sherwood in reply - if Interv. irregular, the Pltff shd. have pleaded to it - That from the moment the Defendt. gave bail to the action, his person was at liberty, and so ought his property under the attachment - As to evidence - this is a commercial case - & case made out - Gilb. Ev. tit. Answer in Chancery - where answer may make for the party making it. -

Roi
v
Main } Action en resiliation du Bail a loyer -

On motion of Pltff that matters in contest be referred to arbitrators

Stuart for Defendt. denies right -

Tuesday 16th June 1818.

Roi v Main } Mo. rejected —

Berthelet v Scott — } On Defendt. mo. for dismissing action from want of proceedings — . .

Bergeron v Henrichon } On mo. for Evocation —

Clarke v Woolman } action of assumpsit for goods & note — Deft. admits demand for £79 — as only sum proved —

Mailloux ~~Lot~~ v Massé ~~et~~ Lal } action for articles pd. to one Jos. Bedard of Defendt. was bound to pay in the room & stead of Pltff —

Roi for Defendt — No proof of the allegations in the declaration — only two exceptions filed —

at

but it does not appear upon what Judgt. nor on what amount the Judgts. were rendered. That the Defendts. were always ready & offered to pay the rente & pension viagere in question —

Rollin for Pltff — the executions shew for what cause the Judgts. were given — When the Defdt. offered to pay, he did not notify the Pltff. who had an interest in the thing —

Bangs & al
~~Hosmergton~~ Levesque — } action en revendication for two Trucks —

Boston. for Pltff — cites Poth. ~~prop.~~ Pret-usage p. 671 2d. Domat. book 1. as to right of property — art 175 of Cout. Paris gives a certain right to Inn-keepers — but Defendt. are mere cabaretiers to whom the article will not apply — The privilege would attach only on the horses for qt. the hay was furnished, but not to such an article as that in question — It is not in proof that the Trucks were ever put under the charge of the Defendt. — and he never pretended to have any claim thereon till next Spring —

see evidence of Pr. Roi –

Vigé for Defend.t – The Defend.t was entitled to retain the Trunks, as he had advanced sundry articles to Pltff, in whose possession they were – cites Denisart. v.o Hotelier – No. 10 – See Droit. Id. Cout. Paris on Art 175

Borton in reply, any privilege of the Defend.t could pretend was done away by his undertaking to send the trunks down to Lachine –

Johnson
v.
Spence } action en Revendication –

Borton for Pltff – The laths were sold by Rae for the Pltff – the Defend.t was the mere agent of the Pltff. and cannot appropriate the property – Poth. 4 vol. p. 452. No. 287 – Oblig No. 506 – 448. 82.

Bourré for Defend.t – No proof of the laths having been purchased for Pltff –
Verbal testimony not admissible to prove an agreement above 100# – The Pltff

Pltff never had the possession of the estate bot and cannot maintain the action en Revendication cite Rep. — vo Revendication —

M'Donald
Turrot } action for goods sold

L. M. Vigé for Defend. — The pork damaged

Pltffs. have not made out proof of the quantity. The evidence of White not precise — The books of acct. of Pltffs. not correct — have not credited Defend. with all the payts. made — a sum of £ 25 not credited — also 5 barrels of pork not delivered —

Ogden for Pltff — the pork sold as damaged Pork — proof suffct. —

Vassem
&
Cardinal } on Inscription en faux —

Bedard in support of faux —

1 moyen. abandoned
2d. — The 2 subscrib 3 witnesses heard, — they prove

prove that they were not both present when the will was made — were not called to be Witss to the act, but accidentally present — Chenet one of Wss says he never knew Testator —
cite Denizt. Vo Testament No. 72.

Rolland for Defs — objects to testimony of the subscribing Witss. & moves to reject it — the Wss ought to be considered as suspect — and coming to prove their own turpitude — but Pltff has not proved any thing & the act & must be taken as valid until the contrary is proved — It is not necessary that the Witnesses should know the party, altho' the notary must —

—

Leprohon
vs
Patenaude.

on rule for Exon on Judgt —
Bedard for Defs. pleads payt — by pr — of Attr to Pltff. Defs. authorized Pltff to settle w: his Creditors. the Pltff substituted Finlay in his place — Finlay made a cession in name of Leprohon & must bind him —

Rolland for Pltff — Finlay was only Attr of Defs. under the substitution, but could not bind Pltff individually from whom he had no authority —

Gove del
Turcot } action for goods sold

Agent for Plff. admits an error in the account of £

Nizé for Defendt. The action premature — no day fixed for payment — 4 barrels pork not delivd is ready to receive them — afterwards a balance to Plff but Sup. Court ought to be without Costs —

—

McGillivray
&
Fr. Prevost } on Exceptions peremptoires —
& contra — as to pleading an unliquidated demand agt. a liquidated debt —

—

Spence
&
Ransan } Action qui tam. for practising Physic without Licence —

Grant exception of Defendt. — considers evidence insufficient —

Christie
&
Ransan } same as case —

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Whitcomb vs Curtis — on Pltff's mo. for Judgt — Grant for Defts. a Judgt has been entered but a Mistake has been committed which cannot now be rectified. —

Wednesday 17th June 1818. —

Bergeron vs Henrichon — Evocation disallowed.

Guy vs Rivers — on mo. for evidence to

Barthet & Norton vs Scott — the mo. to dismiss the action from want of proceeding within two terms disallowed, on the Plaintiffs moving to fix the Cause, which was allowed on paying 20/ Costs. —

Charles vs Bill — over till to morrow —

Gatien pour
vs
Imbault } On exception to sufficiency of service of process —

Bender for Pltff — Three days exclusive of the return are necessary, — but 3 days inclusive are not allowed

Roi for Pltff — Service sufficient —

Gatien pour
vs
Gatien pour } on similar exception. —

Chabotillez
vs
Boudria } On action to compel Defend. to execute a deed of sale of a certain lot of land purchased by him at public sale —

Quesnel for Pltff — to prove agreement Defdt — was examd. on faits & articles, who has admitted the sale, & that he is ready to execute the deed in question provided the lot of land in question be not charged with the servitude of a certain ditch or water course but this was part of the agreement —

Sherwood for Defend — Question here, if the sale by auctioneer of realties can be valid — There is no proof that the Pltff is tutrix of her Minor children a Vabal sale cannot avail — Dens. Vo Vente. No 38 Pothier is of same opinion. — Denizart — Mandat.

118)

There is a variance between the declaration & evidence - alleged to be sold w^t. boundaries, the evidence shews there were no boundaries - The Facts & articles must be taken altogether - and therefore Defend^r not bound to pay for a ditch, he purchased Land - That Facts & articles are not a commencement de preuve par ecrit - Dervf. Vente. N^o 48 -

Counsel - The Pltff appointment of Tutrix not necessary - cites case of Bonnassa. v. Denau, as applicable to present Case. -

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Carmel
vs
Leduc
&
Derome
oppt

On opposition afin de distraire
of Derome -

Rollin for Oppt - The Oppt. purchased the goods in question long before Judgment rendered agt Defend^r -

Bender for Pltff - The Sale was fraudulent having been made a few days before the Judg^t - and after the action commenced agt Defend^r - That besides there was no tradition under the Sale -

Ex parte.— on Petition of Geo. Moffat —

On Petition of Geo. Moffat to set aside the appointment of a Tutor, as having been made contrary to the will of the deceased —

Gale for Petitioner, The late R. Pattinson by his will appointed Trustees & Guardians to his property & Children,—

Merlé ch. 5. p. 79— The Testamentary Tutor must be confirmed unless Cause to the Contrary 1. Bouyon p. 47.— It is also provided that the Guardians so named shall superintend the education of the minor in England — Merlé p. 297— Lacombe. Tutor — Rep^re Tutelle, 308— Merlé p. 86. 87. 109. Institu: Stat. 12 Ch. 2. —

Stuart— for Tutor— There being an issue in fact before the Court, the present argument cannot decide the contest which must first be made & the facts proved —

The application for appointment of the Tutor was regular, he having been the nearest relation in this Country, and not knowing the dispositions of the deceased —

Dec. Droit. Vo Tuteur. & Rep^re Vo Tuteur— The

appointment of a Tutor must be confirmed by the Judge even when a Parent has named one. Here a regular appointment has been made, and must be presumed ~~under~~ to have been made under all the Circumstances of the Case — and if any new opinion of relations can now be taken, it can be only to say whether any change shall be made in the appointment already made in consequence of the terms of the will after deceased and in this respect the petition goes too far — It may be prudent that the care of the minors should not vest in the same person who is named Tutor —

Jacques
~
Jacques
&
Lapierre
tal —

On motion on part of Lapierre to discard his opposition without Costs —

—

Jossey —
~
Thompson

action for value of a horse —
Pltff — moves to reject deposition of Eliz. Thomson
Vige for Defend. There is no proof of Defend. having failed in taking care of horse
q. he left at River she took unable to proceed further

having been taken ill, and then died — There is no fault — or neglect proved on Defdt —

That Eliz. Thomson is a good witness in this cause —

Grant for Plff — The Defend. ought to have accounted for the Cause by which the horse were not returned —

—

Etis
&
Etis

on Report of a Surveyor

Rolland for Plff moves for homologation of Report of Mr Guy, Surr. is conformable to the line drawn formerly by Séné —

Stuart for Defdt — Both parties equally interested in obtaining a boundary line — The land of Defend. bounded by ruisseau du Pointe du Jour — The Surveyor has taken evidence contrary to the rights of Defdt — by referring to a title in the possession of one Turgeon — The Survey of Séné was improperly communicated to Mr Guy to influence his opinion — —

Rolland in reply — The Defendt land ought not to go to the Russeau, but to the lands of the Pte du Jour —

Hodgson
v.
Park

action on Promissory Note. —

Stuart for Defend.t no consideration given for the Note — Com. Contracts p. 8 — cites also case of Bangs. v. Buthitit — here no value proved — note stated to be for value rec.d but this does not

Ogden for Pltff. Chitty on bills p. 84. 85 — not necessary that Pltf prove value where the note bears it on the face of it — Def.d must prove it p. 393 — 121 — Bull. N. P. 275 — 1 Str. Rep. p. 674. — Prov. Stat. Sec. 3. it is suff.t that it be stated in a Note that it is for value received. — —

Dillon
v.
Spence

action for pine boards sold

Bourre for Defend.t no sale to Def.dr but to Mr Saml Dennis —

Thursday 18th June 1818.

Jn. Bouthillier
vs
A. Cuvillier
Sal ——

Judgt. as Cuvillier — dismissed as to Bouthillier.

Monsician
vs
Monsician

Just

Coleman
vs
Bragg

Just. on award

Laurie
&
Wollen —

action dismissed as to the widow the Court holding that the contract of the widow upon facts & articles could not bind the heirs — Judt. ap Defendt. in favor of the heirs for their proportion of the demand

Raymond
vs
Ballenzale &

Judgt. for the sum tendered — the Pltff to pay costs —

Laguens dal
vs
Ballenzall — &

Judgt. for Pltff at rate of ½ Tour demurrage

Wisely
vs
Dewitt

action dismissed. —

Hodgson
vs
Clark —

Judgt —

Stenshaw
vs
Fowke.
&
Gregory &
Wirtt —
Intervs

The Court dismissed the Intervention upon the principle of insufficiency in the evidence — answers of Defts. on facts & art. —

On Claim
of Perry —

Juryn of boards &
Notice said

Hutchison
vs
Smith Taylor & Co

action for Instalment due on a contract for goods sold

Ogden for Deftd — goods pd — Pltffs book Promissory notes & gave a receipt for the goods — The notes cannot be brot up by Pltff, to show

they

they were not paid — moves that notes given in evidence by Pltff. be rejected —

Sullivan for Pltff. The Pltff had a right to fyle the said Notes w. his Replication — .. the notes taken in payt. were not negotiable

1 Bur. 9 — 2 Chitty Pleading 454. & notes. — Bull. 272. 5. Term. Rep. 482. Bayley on Bills 4 — 6 T. Rep. 52 — 139 — exparte Dixon — 8 T. Rep. 451 —

Ogden for Defdt. — on motion — notes have not been regularly inscribed on list of Exhib. That Pltff. ought to have tendered the Notes to Defdts. before bringing action or shewn diligence to obtain payment from Wilcox or delivered back notes to Defendts for them to do so —

—

Allen v. Forrest & Laberge — On oppos.n of Laberge for privilege for house rent —

Bourré for Pltff — The Landlord ought to make his opposition before the sale of the effects, he is now too late —

cites — 171 Gr. Cout. No. 9. 10. Gloss. 2 " — Petit Commr. — on same article —

Berder for Oppt. cites Denizart . vo Loyer —

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Guy
&
Rivers

} action for House Rent

On Pltff's mo. to be admitted to Verbal testimony of the Lease & covenants under it — There is a com. de p. par cent — The receipt of Defendt — and an article in an account made by Defendt —. Cites art 171. Gr. Com. pp 36 37 — Poth. obl. Nº 801 — & seq. —

Stuart for Defendt — This is no com. de pr. par cent — under this the extent of lease pretended by Pltff cannot be let in, it is too vague, and at best could extend only to one year —

Friday 19th June 1818.

Charles
vs
Bell
&
Graden

} Rule agt Guardians — for not producing the property owed —

Ogden for Guardians — are ready to give up Cows — ready to pay value of Sworn of hay.

cites Dict. — Guardian Sec. 4. —

On Requête of the Sours Grises

Praying that this Court would authorise them to proceed to the making of a new Lease Terrier —

See Prov. St. 48. Geo. 3. ch. 6. —

Saturday 20th June 1818

Jossey ~ Thompson } Inst —

McGillivray & al vs Provost } The Incidental demand supported if evidence can be made out — parties admitted to evidence

Gatepuin & Imbault } Inst. on motions —

Carmel ~ Leduc & Deromé } Opposition dismissed with costs

M^c^Dowall & Turcot	Judt^z^
Leprohon & Patenaude	do
Vasseur & Catudal	Inscription en faux – dismissed & mo. to reject the testimony of Instrumentary witnesses rejected –
Christie – & Ransan –	Judt – for penalty –
On Requete of Dam Hemon Coulter	Rejected
Johnson & Spence	Judgt. for Pltff.
Savary & Meunier & Duprat	Mo. for a new trial rejected –

Banegstal
v
Lereque — } Judg[t] for Plff —

The defend[t] had no right to detain the article in question, as he had never rec[d] the trucks into his possession as a bien hotélé upon which he could exercise his privilege —

Chapeau
v
Marteau — } Judg[t]

Spence
v
Ransom } Judg[t]

Lester —
&
Turner — } Judg[t]

Gray
v
Rivers — } The Plff's mo. rejected as to verbal testimony —

Dillon
v
Spence } — Judg[t]

On Petition
of G. Moffat } The appointment of H. Patterson be set aside —

Mailloux v. Massé. } Action dismissed. —

Guy. — v. Rivers — } mo granted for faits dart. —

Lee v. Burton }

October Term 1818.

I was absent on the first day of Term, not having arrived from Three Rivers.—

Friday 2d Oct. 1818.

Present.
The Ch. Justice — Justices Rad & Pyke —

№ 235.

French
v
Conant

On Defendt mo. to quash attachment —
Must be Defendt —
1 Because made in a Cause which had no existence at the time. —

see 1. Tidd p. 156. 7.

2. The affidavit does not shew a legal cause of action — not said that the materials &c were provided for the Defendt —

3. The affidavit goes to attach the estate, debts & effects, but not said, "of the Defendt"

Mr Boston for Pltff — The law does not require that any cause of action should be stated in the affidt ~~and~~ which is in every part sufficient. — —

Stuart in reply — There must be a legal cause of action ~~existing~~ apparent on the affidavit — otherwise a very great inconvenience would arise to a Defendt —

№ 239.

French
v
Hastings

on a similar mo. by Defdt —
Stuart for Defdt not said that boards & lods. was for Pltff or Defendt —

No 241.

French. } Fidget. }

On the Defendr motion to quash process from irregularity -

Stuart for Defr. The Pltff has cumulated two remedies by suing out an attachment agt. Defendr property & also agt his person - to obtain this - only one affidavit has been made - altho' by law there ought to have been two - The language of the law has not been followed, q. ought strictly to be done -

Boston for Pltff - refers to case of Henshaw v Fowler when the double remedy was adopted - all the requirements of the Ordrs of 1785. & of 1787. are complied with -

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Hodgson. } Bagg - }

action on Pr. Note - Tried by Sp. Jury -

The Pltff after proving signature of Note rested his case -

Sullivan for Defr - Pltff resident in England - no sufficient Pr. of attr from him on record - only a copy - this inadmissible under rules of practice -

Upon this the Pltff agreed to withdraw a Juror -

Castagnet } Tavernier }

action of Separation - moth & Pr. -

Burton } Coverley. }

action petitoire -

Rolland for Pltff - The evidence on part of Pltff is complete - objects to insufficiency of Plea of Prescription as to the form of its being pleaded - not Pr. before bringing the action - Should have been alledged to have possessed by himself & his predecessors

predecessors, in whose right he now stands – but this not done & the evidence adduced does not therefore apply to the Plea – The poss. under a prescriptive right ought to have been without trouble. – whereas frequent notice was given to the parties to quit the land – q^t^ is a sufficient interruption – The evidence of Plff's right as Seignior is sufficiently made out –

Sherwood for Defd^t^ – The Plff lives in England & shews no power of attorney to prosecute this action, q^t^ is requisite under the rules of practice – This power not filed, as it ought to have been – it cannot be given in evidence

Rolland was ordered to speak to this point before further hearing – The Defend^t^ has waived his right by pleading to the action – There ought to have been a motion in the Cause to dismiss the Cause or to stop proceedings if Defd^t^ meant to avail himself of this right – like mo. for Security for Costs –

Sherwood in reply – This power of Att^y^ is a thing beneficial for the Plff & she ought to have filed it – there can be no waiver by Defd^t^ – The objection is in time according to the 26^th^ Rule of Prac. – by a legal objection on hearing the merits –

The Counsel was ordered to proceed on the merits the Court reserving the question –

Sherwood – The Plff ought to have shewn the extent and boundaries of his Seigniory – & Plff ought to have shewn his title deeds – any testimony cannot establish boundaries – The plan of Perreyer a Surveyor can make no proof – it is an ex parte proceeding – & done to answer some purpose of late Gov^r^ Christie – but he never claimed the point in question. see dep. N^o^ 2 for Defd^t^ – warning off

wes

was no interruption, not having been done by any acte Judiciaire see Fer. Dic. vo Interruption. — The evidence shews a 30 years poss. in Defdt — and if Plea of Defendt had been insufficient the Plff ought to have demurred to it. Wr. No 2. of Plff. Dep. shews that land in question could not come within the Plff. Seigniory as the measurement not made from the banks of the River —

Rolland in reply — The poss. of the Plff as Seignior is sufficient to entitle him to this action and has been so adjudged in this Court — The plan produced shews this possession — & that there are people as far back as the lot of land in question who pay rents to the Plff — as to the plea of prescription the same is insufficient — and the Plff has demurred thereto — But even if well pleaded yet it is not made out — unless acts of trespass can be admitted as proof of a peaceable possession see evidence of Mandeza & others — The rights of poss. of the Defendrs auteurs have not been conveyed to Defendt by any legal title —

M. McKay
St. Germain

action d'injures —

On hearing on insufficiency of Plea —

Rolland for Plff — The Defendt sets up a Plea of Compensation, but it does not state that it was at the same time of the Defendt publishing the words charged in the declaration — The Defdt

has also pleaded Justification & cannot be admitted. Doran. p. 14. — p. 456. 458 — as to the Compensation it is not sufficiently stated &c. p. Rep^r. p. 237. V^o Injure. —

Sherwood for Defend^t — The Defend^t is bound to plead the special matter he means to give in evidence — Compensation & Justification may be pleaded & given in evidence by Defend^t in — Civil Suits for defamation — refers to Rep^r V^o Injuri. — Fer. Injure Compensée — Denizart V^o Injures. N^o 22. — The compensation is sufficiently pleaded — to wit — on 4^th June at same place, charged in the declaration —

Saturday. 3^d — October. 1818. —

French. } Defendants motion to discharge the attachment
Conant } dismissed —

French. } Same order. —
Hastings. }

French. } The mo. as to the attachment discharged — from
Fidget. } insufficiency of the affidavit, not with^s the words "with
"an intent to defraud his creditors", not being included
in it. —

№ 85

Henry Gasset
James M'Donnell } On Rule to shew Cause why Defend. should not be discharged from his confinement under the writ of Capias sued out in this cause from the insufficiency of the Plff. affidavit, the Plff swearing to the fact of the Defend. being about to leave the Province only from hear-say, and not positively

Sewell for Defend. The Plff ought to be held to make sufficient proof of the fact stated in his affidavit & of the information he rec. — The Plff agreed to this. & the 4 days int. was accordingly fixed —

№ 705

Samuel Jacob
Ant: Foisy & Fresnier } On action to recover certain arrears of a rente —

Hears on Exceptn.

Stuart for Defs. — The Defend. had the liberty by the contract to liberate himself from the principal of the rente on paying a certain sum of 16,000 ℔ — this right the Defs. has pleaded wt. a tender of that sum — This the Plff object to on the principle that a thirty years prescription hath accrued agt. the Defs. and he cannot now liberate himself — This Rente is same as any other Rente Constituée — and the right of the debtor to liberate himself (it was contemplated by the contract) cannot be denied. Rep. p. 322. vo. Prescription —. Prescription does not hold as. a person who seeks to relieve himself from any onerous obligation — Decharnage Tr. des Prescrip. p. 91. —

When

when the action and prescription arise on the same contract, they are mutually preserved —

Rolland for Pltff — This is not a rente Constituée but a Rente foncière — The Contrat de bail d'heritage was made in 1782, and the action is instituted aft on after the representatives of the original party bound — This is a bail d'heritage, charged wt pay^t. of an annual rente à perpetuité, redeemable on pay^t on pay^t 10, 000 but as no time was fixed for this redemption, it is prescribed in 30 years time — There is a diffce between a Rente cons. 1 Bourg. 306. & a rente foncière — the latter being imposed upon the alienation of real estate — the former is when a Rente itself is sold — Poth. Cont. Rente. N°. 1 — Rep^{re} v^{o} Rente Foncier — as to definition. — refer to art. 120. Cout. Paris — as to right of Prescription — Poth. Bail a Rente — N°. 74. 75. 78. 1 Bourg. p. 306. — Bail a Rente. N°. 21. & 23. —

That the tender made by Def^t. were in case of a Rente Constituée, is insuff^t in the manner as pleaded — as it will not go to extinguish the debt — the Rente was not thereby extinguished on 29 May 1817 — the Defend^r should have consigned the money to entitle him to the benefit of the tender — Poth. Obl. N°. 572. & 780 — 1 Rep^{re} au M. 35 — Poth. Cont. Rente N°. 203. 8. & 12 — cites case when an action was brought to foreclose une faculté de rachat — when a limited time to racheter was stipulated by the Contract —

v^{o} Delery — 6 Journ. d'Aud. p. 403. arrêt du
11 Août

The tender ought to have been renewed by the Plea, that the Pltff might have had the right of taking the money — the Pltff cannot do this The presumption is that the Defend^r has changed his intention — The tender was made only on 1 Oct^r. 1818 —

this was too late & could not ext. a rente wh. had become due on 1 June 1817 –

Stuart in reply – The contract is not a bail-à rente, nor ~~not~~ a rente fonciere., it is a Sale & assignment of a certain incorporeal right in consideration of a sum of money – the terms of this contract shews no right foncier in the grantor. – the reservation of the rente is the consideration of the Cession q. the grantor made – see distinctions laid down between two Rentes in Fer. Parf. Notre. – When no time is limited for the redemption, it is always open to the debtor – The tender here is sufficient – there is no Office of Consignation in this Country – the offer to the party Creditor has always been held sufficient – this tender has been renewed on 1st. Oct. and the plea mentions it –

No. 454.

Alex. Grignon v. Jn. Bte. Bourbonnais et al.

On trial by Sp. Jury –

On motion of Mr. Vigé for one of Defts. that the Jury be discharged – as there are three issues raised in the Cause, by different defendants and only a list of 48 Jurors given to be struck, whereby the Defendt. was deprived of his right & choice of a Jury – Sullivan for Pltff – The Defendt. too late in his applicn. the cause was appointed to be tried by Sp. Jury, & when this was moved, the Defendt. – if he had been entitled to a right of a Separate Jury on his issue, ought to have stated it – but his silence is to be taken agt. him – and in fact the Defendt. have no such right as that

contended

contended for —

The motion was over-ruled

Verdict for the Defendant

M^cKay. — } The pleas 2^d & 3^d pleaded by Defend^t
St Germain } rejected — 2^d because justification cannot
be admitted — the 3^d because the compensation
set up was not regularly pleaded. —

Monday 5^th October 1818. —

Lemoine. — } Order for proof —
Frichette }

Whitcombe } The Pl^ffs mo. to amend the entry of the
Curtis } Judg^t — granted —

Hutchison } The Court on the Defend^rs mo. to reject the
Lester Taylor } Note & protest produced in evidence by the Writ^rs
& Co. — } as not having been filed.

Drean } Mo. for a new trial, rejected. —
Mann }

No. 656

Wm. Boston vs Ins Bte. Noreau dal. en } Action agt Defendt. on Promissory Note

On objection to two Interrogatories proposed by the Defendt. to Pltff

Sullivan for Pltff — The Defendt. ought to have shewn that the note was indorsed after it became due to let him in to the defence he has here made — the amount of the Interrogatory proposed is that this action was instituted without his Kn.e — which is tant-amount to a desaveu — which is here inadmissible, there is no such question before the Court — and therefore the Interrogatories are irrelevant.

Rolland for Defendt — the Interrogs. tend to shew that the Pltff gave no value for the notes, and were indorsed after they became due — there can be no endorsment without the consent of both parties & no action can be maintained on such endorsment & part of the Interrogatory is to shew that Pltff had no kn. of Endorsment till the action brot.

No. 365

Mc Niderhof vs Hagar & Bangs dal. oppt. } Oppn. afin de conserver — for privilege for claim of workmen for repairs done on the premises sold

Ogden for Pltff — There is an over-charge of 5/ p day in the days work charged by oppt. — as appears by evidence of other workmen — no evidence

of

of the building the barn for $£$. There is a charge of £27 – The charge made for flooring in 1811 is not proved – £7. 2. 6 –

Boston for Opport. the difference of 7/6 & 12/6 in the first charge is owing to the board & lodging which some of workmen had –

Tuesday 6th. October 1818.–

Etie
Etie. – } R. V. homologated –
The papers taken back for further examn

Dodge
Pickle
Pickle opp } On Pltff's mo. to dismiss Oppn. from want of moyens d'opposn. – –
Objected that record is now in appeal –

Cartier
Fontaine } On Defendr's mo. to be admitted to take off defaut & to plead instanter – refers to case of Jones. v. Henderson – 20 feby. 1818 –

№ 695.

Senécal
Barbeau } On action for interest of a principal sum of money remaining in the hands of the Defendr purchaser of a real Estate –

Roldin for Pltff – Question is merely for Court –
Rolland for Deft. – The debt, or rents became due on the first

first Ap. action sued out on 8th. the place of residence and state of roads was then such that there was no possibility of Communication between the parties — & instead of any demand being made the present action was instituted — these facts are proved &c —

No 250

L. Chs. Fourchet
Tous. Pothier
& Henry sup. par rep. d. inst.

On Plff mo. to reject the faits & articles propd to him by the Defendt —

Bedard for Defendt — only consideration is, whether a default has been regularly entered agt the Plff Henry — this is the fact — on 13 June last, rule for ex. of Plff on faits & last on 16 — on 16th June, on act of a tardy service of the faits & last. a further day was given to Vacation for Plff to answer — The Plff therefore is too late to ~~set aside~~ object to the faits & last. as impertinents — On the 17th augt. in Vacation the Plff did not appear to answer. and before he can be allowed to speak he must purge his default. —

Vigi for Plff. the proceedings of Defendt were irregular, the first service insufficient, service

Motion rejected —

No 863.

Galerneau
Crottes & al

On rule to shew cause why Defendts should not be discharged from the present action on the surrender of the principal Debtor Simon Evans —

Evans.—

Ross for Defdt. The Surrender is regular & sufficient & by Rules of Prac. p. 20. & may be made at any time previous to Judgt. agt the Bail— cost submitted—

Vigé for Pltff. The Surrender is too late— Rule of prac. does not apply to case of Sp. Bail— The Ca. Sa. has been sued out & non est inv. returned upwards of a year past— 1 Tid. P. 276. 6th Edit. 8 T. Rep. Wilkinson v Yates. 422. case of Ferguson v Millar. 20 Oct. 1817, when Surrender was not admitted in discharge of the Bail—

Ross in answer— The Rule of prac. of this Court has set aside all the practice in England, & the Court must be regulated by it—

No. 237
Cotterell v Hawley & Hotchkiss oppt.—

On opposition afin d'annuller—

Ogden for Pltff— no suffct. proof to support the opposants claim—

Lacroix for Opposant— no proof in the record that the Pltff is dead—

No. 81.
McGill v Burton & King Inters & H. I. Richardson rep. d'Inter

On Defendts. motion to plead in writing on the report of the Surveyors—

Wednesday 7th. October 1818

Witness— Day—

No. 481.

Cartier
vs
Fontaine
dal'. —

The Defendants mo. granted on payt. of 20/ Costs. —

No. 656

Boston
vs
Noro dal

Ordered that Pltff appear & answer to the Interrogatories in question —

Thursday 8th. October 1818. —

Witness— days. —

Friday 9th. October. —

The Ch. Justice was absent

No. 181

Rap. Valiquet
vs
Pre. Valiquet dux

action on obligation. — on Exap. Reps. for Defdt. The parties must go to proof before law can be determined —

No. 644

Jos. Turgeon
vs
Augs. Vervais

action putatoire
Heard on exceptions. —

Roi for Defend^t^ — The Defend^t^. is in poss. with the consent of Pltff — & prays that he may be admitted to proof —

—

Regis M. Mongrain
vs
Jn Bte. Leger per } action for Lods & Ventes —
To draw Jug^t^ —

No. 646.

N. C. Burton. —
vs
Elijah Kemp. — } on Report of arbitrators. —

— Rolland for Pltff. — demands homolog^n^ of the report and Judg^t^. thereon — question whether Defen was within the Seigniory of Sabrevois — this determ^d^ agt Deft — The Defend^t^ — has filed affidavits agt the report but taken no course thereon, nor moved to set same aside. The Court must hom. the report if it appears regularly made and it is the Defend^ts^ business to shew irregularity & move to set aside the award —

O'Sullivan for Defend. The Defend. has not had sufficient notice — Defend. had not time to procure his witnesses — the facts stated on the affidavits — these affidavits can be used as well agt. the homologation of the report, as on a motion to set the same aside — now moves that same be set aside — this motion still in time — The whole proceedings are without proof before them of the regularity — offers to fyle the notice served by arbitrators on the Defendant —

Rolland in reply – The Defend^t. ought to pay cost of the Court let him in under these affidavits, as he has taken no course to set aside the award. –

N^o. 784
Raym^d. Beaudouin. –
v
Jn^o B^te. Courtemanche

On action of rescision of a Deed of Donation from insanity in the ~~Pltff~~ Donor –

Stuart for Pltff, refers to evidence adduced in supp^t of the demand – as to mental derangement – The principal & only evidence for Def^d. is St. Germain – but is contradicted by other witnesses – & even on his cross-examination – the fact of imbecility – in going to school – is strong proof ag^t the act. In cases of Interdiction not necessary to shew constant insanity up to the period^+ ~~of passing the Deed~~ first app^ce of insanity in ap. 1813. tog^r Interdiction has a retroactive effect – the Donation in March 1814 – the Interd^n in July 1815 – Rep^re p. 449. v^o "Interdiction" – refers to cases so determined – But if Court should not adopt this principle as to commencement of the insanity, yet the weight of the evidence will be suff^t. to shew it – The fact of Defend^t having inveigled away the Donor to live at his house, & during that time to procure the deed in question to be passed – this precluded Pltff from shews so much proof as otherwise might have been shewn –

^+ of the act in question, it is sufficient to shew

L. M. Vigé for Defend^t – The Pltff states 3 grounds of charge ag^t Deed – Insanity in Donor – fraud – & Lesion – The Interdiction shews only a foiblesse d'Esprit not à demence in the Donor –, and the opinion of the

Judge

seems to have been of this opinion, as it was upon the voluntary demand of the party that the Judge appointed a Curator to her of her own choice.—

393 Demence is not to be presumed prior to the interdiction without appearance of sufficient grounds for it— Repv vo Demence, p. 393— unless there be appearance of lesion in the transaction— by acts filed, it appears that the acts passed prior to the Interdiction between the Donor and some of her family, they did not consider her in a state of insanity— acts passed prior to the Interdiction ought not to be affected by the Interdiction—

There is no proof of any lesion or fraud— and the evidence is weak and doubtful as to the state of the partys mind prior to the deed of Donation— Nelson is the only person who speaks to the State of partys mind prior to this period— considers evidence of Kelly as in favor of Defend all other wits for Plff state no facts of folly in the party— The evidence adduced by Defendt— puts the matter beyond doubt— The precaution used in passing the act— The testimony of Boundays is very material as shews that the party was considered as capable to conduct her concerns, and was in the habit of entering into acts before him vouchs same. see transaction of 1810— when the Plff was a party— The Plff has made no proof of lesion, on the contrary the Defendt has proved that the Deed of Don. was very advantageous to the Donor—

Stuart in reply— The Interdiction not necessary to support the action— is only an auxiliary proceeds— when effected, has a retro active effect to the time of the first appearance of the Insanity d vpus to Repv p. 444. vo Interdiction, as a stronger case than the present— vpus to testy of Renoist Blutcau & Pagot as to time when insanity commenced, nearly about the death of her father in 1810— In 1813 D: Nelson speaks to her imbecility as arising from a Constitutional

caus

causes — & other wits — shew the state of the party's mind from this time down to the time of the Donor being removed into Defend^t house — .

No. 5Δ8.

Allice Clarke v. A. G. Johnson

On Defend^t mo. to discharge the rule fixing the Cause for evidence, & for taking off the files in this Cause the Replication fyled by Pl^tff

Stuart for Def^t — The cause not sufficiently at issue — the Defend^t on the exceptions entitled to the last pleading — and on the cross-demand no Replication filed. —

Rolland for Pl^tff — The cause is sufficiently at issue on the demand in chief — and on the cross-demand, there is nothing said in the motion — and besides the rule of the court is, that the demand in chief cannot be retarded by the incidental demand The grounds offered by the Def^t on the mo. for setting down the cause, were, that there was a law issue & not that the parties were not at issue in fact —

Foucher v. Pothier & Henry et al

on M^r Bedard's mo. for a contrainte against the Def^t Henry until he answer sufficiently to the Interrogatories

See 1 Pig. 242. 244 —

Saturday 10th October 1818.

Bennet vs Collier — on Pltff's mo. that Defendt be held to change his conclusions to the plea from the Country & conclude to the Court — Pltff. a Cabinet maker, and Defendt. a Schoolmaster —

Boston for Defdt. is a case in qn — a trial by Jury can be had —

Motion granted. —

Clarke vs Johnson. — The Defendts mo. granted —

. Action for payment of certain instalments in money claimed by Pltff from Defdt — on a deed of Donation made by Defdt to her as a remuneration for past services. —

On 5th Octobr. the Defdt — filed a plea conts the following grounds —

1. In abatement — That Pltff is a married woman & her husb still alive —
2. Nil deb. —
3. That the Donation was made upon illicit consideration namely — the previous prostitution of Pltff wt Defdt and illicit connexion betwn —
4. An Incidental demand for house rent —

On 6th Octr. The Pltff. filed a Replication, stating generally, that the matters & things pleaded by Defdt — were untrue & unfounded in fact and in law —

On 7th Octr. The Pltff moved that the 14th inst. should be fixed for the adduction of evidence — The Defdt objected that the evidence ought to be limited to the previous plead —

On

№ 219.

Jas Kelly. —
Oliver Mitchell } action for assault & Battery
On trial by Sp. Jury. —

Arthur Smith —
David Sawyers

Verdict for Plff £75 — 0 — 0

Shaw Armour
Sam. Willington } On action of assumpsit on
val. — Promissory Note —
Trial by Sp. Jury —

5 East. 111

Sullivan for Plff, moved to suppress the cross-exn of the Wit produced by him to prove the promissory note in asmuchas it proved a contract different from that laid in the plea of compensation - & plea stated a contract for goods sold & deliv: & that endeavoured to be proved was a Contract or mandat for goods delivered to the Plff to be sold on act. of the Defdt —

The Court however held that under the plea of non-assumpsit, the Defendt was entitled to prove the debt - as stated - This not coming within the Rule of practice touching actions of assumpsit, which was meant to apply only to cases of assumpsit founded merely on money Counts, or for gross sums

Clarke. } cont.d from the preceding page.
Johnson }

on the 8.th Oct.r the Court granted the pltff.s motion.
On the same day the defend.t moved, that the rule for fixing the cause for evidence should be discharged w.t Costs, the issue in the said Cause not being regularly compleated, and that the pleadings of the pltff intituled "Replication" be taken off the files, as being irregular and inadmissible — nisi Causa.

The Court on the 10.th inst.t — that the rule fixing the Cause for evidence should be discharged — that the replication filed by Pltff on 6.th Oct.r be taken off the files as irregular & incomplete — and that the pltff do answer the peremptory Exception and reply to the plea of the Defd.t according to the course & practice of the Court within two days. —

sums of money. —

Robert Shedden — was a Clk to Pltff in Oct.r last before — he the promy. note was given by Defd.ts as indorsers for one Ireson — That the Defend.ts afterwards brot a parcel of goods to the Pltff, and told him to sell them on act.t of the Creditors of the said Ireson — the goods were of same description as those in the list now shewn, Defd.t exhib. N.o 1 — The goods were sold by Pltff but he cannot say to what they amounted — The orders given, was that the goods were to be sold three weeks after the advertisements in the public papers — but were sold the Saturday after without any advertisement as he understood the Creditors had consented to it.

there were no limits given in regard of the Sale
The prices stated in the exhi: No 1 of Defts. are
very good prices — and consider the Sale made of
the goods at time to have been advantageous without
waiting for three months as in all probability they wd
not have sold better & perhaps not so well —

Alexr. Russel, was a Clk of Pliff last year — has
a ken. of the transactions on the note was given — the
Defendts became Security for Ireson & gave a the
note in question — Short-time after the Defts bot. a
parcel of goods to Pliffs store, the Wr recd. them, &
~~was~~ understood they were to be sold on acct. of Mr
Ireson's Estate or Creditors — the Wr said the goods
wd be sold next day, & one of Defts observed to Wr. that
he had better speak to the Pliff to advertise them for a
more distant period, as they might fetch a better price
but Pliffs Co he has been consulting the Creditors, &
they were of opinion they shd be sold immediately —
which was done — the goods brought £120 — seven
were sold —

vide

Patterson
Lebanc
&
Lebanc oppt

on claim of Oppt. for a privilege
Borton for Pltff — The oppt having
allowed the goods to be sold cannot now
be entitled to his privilege —

Dorrivieres for Oppt — The claim founded on
a lease for house rent — 2 Rep. Vo Bait. p. 22
entitled to privilege —

Monday 12th October 1818. —

No 551

Elvz: Harvie
Robt Armour

Action dismissed — no proof of the
marriage between the parties —

No 216

Danl Arnold
v
Thos E. Brown

Rule of reference to Experts, to ascertain the
amount of Pltffs demand

No 213

John Charles
Richd Bull
&
Jas Gordon &
Thos Boyd. Gaolers

an order for proof of the articles committed
to the charge and custody of the Gaolers, &
which were not forthcoming when demanded

№ 446

John Molson
vs
P. Martinant
&
P. Martinant
Oppt

The Opposition dismissed from want of moyens being filed in support thereof.

Don Carlos Dodge
vs
John Pickle, Junr
&
John Pickle Junr
Oppt

The Plffs motion to dismiss the opposition for want of moyens, was dismissed, inasmuchas the Record had been transmitted to Quebec under a writ of appeal sued out by Deffts

№ 237.

Nicolas Cotterell
vs
Lumen Hawley
&
Nchem: Hotchkiss
Oppt

The opposition dismissed, from insufficient proof —

№ 842

Pre D. Debartzche
vs
Artt. Roquier
Def

The Plffs motion to discontinue without payment of Costs, disallowed

№ 615

Andrew Paterson
vs
Jos: Leblanc jr
&
Leduc Oppt

The opposition allowed pr £7. 17. 6 and dismissed as to the privilege

№ 417

Maurin Etux
Joseph Etux } Judgt homologating report of Surveyor. — Costs. —

№ 705

Saml Jacobs. }
Antl Foisy. } The Defendants plea of Exception as to offer to reduce, was over-ruled as presented

№ 863.

Galerneau
v.
Croteau et al } The Defendants motion to surrender was rejected. —

☞ The parties consented that the Judgt in this case should be suspended until final Judt —

№ 183

James Campbell
v.
Edward Cooper } on promissory note & hears ex parte. —

Pothier ob. 234. 5. 6

Sullivan — The action sued out before the debt became due — the proceedings on part of Pltff is irregular, he sued out a Ca. ad resp. ag Defdt & although the Defendt afterwards did leave the Province, this was a posterior fact which the Court cannot consider —

Grant for Pltff — Facts sufficient proved to justify the proceedings on the part of Pltff —

№ 853

Jos Galerneau
v.
L. Croteau dit } on Pltff mo. to reject the depositions of Ermatinger Ogden and Amiot, witnesses heard for Defendt

Vigé for Pltff Then with go to prove matters which exceed

exceed à 100$^{\text{dr}}$. —

reserved till hearg on merits —

—

№ 367

Danl Stuart dec$^{\text{x}}$
Davis vs Stuart. } Action for arrears of rent on a Deed of Donation —

Boston for Defd$^{\text{t}}$ — The Pltffs have no right of action, as the wife was bound to have ratified the deed before she could have instituted the present action —

O'Sullivan — The plea of Defd$^{\text{t}}$. is a demurrer to Pltff's action and an insufficiency must be made appear on the face of the demand — this cannot be shown as all is regular in the declaration — the ratification may be made at any time even under an order of this Court — cites Case of Delisle vs Poitras —

—

№ 177

In Bte Harnois
André vs Martin } On Pltff's mo. to reject pleading filed by Defendt intituled, exceptions & defenses — under rules prac. p. 22. sec. 3 —

Vigé for Defendt — the pleading filed is a plea to the merits, the Defendt states sufficient grounds, namely that all the allegations in the Decln are false & null & void in law — The only penalty in case of a general plea or an action founded on authentic acts, that Defdt is excluded from proof —

O'Sullivan in answer — There is law & fact mixed together in the plea — and the grounds of legal exception to the demand should have been stated — but there must be a prior argument in law before the pltff can go to proof —

No. 759
Alexr. Hart
v
Fr. Campré } action on Oblign.— nothing sd.

No. 657
J. Dumas
v
Wm. Lemaine } Over for proof—
val'—

No. 460
Wm. Porteous.
v
Fr. Mathurin } action on promissory notes— On hearg on Exceptions

Roi for Deft.— The Defendt. is stiled, a mercht. as stated in the Declaration, but an Inspector of wood & timber—

Beaubien for Pltff— when the contract was made, the Defendt. was a mercht.— and the transaction between the parties was ~~[illegible]~~ mercantile long after action is brot.—

No. 250.
Foucher.
v
Pothier.
&
Henry & ux.
en rep. d'inst. } On Defendts. mo. to declare the answers of Henry on faits & articles not pertinent & rejected and to direct that said Henry answer over—

Bedard for Defendt.— The answer to 1st Interrogy. not pertinent— contains an objection to the Interrogatory merely but not an answer— all the answers to the other Interrogatories are of the same nature—

Stuart in this case the party is in contempt, he hass appd. & answered, but answered in an improper and impertinent manner— there is no positive regulation on this point in the Law, & therefore comes within the power

power of the Court to order the thing to be done failing which that the party be in contempt, as being essential to the attainment of Justice in the Cause —

241.—
Pothr. Pro. Civ. art. 6. p. 132. in 12°

Lacroix for Defd. Henry — The penalty demanded cannot be obt. the law does not warrant it — all the Defd can obtain is to have the facts articles declared confessed — 1 Pig. 241. — 244. —

No 34

Vve De Longueuil
—
Joachim Naulet.

On Rule to shew Cause why Exon should not be granted on Judt rendered in this Cause —

Bedard for Defd — The Defend since the Judgt has signified by an act to Pltff, that he had desisted from the pos. of the land and was ready to pay the Costs — this in June last — all costs accrued since ought to have been at the charge of Pltff, as since that time the Defd has not been in the pos. of the property in question.

Sewell in answer, the Court cannot admit party to any proof in face of the Sheriffs return, which shews that Defend was in the poss. of the property and was put of that poss. by force & the Pltff put in the poss. thereof —

No 940

Savary
&
Meunier
&
Dupratt par
rep. d'instan

On motion in arrest of Judgt —

Vigé for Defd — The Debt dates in 4 Sep. 1815 — for maintenance of a bastard child & for damages for seduction —

The

The mo. in arrest of Judg.

1. The Pltff asked for no damages for her Child but for herself — the sum of £25 for the maint.ce of the Child is ~~the~~ a thing not demanded & no Judt can be grounded thereon — the Judt demanded only £2 ℔ month for the Child —

2. The Jury having granted what was not asked for, & have refused what was asked —

3. The verdict is in contradiction with the demand the Pltff does not prosecute as mother of the Child, there was no demand for a quantum meruit for the maintenance of the Child — The question d'etat was not left to the Jury, as to the future maintenance of the Child which depended on the Court alone —

Judd's Pract. a verdict does not help a defective title —

Bedard for Pltff — in consequence of the opinions already given by the Court on the Defend.ts mo. for a new trial, the Verdict is regular & must be carried into effect —

The verdict pronounces upon all the points in contest — it gives nothing for the seduction — but it adjudges the Defend.t to be the father of the Child — & a sum for the maintenance of the Child of — at £25 — makes 23/10 ℔ month — & this allowance ought to be confirmed & allowed by the Court in future —

Vigé in answer — If the principle of the action fail, there can be no Judg.t — the £25 given by the Jury was upon a point not before the Jury, and upon w.h the parties had a right to further evidence —

No 410

Jos. Turgeon
vs
Franc. Pigeon

Action hypothecaire —

Papineau for Defdt — There is no ground for this action, the Defdt shews sufft. acquittance for the demand in question — The declr is insufficient and contradictory — no connexion between the premiss and the conclusion — The exhib. No 1. ought to be rejected — being a Declt. of one Gravel who is not in the Cause and has no relation with this Cause — No 2. is of same nature — Exh. No 5 — Sale by Parent to Gravel, is an acte sous seing privé, not reconnus, a can create no mortgage. the certificate of the notary at the bottom of it does not render it authentic — Exhib. No 3. Vente by Northrop to Jos. Lamoureux, on q. Lamoureux stipulate to pay a certain sum to Pltff — the quittance are on the minute of this acte in the etude of the Pltff — see Exh. No 1. of Defdt — the reserve in that quittance cannot regr. 1 Bourg. p. 531 — 535 Poth. Ob. 553. 583 596 — 2d — 551. 1. Bourg. 544 — alone the pltffs debt, he ought to have proceeded only on that part which was so reserved — Independent of this quittance the Pltff had lost his droit d'hypoth. on the estate of Lamoureux on 3d Sept 1804 — on q. Pltffs exhib. No 4. This act passed before Turgeon a declared to be franc & quitte of all mortgages, — this discharge all mortgage on the part of Turgeon, & he cannot claim a mortgage on the property in the hands of the Defendt — The Defdt never possd the land of Northrop — so admitted — by pleadings & admissions — The acte nowledgt. of Parent exh. No 5, that he is indebted to Pltff, being sous seing privé, cannot create a mortgage — & that the mortgage

cannot

cannot be founded either on the acts of Parent or of Lamoureux. —

Lacroix for Plff. The ex hib. Nos 1 & 2 shew the debt due to the Plff by Gravel — The quittance filed by the Defts. must be taken altogether — it was conditional and the condition was never complied with. —

—

No 635

Joachim Neveu
Alexis Godin } On Report of Arbitrators —
Sullivan for Plff, demands hom. —
Lavois for Dfts — on looking at Depositions in the Cause, the Costs ought to be divided

—

No 894 ~~817~~.

Pre Berthelet
v
Samuel G. Pearce
et al } On action agt Defts as Security —
Defts says he ought to be entitled to the discussion —

—

Tuesday 13th. October. 1818. —

Stuart dang
v
Stuart. } Plea of Exception over-ruled. —

Harnois
v
Martin. } Same Judgt —

Guy
vs
Rivers — } on Pltff's mo. to be permitted to prove the sum agreed on for which the Defendt has occupied a certain house leased to him by Pltff — The Pltff has proved the occupation of Defdt for 3 quarters —

2 Gr Com. art 161. p. 1053
1 Toull. p. 259 or Tit. 20. art. 4 — The authority cited is in direct contradiction with the law, the possession of the property carries no presumption as to the value to be paid for it. —

—

Cairns.
vs
Collier. — } On Pltff's mo. for Enquête on 15th — Defendt objected — stated that a delay was necessary for Defendt — till a longer delay than 15. as he cannot have a return to the Comn: Rogatoire granted to him yesterday. —.

Pltff. mo. granted —

—

Fraser
vs
Collier } on Defendt's mo. for a Rule to shew Cause to-morrow why return of Comn. Rogte — should not be extended to a further day —

Jean Bte Gendron
vs
Joseph Pelletier } on trial by Sp. Jury. —

Verdict for £25 — dam. & Costs —

Hart
vs
St. Louis }

№ 517

Jean Bouthillier
Austin Cuvillier
M. Cl. & Perrault
appts

On hearing on appeal —

Beaubien for appt — The appt under a Separation with Respt — is entitled to the effects seized as her separate property —

It is not necessary that a Rem. to Com. shd be insinuated refer to authorities —

This case is different from those where the credit was prior to the separation — This is subsequent —

Rolland for Plff — The Separation between the parties has never been executed — & it matters not as to the present demand whether the credit prior to the Instt. or not — No person can ascertain when the property seized belonged to the Community or not — cites Caen Asylum & Cuvillier & Bardet — No proof that the effects belong to appt this was necessary — 2 Pigeau 197. —

—

Dom. Rex
Thos Stebbins

On certiorari —

On mo. to quash the Certiorari as having issued improvidently —

Rolland for Pr — return not regular — The writ does not require the removal of any proceedings — this has been omitted. — The Security given is not conformable to Stat. The 1 Wm Justin 370 — The Defd has not joined in the Recognizance, nor in the sum required —

5 Geo. 2. ch. 19. s. 2

4 T. R. 281 5 T. Reports. King v Dunn — 217.

The precedent in Hands Prac. is not in conformity w. the decisions on the St. 5. Geo. 2.

Grant for Defdt. The writ is regularly returned — The Magistrates having yielded obedce to the writ any objection to a clerical error is immaterial — The Security given is for £50 — namely two persons in £25 — each — The Defendt is not bound to enter into the Security personally — the bond drawn according to forms in Hands Practice —

—

№ 853

Jos: Galerneau
v
Louis Crotteau
Sal. —

On action on Recog: of Sp. Bail. —

Nigi for Pltff — objects to testimony of Witnesses adduced by Defendt to prove the surrender of the principal Debtor as this could be proved only by a written document — cites Tidd's prac. —

Ross for the Defendt. The surrender was made within the time required by law — If it was not sufficient, it was the Pltff fault, as he had not used the diligence required by law in suing out the Ca. Sa. had the Debtor been in Gaol he wd have been discharged had the Pltff failed in suing out the Ca. Sa. in two days after the 15 pointed out by the Ordinance —

The Witnesses objected to are legal in this cause, as their evidence goes to establish a fact, & not an agreemt.

No 392

Jos: Roi
vs
Robert Main
& contra

action to rescind a lease on acct. of Defendr mis-using the premises leased

Roi for Pltff — The Defendr has altered the use of the house & converted a room into a Shop — Rep. Vo Bail — p. 43 — nothing being said in the lease on this subject, the apartments ought to be still used in the same manner — The Pltff has proved that Defr has over-charged the floor by heavy loads of goods, particularly Salt — & the opinion of workmen is that the load is too heavy. —

Stuart for Defendr — The wits adduced by Pltff prove nothing sufficient to support the action — Auclair's testimony does not establish in what place the beams were he exam[in]d — the Pltff shewed us the other end of the house — The Defendrs witnesses put the question beyond a doubt from a knowledge of the Pltff's house & the examination they made on the point now in contest — & shew that no injury could not arise to the house from the weight put on it by the Defendr — Hypolite Perrault shews that salt was put in store by consent of Pltff himself. — as to Puncheons of rum — only two of them were put in to the Shop when there might have been danger — The Scales are proved not to do any injury to Pltff's house —

On Incidental Demand — for damages for non-delivery of a Cellar under the Lease — and for cutting down the gallery which communicated with the Cellar & thereby depriving him in a great measure of the use of it, or at least with much

much trouble and inconvenience — This gallery altho' not mentd in the lease, yet being useful for the enjoyment of the Cellar, it could not be removed without consent of Defdt Poth. Louag. N° 54. being an accessary to the thing leased. N. Denizt Vo Bail à ferme ~~S.G.~~ §. 4 p. 29. — The damages ought to be allowed to full extent proved as an indemnity to the injury he has sustained & must sustain — The conclusions of the Incidental demand that Puff be held to reestablish the gallery —

Roi fa Puff — as to consent of Puff to putting Salt in the Shop — only one Wit.e, and besides the quantity of Salt is much beyond the usual quantity qt is put in Shops — The balances must injure the house — Defts Wrs were not able to see how they were suspended from the ceiling being covered by boards — The Court may order Experts to examine in what manner the Defts has injured the premises — Only one Wr to shew that Gallery was taken away in July last — the evidence does not apply to the fact — Not proved that the gallery was necessary for commn with the Cellar — the ordinary communication is by the Yard door & not by the gallery — No proof that Defts Incidental ever refused to deliver up the poss. of the Cellar to the Incidl Puff —

Stuart on Incidl Demand — The specific day of cutting down gallery not necessary — The gallery still subsists where useful to Puff — Cellar not yet delivered —

Wednesday 14th. October 1818.

Witness Day

Thursday 15th October.

Witness Day.

Friday. 16th October.

Guy. v. Rivers } The question proposed to the Wr Shaw Armour touching the agreement for house rent, was over-ruled.—

No 219

James Kelly v. Oliver Mitchell } On Defendants motion for a new trial.—

Bourrit for Defdt—

1. The verdict contrary to evidence — The facts proved shew Plff by his conduct was not entitled to any damages.

K 2. Because the damages are excessive — no proof of any damage given to the Jury — Plff a common labourer — and £75. is therefore oppressive on Defndt—

No 467.

Shaw Armour v. S. Wellington et al } On the defendts mo. for a new trial.—

Mr Boston for Defendts

1. The Defendts were surprised and unprepared at the

the trial – That Defendants had right to a deduction of £120. on the sum demanded – Poth. Mendat. Nº 62. The Defendr has an action agt. Pltff. for the property put into his hands belonging to one of the joint Debtors – Id. Nº 82. The Defendants Counsel was not sufficiently instructed and prepared – Pltff a Bankrupt – & there can be no suffe acct – obtained from him for Creditors of Iberson. & Co.

vide Nouv. Den. vº Compensation Nº 14.

Nº 454.

Alexis Grignon
J. B. Boutroue } vº

On Pltff's mo for a new Trial –

Sullivan for Pltff

1. The verdict has been rendered contrary to Law. – The evidence shews that the act done in opening the Canal was acquiesced in by all the Defdrs

2. 3. & 4. – grounds well founded. –

Rolland for Defdr – The Jury have not believed the Witnesses, they were suspected from their interest – They were the persons who made the Canal, and the pretended promise of the Defendrs that they would fill it up, did not meet the charge in the declaration – The discharge to the Wrs not shewn – nor sufficient to render Witness competent. Repse vº Temoin. p. 63. 2. Despeisses. p. 177. – There were no other Witss than those who were interested. The agreement wt the Witss – that they, the Defendrs would fill up the Canal, could not be proved by Witss, at least not by the parties to that agreement –

Rep. 63. vº Temoin – 2 Desp. 177.

D. Vigé for Defdr. Boutron – no evidence agt. Defdrs nor any of them – & the fact was wholly different from that charged. No room for a new Trial – that Jury have determined

and

and given Verdict agt the opinion of the Judge — The witnesses all interested — not discharged or released by Pltff — such release not suffte as they were liable over to the Defendts for their proportion of the damages — no fact charged of quasi-delit — only an agreement on wh action is not founded. —

Ross for Defd — The Pltff had notice of the State of the road &c

Stuart for the Pltff in answer — The action well founded agt Defendts The Oblign on Defds to repair the road same under Judgt as if it had arisen under the Law — Defts are to be assimilated to so many Co-proprietors of a land on which a road passes and some of whom had neglected to fill up their share of the ditch — The witnesses were competent — they were called to speak agt their Interest, which renders them the best Witss — they were not contradicted by any evidence on the part of the Defendts — The Defds were not only liable in point of obligation, but as having acted by the wk as their agents — The Verdict being contrary to the opinion of the Judge is a sufficient ground to set it aside — & which applies particularly here —

—

№ 304.

Pr Jos: Taschereau,
Jos: Simon Allard } Action for Loods & Ventes —

Rolland for Pltff — Sale by the Executors of the late — Lamothe of a certain lot of land belonging to his succession made by consent and authority of the widow — The Defd entered into possession under this Sale, and two months after re-sold the land to the widow of Lamothe for a profit of 4600 livres — The Defend purchased without taking a Deed and sold

sold again without a deed – but there was suff[t] to engender lods & rentes, sale & mutation of property which is proved by the oath of Defdt

Rsp. Vo Lods & Rentes 604. – applies the principle in the Case of a retrait, when sale made without a Deed see also p. 602. – 3 Guyot. 202. – & 479 – But the tradition here has been proved – the Defendt cultiv[t] part of the land, & on Sale reserved a part of the produce. The arrangement before the Notary in passing the deed, shews a fraud committed on the Pltff as Seignior

L. M. Vige for Defdt – Denies that there ever was any Sale made by the Executors of the late Lanothe – that the Sale was merely conditional & was rescinded by consent of parties – this appears from answers of Defendt on faits & articles, the only proof in the Cause – the conditions of the Sale were never complied with so as to render it complete – there never was any tradition with the view of completing the Sale – without this there could be no Lods & Rentes – but where there is a voluntary resiliation of the agreement, to give rise to Lods there must have been a prior tradition – To bring the validity of the first Sale in question the Executors ought to have been parties to the Suit, as the avowal of one of the parties to that Sale is not sufficient, even according to the authority cited by Pltff. p. 604 – the Sale must be avowed by both parties – But had there been an efficient Sale by the Exts to the Defendt – there can be no Lods & Rentes, by reason of the subsequent resiliation Rsp. ibid. p. 708. – The money paid by the widow

was

was a present made, from family considerations, to the relation of her deceased husband, the wife of the Defendt— only one Wit: No 7— who speaks of what passed at the notarys, when the ~~Sale~~ Deed was made by the Executors to Made Lamothe— In this case the Defendt. gave up his right to carry into effect the Sale, which was inchoate, by agreement with the parties concerned, but in this the Seignior can have no right or interest—

Cde Pothom. pp. 150. that tradition & poss. are necessary
1. Bourg. 287. 288. —

Rolland for Plff. contends that there were two effective sales— one to Defdt & one by Defdt— The consent of the parties was sufficient to effect the Sale— refers to case of Denau. v Bonassa— and the parties cannot resile at the Sale to the prejudice of the Seignior by any private arrangement after the consent has been complete on all the parts of the contract—

—

No 394

William Jones
vs
Ellison Fowler

Action on deed of Sale—
On exception—

Feb. 17
Hunter
Rolland

Stuart for Defdt. There is a mortgage claim on the property sold, & therefore Defdt. not bound to pay, as there is an express stipulation in the deed that the property sold was free and clear of all mortgages—

Borton for Plff—

No. 37.

Zabdiel Thayer
Edwd. Hartley
& Martha E. Moore
Oppt

On merits of the Opposition of Mrs Hartley —

Stuart for Oppt. — there ought to be parole evidence to shew the property to be in the Oppt. — and there is besides another cause in qt. the oppot. has brot. an action en Separation agt the Defendant —

Rolland for Pltff. — the mere exclusion de comté does not operate a separation contractuelle, but in this case the husband has the enjoyment of the husbd. —

The case was given up by the Oppot. —

No. 512

Robert Griffin
vs
Jerome Durand

action on a promissory note —

Stuart for Pltff — the defence that note had been given to Pltff as Cashier of the Montreal Bank — the proof to contrary has been made out —

Berdu for Defdt. — The note in question was given for money paid by him ~~to~~ Defdt. as Cashier of the Bank — refers to answers of Pltff on faits & articles — which shew the nature of transaction, that the note was given to Pltff, as cashier, & he has no right in it —

1 Pig. 59

that the indorsement on the note is not sufficient to entitle Pltff to maintain his action — there ought

Stone
Bl. Comm. 3

therefore to have been a full Indorsement on the note when it was delivered to the Pltff — cites St. Geo. 3. ch.

Stuart in reply. — The Interrogatories are not framed so as to draw out from the Pltff the fact Defendt. had in view, as they tend to prove that Pltff paid the sum of money demanded by this action. — As to the Indorsement it may be filled up at any time, which was done here before the action was brought —

Bayley. 48. (a)
2 M & S. 90
Chitty - 146 - 145 —

No. 763
Jos. Barbeary
vs
Jn Bte. Foretier

On report of Arbitrators —

Peltier for Pltff - opposes hom. of P. V. for the reasons stated by the arbitrators themselves which are insufficient to ground their opinion — From the state of the evidence returned by the arb. the Court will be enabled to render a Judgt. — or other arb. ought to be named.

Lacroix for Deft. — contends that the report is regularly made and ought to be confirmed. —

No. 569
Wm. Obrien
vs
Chs. Waters

Action for quantity of pork sold

Beaubien for Defendt. — proof is not sufficient. the faits & articles in this Case cannot be taken as confessés & averrés, the question proposed, being "Is it not true"! q^r if answered affirmatively, would mean "yes, it is not true" — which means nothing —

Stuart for Pltff - this is a stronger mode of proposing the question —

№ 517

Jean Bourbillier
Austin Cuvillier

on report of Experts—

Rolland for Pltff— asks for hom. of the Experts—

Beaubien for Defdt— not said from what time the Experts shall estimate the fruits & revenus by the Judgt— and yet the Expts. have taken upon themselves to settle a period during which they allow certain fruits & revenus to the Pltff— they have allowed to Pltff more than asked by Demr—

Rolland for Pltff. From view of evidence on record the report is regular—

—

In Bc Gatien
Pre Imbeault

action for goods sold—

Roi for Pltff— only proof of delivery from answers of Defdt on faits & art— this has diminished the amount, but— asks Judt. for sum acknowledged to be due w. Costs—

Bender for Defdt— Pltff has not proved the value of the wheat— if he had, he was bound to have made a demand on Defdt— before bringing the present action— ought to pay Costs—

№ 115

In Bc. Legris fils
I. Bte. Legris père
& E Coutu—

on Pltff's mo. to be permitted to amend his answer to the 8e Interrog. proposed to him by Defdrs—

Roi for Defdt. objects as the answer is complete—

Saturday 17th October

No 667

Os. Jos. Taschereau
vs
Amable Prion

On hearing on exceptions pleaded by the Defendt

.266.

Nizé for Defendt contends that the droit de banalité is not set out by any sufficient title in the Pltff's declaration, & under arrêt of this must be shewn, the right is not to be presumed
Rolland for Pltff — It is enough that Pltff that the has alleged to be in poss. of the banalité. — . —

No 167

Peter Sheaver
vs
Donald Cameron

On action to recover back the money pd on a sale not perfected by Deft
Rolland for Pltff asks for Judgt — on evidence adduced. —

Walcott
vs
Curtis

Sewell for Defendt — the answers of Defendt — on faits & articles must be taken altogether, & according to apt — something

No 708

Inft Bte Gendron
vs
Jos. Pelletier

On mo. for a new trial. —
Bourré for Deft — on ground that verdict given contrary to evidence & to law —
The making a search is not cause of slander, but of trespass —

№ 447

Jacob Dewitt
Jos: Wedgewood } action for goods sold

Beaubien for Pltff. asks Judgt on evidce
Boston for Defdt — no suffit proof of delivery
of the articles to the Defdt — but only to a person calling
himself the Defdts Clerk — .—

—

№ 218

Jn Marie Cadieux
Thomas vs E. Colburn.
& Contra. — } action for house rent &c on lease

Grant for Defend — The Pltff. is
entitled to recover rent only from
time he was put in poss. 23d Augt
instead of 1 May, as he ought to have been by the
lease — the Defendt by the non-delivery of the house
has suffered a considerable damage, for which he
has instituted an Incidental demand — refers to
Depos. № 6. 7. 8 — The Pltff pretends that it was
owing to the damage done to the walls of the house
by the frost, that the house was not delivered — but
the evidence shews that the Pltff might have done all
the repairs requisite, so as to have delivered the house
on 1 May — Damages proved by № 1. 3. 6 & 9. — equal
at least to £50 — — Cits. Poth. Louage. № 64. 65. 67.
71 & 74 —

Beaubien for Pltff — The reason why house was
not delivd did not arise from any default of Pltff, but
from an unforeseen accident — refers to depo. № 12. & 15 —
all necessary precautions were taken by the Pltff to secure the
house — Defdt had poss. of the whole of the house — altho'
by lease he was entitled to only the lower Story — The

lease

case between Defdt. and Fisk, is fictitious merely to give a presumption of damage suffered by Defendt — but it is not proved — The only damage Defendt is entitled to is a deduction of 3 months rent — 1 Pars. Not. 608.

Rep. Vt Bail 632

Repr Vt Bail. p. 632. 18. 41. 43.

№ 848

Thomas Hunter vs David Munn.

action for money lent. —

Pelletier for Pltff — The action founded on a note given by one Thos. Borton the Clerk of the Defendant — the question rests on the admissibility of Borton's evidence — he has been objected to as interested — 1 Peake's Ev. p. 181 — Ph. Ev. p. 54. The Wr is indifferent between the parties — 166. 180 — Peake — Phillips 94 — 95 —

Stuart for Defdt The testimony of Borton is inadmissible under the French law — is not a commercial case — the money lent not being for carrying on any commercial concern — Borton is a relation of Pltff. & renders him incompetent — Borton is interested Wr to have money paid by Defendt in the first instance — The Defdt gave no authority to Borton to borrow money for him —

Pelletier in answer — The writing given by Borton is even under the ancient laws of the Country, a commencement de preuve par ecrit — under which Pltff wd be entitled to make out the fact by other Wr — the Pltff has also proved an entry in the Cash-book of Defendt of this money — That by evidence, Borton appears to have been authorised by the Defendt to borrow money for him —

1 Com. on Contracts p. 239 — 1 Esp. N. P. 140. 141

№ 814

Franc^s Dezery. } action for balc^e on a deed of Sale —
John^n Clarke. }

Rollin for Pltff. moves that the testimony of Mr Bourneuf be rejected as inadmissible

Mr Beaubien for Defd^t — obj^n too late — not having been made at time — no notice of the motion — The defence to this action is, that there is a Mortgage on the premises sold, of £15.12.6 for Lods & Ventes — on a prior sale of the property — Pltff ought therefore to be held to give security before obtg the money Rollin — There is no legal testimony or proof that any Lods & Ventes were due on the land in question —

—

№ 166.

John Molson. } action for beer sold to Defd^t
Rob^t M^cNabb. }

Stuart for Pltff — the evidence here is adduced from handwriting of a deceased Clerk in the original books of entry, which is alone sufficient — there is also the evidence of Mr Yarden who states that Defd^t admitted the debt — side of the act. —

1 Esp. N P. 141.

Grant for Defd^t — Evidence not sufficient — by a subsequent account produced by Defend^t — there is a small balance now due to Pltff. for which only there can be a Judg^t — —

№ 773

Nic. Menechei
vs
Paul Lemaieux

action for goods sold

Bender for Defdt — The Defendt. is stated a blacksmith — he is proved to be a merchant and yeoman —

Bourré for Plff — The Defendt. is known as a blacksmith.

Angelique Lafresnier
vs
William Warwick et al

on mo. for security for Costs

Objected that evidence of fact of the Plff having left the Province, is not suffte —

№ 117

Frosse & Porter
vs
Charles Waters

action on protested bills —

Beaubien for Defdt. no notice of protest for non-payt upon first bill — The protest on 2d. bill protested 15 days after due — and no notice of protest —

Bourré for Plff — Defdt ought to have pleaded specially the want of notice — & shewn that Drawee had effects in his hands —

№ 666,

Lor. A. Lepailleur
vs
Jos. Turgeon

action on a dépôt —

Rolland for Plff — compensation pleaded, but cannot be admitted — refers to Pothier —

№ 861.

Jul: Fraser
Chas E. Collier } action on Judgt—

Boston for Defendt—

over to Monday.

№ 31

Abba Brown
Peleg Weare } action for money pd for Defdt as having become Sps. bail for him—

Rolland for Defdt— no sufficient proof that Plff ever became bail for Defdt— the bail piece ought to have been produced— no identity that Plff is the person named on the back of the writ— The bail was never fixed by a return of Non est— no liability in Plff to have paid the debt—

Grant for Plff— The evidence sufficient under the laws of the Country where the Bail was taken

№ 752

Ad. Au. Gordon.—
Fredk W Ermatinger
& al— } action ag Defendts as Trustees of Bankrupt Estate to obtain a dividend

compare above p. 4. № 1A.

Rolland for Defendts The Defendts not sued as Trustees, but in their individual capacity, & as individuals they are not bound to account—

Stuart for Plff action is regular— refers to case of Laurence & Dayton. v

№ 782

John Yule
Wm. J. Pardy
& Contra —

On hearing on the exception to the Incidental demand —

Bourré for Plff — cites — Rep. vo Reconvention that Incidental demand cannot be set up as demand in chief —

Rolland for Defdr. The Incidental demand is not here set up as a Compensation to the principal demand

№ 76

Geo: Willard
Franc. Levesque
Cecile Robert oppt
& — Simpson

On opposition of Cecile Robert claiming the effects seized —

Bourré for Plff — no separation proved — not shewn how she became possessd of the effects in question. —

That on opposition of Simpson, no proof has been made —

—

№ 727

Pre Lanctot. —
Joseph Dugas
& Pre Lanctot oppt

On opposition à fin de conserver

Rolland for Plff soppt — states that opposition founded on a Judgt —

Vigi for Defr — oppt. does not allege that the Judgt. he sets up has not been paid. —

N°351

Martin Levac.
& Ant. Chenier. } action on obligation

Vigi for Dfd. – That by an arbitration entered into between the parties the Pltff's demand has been considerably diminished, & by proofs proved only a small balce due to Pltff & Dfdr has tendered –

Pelletier for Pltff the Defendr – never made any sufficient tender after money –

N°388

Jac. Dorions
& Jacq. Labrie
& Contra. } action for recovery of a Promissory Note

Stuart for Pltff – The Defendt has set up an Incidental demand for medical attendances which are exhorbitant – and ought to be modified & reduced by the Court

Bedard for Dfdt – admits the demand in chief contends that the Incidental demand has been fully proved – The charges are proved to be the usual charges –

The Defendr – has offered his oath or serment supplétoire

Allen
v
Howard } action on 3 promissory Notes —

Borton for Deft — the defend. has satisfied the demands except a small balance — & therefore Capias was issued — £5 . 17 . 6 —

Gray
v
Rivers } On Pltffs mo. that the facts of articles should be taken as confessed & answers — as Defendt had refused to answer to them the Defendt pretends that he does not understand the French Language — which is no excuse — but Pltff is ready to shew that Defdt does understand the French Language —

Monday 19th — October 1818

Sanguinet
v
Prevost } action for Lods & Ventes & Seigneurial rights —

O'Sullivan for Pltff. there must be a ventilation of that lot of land sold by Bender to Duval to ascertain the amount of Lods & Vents Pltff would be entitled thereto — Bender for Defdt — action for exhib. of titles — The Defendt pleads that he had exhibited his titles — proved by the receipts of Pltff for his Lods & Vents — The Pltff ensaisined

Dowg. v.
Ensaisement

the Contract, and therefore not entitled to any right of Lods upon it —

Sullivan Action is twofold — for exhib. of titles and for purp. of rights thereon —

—

Boston. —
v.
Needham

action on promiss. Notes. indorsed by Nichols & Sanford to Plff.

Sullivan for ~~Defd~~ Plff — objects to a question put to wit. Nichols — 1. leading question 2. does not affect the issue — 3 would charge W himself by setting up an indemnifying in him by a new Contract —

Molton
v.
Graves

on action for bar word demand reduced under £20 — agreed —

—

Hill
v.
Perrault

action for execution of an agreemt —

Pelton for Defd. action premature — money to be paid only when Stairs were finished & visited by Experts — by them

Report

report he was bound to repair certain defects in the work —

Objects to report of Exps. as they have not determined upon all the points submitted particularly on the claim in question — 2. The Experts have shewn partiality — 3. Have pronounced on matters not submitted to them — The report is defective as it does not state that the Exp. were sent upon the premises —

refers to circumstance of a pair of mahogany & of Chimneywood —

Borton for Pltff —

No. 460

W. Porteous dal
Franc. Mathurin } W

The exception à la forme, irregularly pleaded the matter therein stated not being ground of an Exception à la forme — dismissed. —

Foucher
Pothier —
& Henry on } W

The Pltff — par reprise d'instance ordered to answer over to the Intervop — that part of mo. for contrainte par corps rejected. —

No. 183
Campbell
Cooper — } W

action on Promy. note — Debt not due — Debtor absconds — Judgt. — See note on art. 160. 2 Gr. Cout. p. 1053 —

No. 410
Turgeon
Pigeon } W

action by pltff. Pltff does not shew in a sufficient manner that he acquired a mortgage on Defts land — Dismissed. sans dens —

№ 34

B. De Longueuil vs J. Nadlet & al'

On mo. fr ex. fi. fa fr damages & Costs as well on Judgt. as on Writ of possession = Writ of poss. dated 14 June 1817. on = Protest & notification by Defd. to Pltff. same day by leavg same at manor house w.t a Servant of family at 5 o'clock P. M. of delivery of possess.n —

This notification not considered to be a sufficient abandonnement of that poss.n which Defd. had been adjudged to deliver up to pltff, the act should have been perfected in such manner as to bind the Defd. — and as the Writ of poss. was in the hands of the Sheriff, ought to have been signified to him as well as to the Attorney conducts the Cause — Service at the Pltff's domicil not sufficient in such case —

Rule absolute —

№ 894

Berthelet vs Pearce & al

On Plea of discussion of principal Debtor — pleaded as an exceps. peremps. — this irregular — Plea dismissd — Declr. also stated that parties were jointly & severally bound

The Pltfs vs Stibbens

The Court were of opinion to quash the writ from insufficiency of the security — allowed to stand over at request of party —

Bouthillier & Cuvillier vs

Report of Experts confirmed —

№ 236

Hart vs St. Louis

Exceps. dismd — emprps.r — causes of action alleg.d to have been joined — Declr. cont.d 3 Counts — 2 first on 2 Notes. & 3.d for goods sold & deliv.d. —

Confroy
v
Boudria

Judg[t] for Pl[ff]

Legris
v
Legris

On Pl[ff]'s mo. to be allowed to come up and amend his answer to one of the Interrogatories proposed to him by Def[t] by adding some words thereto which have been omitted to be taken down—

The Court were of opinion that Pl[ff] should join his affidavit with the mo. to shew that the omission stated was from the act of the Bailiff in reducing the answer, & that the words to be now added had been given at the time as part of the Pl[ff]'s answer.—

Armour
v
Wellington
val'—

Mo. for New Trial rejected

Kelly
v
Mitchel

D[o]— d[o]— d[o]—

Gendron
v
Pettierval

D[o]— d[o]— d[o]—

Grignon
v
Bautron
& al—

D[o]— d[o]— d[o]—

Barbary
& Grandmaison
v
Foretier—

Report of Arbitrators homologated

Tuesday 20th October 1818.

Dugas ñ Sanctot & Sanctot opp.t — Judgt in favor of Oppost.

Willard ñ Levêque & Mrs Levêque opp.t — Judgt. of amoveas manus on oppn

Molson ñ Graves — Judgt. for Plff

Molson ñ McArthur — Do ——— do

Arnoldi ñ Brown. Cur & Brown Impt — Judgt. on Intervention — & Interlocutor referring demand to Experts —

Menecher ñ Lemai — The Excep. à la forme - Dismissed - matter improperly pleaded. —

Dewitt ñ Wedgewood — Judgt for Plff - goods sold

Clarke ñ Woolman — action dismissed —

Frost & Porter vs Waters } Judgt

Roi - Main & Contra } Judgt

Gatignon vs Imbault } Judgt for Plff. w. Costs as in the Inferior Court and costs to the Defendr for defending his suit in this court - M. Justice Ryan differed in opinion as to the allowing costs to Plff on one part of the demand & Costs to the Defendr on the other, considering it as inconsistent -

Dezery vs Clarke } Judgt for Plff - M. Bornemans testimony not sufft to prove plea set up by Defendr -

Vve Lafresnaye vs Warwick. } The Defendants motion granted for security for Costs -

Allan vs Howard } Judgt for Plff - Costs as in the Inferior Court

Gordon - vs Ermatinger & Moffat - } Interlocr - What Defendrs amount -

Grignon vs Bautron et al' — Judgt. on Verdict — action dismissed

Boston vs Noreau et al' — The question proposed to Wit. over-ruled considering it as a leading question. —

Webb Robinson Ezra vs Hoyt and Garnishee — Default Case — The service of process on Defendt. imperfect — allowed Sheriff to amend his return —

Yule. — vs Pardy and Contra — The exception pleaded by Pltff to the Incidental demand over-ruled —

Selby. — vs Shorts — action dismissed, Evidence insufficient —

Griffin. — vs Langan — Judgt —

Kelly vs Mitchell — on Pltf's mo. for Judgt on verdict objected by Deft — that he has all the day to move in arrest of Judgt —

Mo. over-ruled as prematurely made —

Perrin
v
Lorehouse

On ptff's mo. for Enquête.—

Bourré for Defd— The mo. cannot be granted as the pltff is in default, not having adduced on his witnesses on the last enquête day when the Cause was appointed for ex. of Wrs

Boston in ansr— The Pltff is not precluded from— another day to ex. his Wrs— as the Enquête in this Cause was continued generally—

Bourré— The Pltff ought to be held to shew deligence before another day be granted to him.—