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Jacques & Jacques & Tremblay opsts.

On question of right of Creditor to be subrogated in, and to exercise the rights, of his Debtor, in case when Debtor is not a party. —

Denisart. Vo Creancier. No 2.

Le Creancier peut non-seulement poursuivre son debiteur par des voies licites, pour s'en faire payer, mais encore poursuivre les droits et les actions de ce même debiteur si celui-ci neglige de les poursuivre lui-même. —

No 3. Ainsi, par example, un Créancier peut former opposition a un decret dans lequel son debiteur a des droits à faire valoir en un mot, les actions, et les privileges personnels du Debiteur peuvent être exercés par ses Créanciers, quand l'exercice ne demande pas une acceptation précise de la personne à qui le privilege est accordé. —

No 4. Un debiteur ne peut au prejudice de ses Creanciers, renoncer à une Succession qui lui est echüe. —

Dicn. de Ferriere. Vo "Créancier". —

La 2e Que les Créanciers n'ayant point d'autre moyen de se faire payer, peuvent, dans le tems de l'ordonnance se servir au nom de leur debiteur du benefice de Restitution en entier, pour lesion d'outre moitié, contre celui qui auroit acheté de leur debiteur un heritage plus de moitié moins qu'il ne vaut, à l'effet que le Contrat de vente soit nul; et les parties remises en l'état qu'elles étoient avant, si mieux n'aime l'acquereur payer le supplément du juste prix — Ch. arrondas. liv. 9. Rep. 29. Maynard liv. 3. ch. 70. —

La 3e Que les Créanciers peuvent recüeillir au nom de leur debiteur, ex etiam invito, une Succession à lui echüe en baillant caution de l'acquitter des charges — Auzanet sur l'art. 307. — Cout.

See also. 2. Pezeau. 409. — Repse Vo Creancier. p. 156. —

Lacombe — Vo Creancier. — No 8.

But the Debtor, whose rights are in question ought to be called — see — 1 Pigeau. 654.

La Saisie-arret ou l'opposition étant faite, si on veut poursuivre il faut la dénoncer au Debiteur, l'appeller pour la voir déclarer valable en conséquence, ordonner la délivrance des deniers entre les mains du Saisissant, on ne peut y parvenir sans cela, parce que le debiteur peut avoir quelque chose à opposer contre la Saisie, et que l'on ne doit dépouiller personne de ce qui lui appartient, sans l'avoir mis à portée de se défendre. —

See also to same effect — Serpillon. Tit. 33. art. 1. No. 9. p. 614.

Par arrêt de la même Cour du 7 Juin 1681, il a été jugé qu'une Saisie entre mains n'étoit parfaite, que quand elle étoit signifiée au debiteur principal — ensorte que le Cessionnaire d'une rente ayant fait signifier son transport au debiteur de la rente, il étoit préférable au Creancier du proprietaire originaire de cette Rente, quoiqu'il eut fait saisir anterieurement à la signification du Transport de l'autre Créancier — parceque cette Saisie n'avoit pas été notifiée au Debiteur. —

Rep^re. V^e. Créancier. p. 156.

Les Créanciers peuvent exercer les droits de leurs debiteurs pour la seureté de leurs créances — ils peuvent saisir et arreter ce qui leur est dû, former opposition en sous-ordre sur lui — prendre en son nom des lettres de rescision contre un engagement qu'il a contracté à leur préjudice, accepter en son nom une Succession malgré lui —

Nouv. Denis^t. V^e Creance. §. 2 No. 7. —

Les droits & actions faisant partie des biens, les Créanciers peuvent en certain Cas exercer les droits qui appartiennent à leur debiteur; ce qui s'opere par une espece de Subrogation —

Arrets de Louet 1. Vol. p. 334,

Par arrêt du 9 Juillet 1698 du Parlement de Paris, rendu au rapport de M^r. Chassepot de Beaumont, qui a prononcé sur 19 differentes questions entre autres, sur celle de Savoir, si un Creancier peut exercer les droits de son Debiteur — Il a été jugé pour l'affirmative — Voy. le Journal des Audiences. Tom. 5. liv. 14. ch. 8.

Lacombe. v^e. Créancier No. 8. —

Créancier peut exercer les droits de Son Debiteur. Le Brun des Succ.

N° 304.

Taschereau
et
Allard

Qu. Whether Lods & Ventes are due on a Sale not perfected by a Deed duly executed — where before executing a deed, the first purchaser agrees to give up his bargain to another who with his consent takes the Deed from the Vendor —

If the Sale could be considered as merely conditional, no Lods & Ventes were due — see Prat. des Terres 5. Vol. p. 727. — Id. p. 804 — Quest. Si l'adjudicataire cede son droit a un tiers avant qu'il ait pris possession, les Lods en seront-ils dûs? — Maynard Liv. 4. ch. 51. dit que par arret du Parlement de Toulouse, dont il doit Rapport-eur, de l'année 1582. — il a été jugé, que l'adjudicataire qui cede son droit à un Tiers, avant qu'il ait pris possession des choses à lui adjugées, les Lods ne sont pas dûs par l'adjudicataire, mais seulement par celui au quel il a cedé son droit — La meme chose a été jugée par arret du Parlement de Bretagne du 30 Oct. 1576, rapporté par Chopin sur la Coutume de Paris. l. 1. Tit. 3. N°. 13. — parce qu'il ne s'est faite aucune mutation. —

(see after p 70)

Ch. I.
Rep. V. Lods & Vents. 604. — D — 708.

No Lods & Ventes are due where no deed has been executed see. Pruth. liv. 3. ch. 7. p. 150. +

Il faut faire attention que la mutation seule ne suffit pas pour donner ouverture aux droits de Lods & Ventes, il faut qu'elle soit jointe à un titre qui importe alienation, tel qu'un Contrat de Vente donation ou change ou autre titre qui transfere la propriété: De meme le titre ne suffit pas non plus, s'il n'est accompagné d'une mutation effective; Car suivant le principe general, les droits Seigneuriaux n'etant que le prix du Consentement que donne le Seigneur pour que l'heritage change de main, il faut qu'il y ait une vraie mutation pour donner ouverture aux droits des Lods et Ventes, qui ne sont point dûs s'il n'y a titre & mutation en meme tems. —

Ce

Ce n'est donc, ni le titre seul, ni la mutation seule, mais la mutation qui arrive en vertu du titre, qui produit les droits Seigneuriaux; d'ou il resulte, que s'il y a plusieurs titres d'acquisition et une Seule mutation, il n'est dû qu'un droit, et s'il y a plusieurs mutations et un Seul titre d'acquisition, il n'est pareillement dû qu'un droit; Ainsi, si l'acquereur, avant que la tradition lui ait été faite revend a un autre l'heritage, que cet autre le revende à un tiers, et ce tiers à un quatrieme, qui enfin est mis en possession, le quatrieme Seul devra les droits de Lods et Ventes. — C'est la decision de M. Prevot de la Jannés en Ses principes de la Jurisprud.ce Franç.se Tom. 1. tit. 10. Sec. 2. N.o 232. et de Dumoulin sur l'art. 78. de la Cout. de Paris glose 1. sur ces mots "acheté à prix d'argent" n.o 124.

Pothier. Introduction au Titre des Fiefs — Cout.e D'Orleans Max. 14.e — p. 106. — N.o 144.

Lorsqu'il n'y a eu qu'un seul Contrat de Vente — il n'est dû qu'un Seul profit de Vente, quoiqu'il ait donné lieu à plusieurs mutations. — Cette maxime est une Consequence de la premiere —

The first says. p. 98. C'est le Contrat de Vente plutôt que la mutation qui donne ouverture au profit de Vente. —

Pothier - in his Traité des Fiefs - ch. 5. - p. 135 - lays it down as a General Maxim - Ce qui donne ouverture au profit de Quint - est la Vente du Fief — and as a principle arising from this he lays it down - 2e troisieme - Tant qu'il n'y a pas un Contrat de vente parfait, il ne peut y avoir ouverture au profit du Quint — and as a Corollary, he lays it down — Lorsqu'il n'y a point de Vente, il n'est point dû de profit, encore bien qu'en consequence d'une Vente putative, il y ait eu mutation du Fief —

№ 853.

Wm: Galernau & al. vs Louis Crotteau & al

Action on Recogz. of Special Bail —

Judgt. rendered agt. Simon Evans, the principal debtor the 19. April 1816. — Ca. Sa. sued out 27. May. follows —

On the 10th. May the Debtor went to the Sheriff's Office to surrender himself, but as the Writ had not then been sued out, the Sheriff refused to receive him, having no authority to detain him. —

On the 27 May the Pltff deliv'd the Ca. Sa. to the Sheriff, who on the 10th June 1816, returned non est inv: — On the 11th Oct. the action was commenced agt the Bail —

There are three periods of surrender pointed out by the Ordre of 25 Geo. 3. ch. 2. — 1st. Pending the action agt. the Debtor — 2d. At any time within one month after Judgt — & 3d unto the Sheriff at any time within 15 days after the day on which the plaintiff might legally have and obtain execution by Ca. Sa. —

Can this surrender be made without notice to the Plaintiff? — The course in England is, by giving such notice — see

1 Tidd's Prac. 240. 241. —

——— Prac. Forms. 103. —

1 Sell. Prac. 165. —

If the principal be surrendered in time, but the bail omit to give regular notice of it to the pltff, in consequence of which he proceeds upon the Bail Bond, the Bail may apply to set aside the proceedings on payt. of costs, even after Execution levied and the money in the hands of the Sheriff. — Lepine & al. v. Barrat. 8 T. R. 222. Tid. 241.

See also Case of Wild. v. Harding. 8 Mod. R. 281. Notice of surrender requisite — want of it cannot be supplied by the Court. —

№848.

Hunter
vs
Munn.

Action of assumpsit for £50 money lent
Pltff states himself to be a merchant — Defendt a
ship-builder — On undertaking in following words

"Received from Mr Thomas Hunter / say borrowed / fifty
"pounds Currency, bearing interest till paid". —

Montreal 18 Decr. 1816
Pro. David Munn
"Thos. Boston" —

The decln states, that on 18 Decr. 1816. Thos Boston was the agent, Clerk, or attorney of the Defendt & in that capacity borrowed from the Pltff the sum of £50. for the use & behoof of the Defdt — 2. Count, for monies paid, expended &c for the use of Defdt

Plea — Non-assumpsit. —

Witss exd.

№1. Robert King — clk to Defdt In 1816. Thos Boston was the Clerk or agent of the Defdt & did business for him in his absence proves the signature of Thos Boston to exhibit filed by Pltff That it is usual for Merchts Clerks, in the absence of their Masters to borrow money to carry on their business — There is an entry in the Cash book of the defdt — made by one John Hall, ~~them~~ Clerk or book-keeper to the Defdt of the sum of £50 borrowed by the Defendt from Pltff, under date 18 Decr. 1816 — Hall was Clerk to Defdt when he made the entry, but not at the time of the date of the entry —

Has no knn. of any Custom in Canada for Clerks to borrow money for their masters — believes that the entry in question in the Defendts books, was made by the directions of said Thos. Boston, as the books were under his management. —

№2.

No 2 Hiram Nichols - Thos. Borton was agent for Defendt has frequently called as such upon Wr to receive money for goods sold by Wr for Deft - & money was charged to Defendt and never disputed by him - That Borton always gave receipts for Deft - Proves signature of H. Borton to Pltffs Exhibit. -

x

That said Borton never borrowed money from Wr on act Deft but the Wr has advanced monies to Borton on act of goods put into the hands of Wr for sale. - That it is customary for Masts Clerks to borrow money for their Masters in their absence - but cannot state any instance of this -

No 3 Thomas Borton - Pltff is his uncle - That in the year 1816 the Wr was Clerk & Agent of Deft who was absent from the Province and the Wr had charge of his business - during that time, he had the power of borrowing money for Deft - and as such agent borrowed the sum in question from Pltff - which was employed for the use of Defendt -

Objects to Competency 1 Relationship 2 Interest. -

x

A Sudgt of Deft in this Cause will exonerate Wr from pay. of money to Pltff. - Deft would not be exposed to loss, if Pltff were to fail in this action the driven to his recourse agt Wr - That Wr would not be liable to pay Pltff - if he should fail in this action, as Wr signed the receipt for Deft - Wr not think himself liable to reimburse Pltff, were it even ascertained that he the Wr had no authority to borrow the money for Deft

That Wr has written authority from Deft by letters for transacting his business during his absence - That Wr borrowed s money as Defendants Clerk. -

Paley - Agent & Pl p. 207. 208. - 238.

When the question is whether a person to whom money has been paid for the use of another, was an agent duly authorised to receive it, so as to charge the principal in an action for the money - It has been held, that the authority may be proved by the Agent himself. - Ilderton v. Atkinson. 7 T. Rep. 480. & cases cited in note. Evans. v. Williams. - See also. 1 Atk. Rep. 248. & L^d Hardwicke - & 11 Mod. 226. & L^d Holt. Mason v Hoppden & cases cited. But

Snee v. Prescott.

Paley. P.L. 2 Ey 200 — But is said — That the party who avails himself of the act of an agent, must in order to charge the principal, prove the authority under which the act is done — If the authority is created by a power of attorney, it must be proved by the production of the instrument itself, that it may appear whether the authority has been pursued — But in other cases, it is sufficient to prove that the agent has acquired credit by acting in that capacity, and has been recognized by the principal in other instances —

see Phillips — Ev. 81. & 181. 2

Griffin vs Dennard { 1 Bos. & Puller. p. 147 —
1 Chitty on pleads. p. 5 —

A Trustee cannot maintain an action in his own name for the Company — Contra to qst he is Trustee for —

But see 4 Cranch. Rep. Stone v. Metcalf
Forrest v. Camane — 2nd. 12 June 1815 —

2 M. & S. Rep. 90. Crutchley. v. Clarance — Bill made with name of payee in blank — filled up after negotiated by Plff himself —

L^d Ellenborough — The Defend^t by leaving the blank undertook to be answerable for it when filled up in the shape of a bill —

Bayley J. The issuing the bill in blank without the name of the payee was an authority to a bona fide holder to insert the name. ———

Hunter
v
Munn.

But is said, that a master may be liable on a note given by his clerk, though without authority, if the money be actually and bona fide applied to his use. — Paley 123 — vers to case. 1 L. Ray. 225. Bolton. v. Hillersden. — 2 Holt. Ch. J. If a master has never ~~instructed~~ intrusted a Servant to charge him by signing of notes in the master's name, yet if the money for which such note is signed comes to the use of the master & such note will bind the master, though he never permitted the servant to sign such note before. —

4. Bac. Abr. Tit. Master & Servt — letter K. — 586

And herein it is said, that a Servant by transacting affairs for his master does thereby derive a general authority and credit from him — which general authority is not liable to be determined for a time by any particular orders or instructions, to which none but the master and Servant are privy — for that if this should prevail there would be an end of all dealing but with the master —

And see Note — Case — If a merchants apprentice draws a bill in his name "I promise to pay such a sum "for my master" — to charge the master with this note, it is said, there ought to be either an authority precedent or a consent subsequent — "or that the Master had entrusted him with his "affairs". — Comb. 450. —

Agreeable to this is the Case of Nickson. v. Brohan. 10 Mod. p. 109 — But the Court were all of opinion, that the master was chargeable and he only — for a Servant by transacting affairs for his master, does thereby derive a general authority and credit from him — and if this general authority should be liable to be determined for a time, by any particular instructions or orders, to which none but the master & Servant are privy, there would be an end of all dealing but with the master. —

and

No 484
Hunter
Munn

And see Case. Fenn. v. Harrison. 3 T. Rep. p. 762
Opinion held by Mr Just. Buller — I agree with my brother Ashhurst, that there is a wide distinction between general and particular Agents — If a person be appointed a general Agent — as in the Case of a factor for a Merchant residing abroad, the principal is bound by his acts — But an agent Constituted so for a particular purpose and under a limited and circumscribed ~~authority~~ power, cannot bind the principal by any act in which he exceeds his authority" &c —

1 Esp. 111 Ed Ca
4 Esp. —
"Defts ought to have made out proof of want of authy in agent.
Chitty on Bills. ed. 1812. 4e p. 35 — n. 2.

Poth. Obl. No 79.

Ce pouvoir secret me donne bien une action en dom. & interets contre mon procureur pour n'avoir pas suivi les instructions secretes que je lui avois données; mais il ne peut me dégager envers celui avec qui il a contracté en mon nom, conformement au pouvoir apparent qu'il lui a representé, autrement il n'y auroit aucune sureté a contracter avec des absens." —

and Id. No 82 — Nous sommes aussi censé contracter par le ministere d'un autre, quoiqu'il contracte lui-meme en son nom, lorsqu'il contracte pour des affaires auxquelles nous l'avons preposés — Car en le preposant à ces affaires nous sommes censés avoir adopté et approuvé d'avance tous les Contrats qu'il feroit pour les affaires aux quelles nous l'avons proposés, comme si nous avions contracté nous mêmes — et nous sommes Censés avoir accedés à toutes les Obligations qui en resultent.

№ 270

Curry. }
Phillips }

Can. Ca. ad resp.
The Sh. admitted Defendt to bail. —
On return day of writ, 1767 when Defts was called, Mr Boston appeared & moved to be permitted to give special Bail — wch was granted — No special bail however was put in — on the 4th Feby. the Defendt obtd a rule on the Pltff to shew Cause why he should not be held to give security for Costs as residing in Upr. Canada and on same day the Defendant filed a plea — on the 6th is shewn Cause agt this rule the Pltff moved, that as Defendt had not appd. in person, nor given bail to the action, that the appearance of Mr Boston and also the mo. & rule for giving security for Costs should be rejected & discharged as irregularly entered —

The Court ordered that on default of Defendt giving the special bail according to his motion of the 1st that the Pltffs mo. be granted. See 1 Sellon Pr. 137. 181. & Tidd's Pract. 216. a

═

Ermatinger }
vs }
Perrault }

Action by Pltffs as Trustees to Estate of Armour and Davis, Bankrupts, agt the Defendants as Customers and Brokers to recover from them the amount of Sales of Certain goods & merchandises sent to Defdts for Sale —

The Defendts plead compensation, and set up an Incidental demand for amount of a promissory note made by Armour & Davis on 1 Novr 1816 to Messrs Hart Logan & Co for £594.8.11, which note was on 1 June 1817 endorsed by Hart Logan & Co to Defendts which they claim a right to set off agt the damages demanded — and as the amt of the note is greater than the damages, that Defts ought to be discharged from the action — The Reps join issue & state, that the note in question was not endorsed to Defts on 1 June 1817, but long after the Bankruptcy & assignment to the Pltff. —

What parties to a bill can be Witnesses — & to what facts —

Indorsee }
vs }
Acceptor }

Payee, Drawer, or Indorser, a competent Wn to prove that the bill was originally void — 7 T. Reps. 601. — 1 Esp. R. 332.

No objection unless he be directly interested in the event of the Suit or could avail himself of the verdict in the Cause so as to give it in evidence on any future occasion in support of his own interest — 7 T. Rep. 62.

Indorsee v Acceptor } Drawer competent to prove the acceptors hand writing though defence be forgery — 4 Esp. R. 32.

Indorsee v Drawer } Payee who indorses it to Plff in pay: for goods may prove the consideration for the Indorsement — for if the action failed he wd be liable to Plff. for goods sold, and if he succeeded, liable to Defdt. for money paid. 1 Camp. 407. — Shuttleworth v Stevens —

Indorsee v Drawer } The Indorser may prove that he rec'd money from the drawer to take it up and it had been satisfied — being liable either to the Plff on the note, or to the Defdt. for money had rec'd — 2 East. 458 —

Action v Maker } Indorser a good Wt to prove it paid —

Do v Drawer } Acceptor may prove that he had no effects

Do v Indorser } Maker admitted to prove that the date had been altered

An Indorsemt by a Wt to prove a property in himself, or that it was indorsed to Plff without consideration. 1 Esp. 86 5 T. Rep. 578 —

See St. 46. Geo. 3. ch. 37 — declaratory of law respecting interest in a Wt —

Peake's Evidence. 4th Edit. p. 175 — A man who is interested in the event of a Suit, is objectionable as a Witness, only when he comes to prove a fact consistent with his interest — for if the evidence he is to give be contrary to his interest, he is the best possible Witness that can be called, and no objection can be made to him by the party in the Cause. —

En Angleterre on accorde trois Jours de grace, en sorte qu'une lettre de change acceptée pour être payée, par exemple dans dix Jours à vüe, peut n'être payée que dans neuf Jours — Par toute la France on accorde dix Jours de grace — Et remarquez que que les dimanches et les fêtes sont compris dans le nombre des Jours de grace — Rep: de Jur. Vo Jour. —

Savary. Dic. Com. Vo Faveur — On appelle en termes de commerce Jours de faveur les 10 Jours que l'ordonnance accorde aux marchands, Banquiers & negociants apres — l'Echeance de leurs lettres de change pour les faire protester

Ces dix Jours sont appellés de faveur, parceque proprement il ne depend que des porteurs de lettres de les faire protester dés le lendemain de l'echéance — et que c'est une faveur qu'ils font a ceux ou qui elles sont tirées d'endifferer le protêt jus qu'à la fin de les dix Jours —

See also - Id. Vo Jour. - as to Dix Jours de faveur

p 1741 -

No 746

Willard
v
Dewitt

Defendt mo. to quash as well writ as Declaration because of variance - Defendt denies qualibet Gentleman in the Dom. & merch. in writ —

Lussan pro Defts. cites to rules of prac. reports Seven & Pres. p. 43 — but this applies only to the writ or process & not to the declan. which can be altered only by a plea —

7 Cart. 384.

No. 193

Crepeau & Beauchamps — Action hypoth — Defendt can

Defendt. sued as residing in the parish of St. Henry de Mascouche — the service of the process was also attaching the writ to a Stable door on a land in the parish of St. Jacques being the only building on the land, where the last domicile of the Defendt in the District was —

Held irregular — as the service was in a different parish from that described in the writ — and also the attaching the writ to a stable door, not being any domicile or residence of Defdt —

No 562 Johnson v. Nau. 5 Aps. 1817.

No. 731 Henshaw & Chaste — Feb: 1818. Pleading process to be empty house door bad

Dalrymple & Butterfield v Norton — Decouagne v Poines. Jun 1818

action on a promissy note —

Service made by leaving copy of writ at the Counts house formerly occupied by Defdts but in wch no one lived at time — the house being vacant, & the Defendts absent —

Johnson & Stearns — action for arrears of Cens & rents as Defendt as detenteur — Exception — not sued as propre — nor by action hypo —

Sed vide —

Pothier p. 127. liv. 2. ch. 3

Par le mot Detenteur, on doit entendre celui qui jouit de l'heritage en qualité de proprietaire, & non comme fermier ou locataire car ceux ci ne sont pas tenus de payer la Censive, s'ils n'y sont expressement obligés par leurs baux — C'est pourquoi lorsqu'un fermier est inquieté par un Seigneur pour le paiement de la Censive, & qu'il n'y est pas obligé par son bail, il doit declarer quel est le propre de l'heritage, & etre dechargé de la demande dirigée contre lui &c —

S'il est dû au Seigr des arrerages, ils doivent etre payés par le Detenteur actuel, avec ce qu'il peut devoir pour le tems de sa Jouissance mais il a son recours contre ceux qui ont possédé l'heritage avant lui, parce qu'il est indifferent au Seigneur d'entrer dans cet examen, ayant le droit de s'adresser au possesseur de l'heritage, tant pour les ~~heritages~~ arrerages, que pour l'année derniere, fondé sur le privilege du Cens qui est sur tout l'heritage.

M^c Gillivray & al
Jos: Lépine & Pausin } action of assumpsit —

The declaration contained 2 Counts — 1. for money paid, laid out & expended, lent & advanced, and had and rec^d by Def^ds — to use of Plff^s — 2^d Insimul computass. Plea. Non assumpt — 2. The monies in question were paid to Def^ds — for the purpose of affording the means to withdraw himself and remain absent from this Province in order to prevent his Testimony respecting certain Crimes and offences committed in the Indian Territories of North America. —
Replication — Joins issue —

John Hellrick — on his cross-examination states — that the advances in question were made to the Def^ds by the Plaintiffs as Agents to the N. W. C^o — and charged accordingly in their books —

№ 326.

Sauvé & ux
Valois —

On action Hypothecaire. —

Decln states — That by act passed at Vaudreuil on 9 Febr 1813, before Dumouchel & anr. notaries, the pltffs sold to one Charles Davout a certain lot of land (described) on condition & consideration amongst other things to pay to one Jn Jos. Trestler in discharge of Pltffs the — quantity of 400 bushels of wheat, q. they owed to said Trestler, payable in four years, by 100 bushels every year, which said quantity of wheat was then due, as is more fully apparent by an acte de transport made by the said Davout to the said Trestler before Degnie, Notary, 29 March 1808 — which debt the s. Davout undertook as his own personal debt to pay to the said Trestler —

100 Jany — 1809
" — 1810
" — 1811
100 Jany 1812.

That at the time of executing the said deed of sale, there was an action pending before this Court at the Pltffs at the suit of the said Trestler, for the pay. of the two first Instalments of 5. quantity of 400 bushels of wheat, and Judt was thereon rendered as Pltffs — on the 20 Febr. 1813, for £87. 10. wt int. from 1 Sept. 1812 & Costs — taxed at £21. — making in all £108. 10 —

That afterwards to wit, in the Term of Febr. 1815 the said Trestler not being pd the third Instalment of the s. wheat, obtained Judg. as s. pltff in this Court on 20 Febr. 1815 for a sum of £75 — as value of s. 100 bushels of wheat wt Int. thereon from 9 Oct. 1813 & Costs taxed at £14. 10 —

That on 26 Nov. 1813, the pltff. in order to avoid Costs, pd to s. Trestler on acct a sum of £83. 6. 8

In the month of Oct. 1817, the pltff prosecuted the said D'avout before this Court for the recovery of the said sum so by them pd to the said Trestler, whereon Judt. as him on 20th of that month for the same (£83. 6. 8) wt interest & Costs, taxed at £11. 3. 6

Upon this Judgt the pltff. sued out Exon & att the goods & chattels, lands & Tenements of s. Davout, but on q. nothing could be levied for want of property — upon q. a further charge of £8. 12. 4

was

was incurred — which allog. the sums of £98. 2. 6 not includg interest —

That the plffs by the payt to the said Trustee of the said sum of money are by law subrogated in his rights, & entitled to demand of the Defendt as holdg & possessg the real Estate specially mortgaged for the payt of the said Wheat, & to have & receive from him the payt of the said Sum of £98. 2. 6 w. interest & Costs, or that Defendt quit & abandon the said premises so mortgaged — Concludes accordgly —

Plea 1. Nil debet — 2dly That the different Judgts rendered in the Court of K.B. in regard of Wheat in question cannot injure the Defts rights, as he was no party thereto — 3ly That supposing that the land in question were mortgaged to sd Trustee for the payt of the Wheat or a part of it, yt was transferred to sd Trustee by Chas D'aout by act of 29 March 1818, the sd Defendt avers that the said Trustee or his representatives have been paid for the same —

Replication Joins issue, — admits payt of a sum of £101. 13. 5 — to have been pd — as stated in exhibit filed by Defendt Judgt Dismissed Oct 1814 —

—

D'aout sold a land to Michel Poirier dt. Desloges fils — & by transport of 9 March 1808, transferred to Trustee 500 bushels of Wheat part of the consideration of this sale, to be by him rec. from Poirier. Same, the Plff married Margte Martin, the widow of this Poirier — The Plffs who were the Debtors of this wheat, afterwards sold a lot of land to D'aout and charged him w. the payt of the same wheat, as by deed of sale of 9 Feb. 1813. —

20 Feby. 1813. Judgt for £87. 10 — for 200 bushels — in Sept. 1811. & 1812
20 Feby. 1815. Judgt for £75. — for 100 do — in Sept. 1813. —
In this Judgt the transport from D'aout to Trustee is stated to be in 25. March 1808 —

Watson & Heath & Mills oppts

On Seizure under Expon. of a Vessel in the poss. of the oppt. qt had been leased to him by Defendt — Dno. where the Saisie-Expon can take effect —

Poth. Proc. Cw. p. 175. says — Lorsque les meubles d'un debiteur sont en la maison d'un Tiers, le Créancier ne peut pas les saisir & executer, il n'a que la voie de les y arreter et de l'assigner pour qu'il en fasse la delivrance. —

1. Pigeau. 659. —
2. Gr. Comm. Fer. p. 1171. Nº 14 — on art. 170. —
2 Bourg. Sec 2 Ch. 8. p. 678. art. 6. —

551

Nº 394

Jones & Fowler —

action of debt on deed of sale. — for a sum of £100 become due and in arrear on 1 May 1818, being the second term of pay. of a sum of £1500 the stipulated price of the property sold —

Plea 1. Nil debet. —

2. The premises in question were sold by Pltff to Defendt — with warranty agt all gifts dowers, mortgages & all other incumbrances and as being free and clear of all arrears of Cens & rents &c — but that in this respect the Pltff hath failed in his Covenant inasmuch there are lods & Ventes due on the premises sold, namely on the sale from one Donald McPherson to the said Pltff. the said Lods & Ventes amounts to the sum of £96. —

Lanctot. Trepanier

3. Payment. —

Replication — Joins issue on first plea — On 2. contends that it is not sufficient, inasmuchas Defendt has yet a large sum of money in his hands vest. sum of £900 — after payt of the sum demanded —

&

№ 326

Sauvé &c vs
Valois

To amt of Judgt - 20th Febr. 1813 - £87.10
Int. from 1 Sep. 1812 to 31 Oct. 1814 -
2 years & 2 months ——— 11.7.10
Taxed Costs ——— 21.
£119.17.10

1814. Oct. 31. Pd Trestler out of Deans Estate. 101.13.5
£18.4.5

№ 723

Reeves
vs
Berthelot
&al.

action for recovery of wages — £123.13.10.
Ex. Pltff's decln not signed —

Plea. 1. Non assumpsit —
2 Tender of £40 —

Wits. exd.

№ 1. In Bs Audet — Pltff ent. service of Defts as a clerk in beg. of Nov. 1816. & cont. to beg. of Feb. 1817 — saw Pltff. at two diff. times in April also employed at Books of Defts — X — Pltff frequently about —

№ 2. Robert McRobb — speaks to capacity of Pltff as a book-keeper — services worth from 2 to 300 £ an.

№ 3. John Smith — Pltff reasonably entitled to £250 — £ an as a clerk in employ of Defts — Pltff's capacity — X Pltff's brother was sic a Partner of Berthelot —

№ 4. Chas. Castle — Defts ent. in confusion — Pltff employed to post books — worked about 4 months — saw an Entry in Defts Books, crediting Pltff w £100 — money lent — X That Jessé Reeves, Pltff's brother was partner of Berthelot & bound to keep the books — Does not know whether Pltff was employed by Defendts — or by his Pr brother. Pltff very irregular in his attendances —

№ 5 - John Jessé Reeves — brother of Pltff — he is a partner of Defendts —

Bethelet - and has also a share in the business of Defendt -
objected to his testimony - 2. can he be a witness in the cause -
see Peake. 170 -
To see article of Copartnership between Jesse Reeves & Defdt
not among papers

No 23.

Wilcox
Skinner

Assumpsit ag[ainst] Defdt. as a Carrier
4 Jan[uar]y. 1816. Pltff deliv[ere]d to Defdt. 5396 lb. pork
to be carried from Royalton to Montreal
Defendt. deliv[ere]d only 5083 lb. deficiency of 312 lb. value £20

№ 122

Turner
vs
Booker

Action of assumpt. on Promy Note —

Note from Defend. to one Thos. Mears or order for one thousand dollars, payable ten days after date — no date to the Note —

Indorsed

Montreal 3d. July 1816 — Recd. Joshua Healey's bon for 300 dollars on acct. of the within — Thos. Mears. —

and

For value recd. pay the within contents to Thos. Andw. Turner or order. Montreal 3 July 1816. —

Plea — non-assumpt. — 2d payt. to Thos. Mears before he indorsed the note to Plff

The Defend. pyes — a Draft drawn by him on Joshua Healey for 600 dollars, Dated 4th July 1816 — —

On 9th July 1816 — this draft is accepted by Healey, payable when in cash for the drawer, Booker

and

on same day Thos. Mears gives a recipt for the amount, by stating that it had been passed to his credt —

№ 829

Day
+
Norton

action on bill agt. Drawer & Indorsers jointly — cannot lie — see

Kyd. on bills. p. 114 — contrt several —

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see com. Procedure. M'Neil — Stewards Rep. p. 186 — in regard to American trading in the Kings Colonies —

The law of Canada is different

Molson & Phillips v. Hitchcock Intervs

Touching the seizure of the moveables of the Sub-Tenant for rent due by the principal Tenant.

2. Pigeau. 76. S'il y a des Sous-locataires, le Propr.re peut aussi faire Saisie-gager leurs effets – mais en lui payant le loyer de leur logement ils doivent avoir main-levée suivant l'art. 162. de la Coutume. – Aussi. 1. Despeisses. p. 111. n.

2. Bourj. 553. art. 25. Il peut pareillement saisir et gager les meubles des Sous-locataires ils sont également son gage mais sous la restriction ci-après. – ce dernier privilege est limité – les sous-locataires ont maintenu d'une telle Saisie et execution en payant le terme courant lors de la Saisie, en sorte que ce qu'ils ont payé avant est bien payé, ce qui conserve le droit de chacun, et si par la, le propriétaire ou principal locataire n'est pas rempli, il est plus juste qu'il souffre de n'avoir pas agi plutôt que l'autre qui n'a pas pû parer à son inaction – il est donc juste en ce cas d'accorder au sous-locataire main-levée d'une telle saisie en payant ce qu'il doit de loyer. –

art. 26.

Denizt. Vo Loyers. 3. Vol. p. 155. Le locataire ne peut valablement payer ses loyers d'avance au préjudice des Créanciers des propriétaires et des Saisies qui peuvent survenir en ses mains, à moins qu'il n'y ait Convention expresse par le bail devant Notaire, que les loyers seront ainsi payés, et encore pour seulement une demie-année d'avance. –

Acte de Notoriété. 56. un notis

Il a encore lieu sur les meubles des Sous-locataires et sous-fermiers en faveur du propriétaire, mais jusqu'a concurrence seulement de ce que ceux-ci doivent de loyers ou fermages au tems de la Saisie ou opposition faite en leurs mains, et de ce qui echoira depuis. –

Pothier seems contrary to this – See. Jr. de la Prov. Cv. p. 192 Cout. Louage. p. 276. No. 235. et Suiv. –

Lacombe Vo Saisie = Ga. p. 476.

Les meubles des Sous locataires peuvent être saisis, mais ils leur seront rendus en payant le loyer de leur occupation, ce qui doit s'entendre, s'ils n'ont payé au principal locataire, contr Brodeau sur ledit art. No 3. — Il doit même être observé dans la Coutume d'Orleans quoique contraire Et même l'usage est de faire seulement une Saisie arret entre les mains des Sous-locataires —

Gr. Cout. 2. Vol. p. 1061 art. 162. No 11.

Je ne serai pas de l'opinion de Brodeau No 3, qui tient que les Sous locataires sont tenus de payer les loyers de leur occupation quoiqu'ils l'ayent payé au principal locataire, ce sentiment me semble contraire à l'equité, et à l'esprit de notre Coutume. ce

Id. p. 1064. No 4. —

Il est juste de faire main-levée au Sous-locataire en payant ce qu'il doit au locataire pour son loyer — Et il lui suffit de justifier les quittances du principal locataire du quel il tient. ce

Neanmoins la voie de Saisie-arret est plus naturelle, et plus convenable, parce qu'il s'y fait moins de frais, et que c'est une maniere d'insulte que de faire saisir par gazerie les meubles d'un Sous-locataire qui paye bien. —

It is to be observed that neither Pothier, Guyot or Desgraves notice the Case where the Sous locataire has paid his rent, and consequently do not appear to have given any positive opinion, as Brodeau has, who is contradicted by the other authors —

Denost Vo Gazerie.

Et meme s'il y a des Sous-locataires il peut arreter leurs meubles par la même voie, mais ils en auront main-levée en payant ce qu'ils se trouveront devoir pour leur occupation —

Dic. Droit. Vo Sous-Locatn

Mais les meubles des Sous-locataires ne sont pas responsables de tous les loyers qui pourroient être dus par le principal locataire, mais seulement de ceux qui se trouvent dus

dus par les Sous-locataires — La raison est, qu'il seroit absurde que le proprietaire d'une maison eut plus de droit sur les — Sous-locataires que le principal locataire n'en pourroit avoir sur eux. —

—

Deschambault
&
Patenaude — }

2 Pigeau. 219. 228. 29. —
Obl. N° ~~579.~~ 745. — 781 - 2 - 3 - } Ch. I —

Dic. des arrêts — V° Paiement — (Preuves de Paiement)
Arrêt du Parlement de Dijon du 16 Dec^re 1584, qui admet la preuve contre une quittance donnée —

Poth. Obl. N° 792. 793 —
Jousse on Tit. 20. Cod Civil art. 2. p. 256. § 4 —
Bornier — d° — d° —

Varin
&
Bleakley } action by Pltff — on Deed —

Exception over-ruled, as the action although it was grounded on the neglect of the Defendt to have endorsed an acquittance did not conclude for that amount, but for damages accruing to Pltff by reason of ~~Pltff~~ Defendt not having done so — this was not inconsistent with the other Counts in the declaration — as the whole concluded to the payt of a certain specific sum of money —

Deschembeaux v Patenaude } action on deed of sale, for three payts of the capital of 1000th each - one due on 1 Augt 1816. - one on 1 Augt 1817. & one on 1 Augt 1818 - making 3000th - and interest on the principal of 10,000 for 2 years - 1817. & 1818 making £50 -

The Defendt pleaded payt - and filed a receipt signed by the Plff bearing date 4 Novr 1817 - in this Term -

The Plff contended that there was error in the receipt, and moved to be permitted to adduce Verbal testimony to shew the error - in writing word "pistoles" instead of "livres"

The Court granted the motion, on the legal presumption arising from the facts in the Case - (sup. p. 26.)

Mattheson v Allen - } Service of Process at last Domicile of Defendt by mailing it

Johnson v Nau - Service of process by nailing same to the door of the Defendt - an absentee held insufficient in 1817. - 5th April.

Hearshaw v Clarke Feb. Term 1818 - Posting process ab door of an empty house held insufficient -

Pickels v. Norcum. }
Jones v Henderson }
Dodd v Dickson & Mann } The Sheriff must specify where the last domicile was, when the service is made at such place -
Robinson v Hoyt }

Brown v Byrne -

Dechambaut
& Patenaude

namely, that the Defend^{r} by paying 600 dollars on the 4 Nov^{r}. 1817 was paying more than he owed, for on the 1^{r} Aug^{t}. 1816 - there was due of principal 1000$^{\#}$ -
On 1 d^{o} 1817 d^{o} ——— d^{o} ——— 1000.
And Int. on 10,000$^{\#}$. for one Year ——— 600 2600$^{\#}$ -
£108.6.8

For no man is presumed to pay more than he owes without some consideration - Poth. Obl. 781 -

That the Receipt bearing that the 600 dollars were paid on acct. of interest, was evidently an error, as no such sum was due for interest, and although the Defend^{r} was in law entitled to set off the surplus a^{t} the Capital, yet the state of the receipt was a ground for letting in proof to shew the whole circumstances Resp^{rs} v^{s} Prince. p. 580. 2^{d}. Col. citation from Danty -

The Court considered these circumstances as a Commencement de preuve par ecrit so as to let in the verbal testimony -

The Pl^{ff} had ex amd. the Defend^{r} on fact & articles, but his answers were so pointed and positive that no fact could be laid hold of to ground the rect for verbal testimony — and the Court were inclined to think that without the above circumstances being found, the verbal testimony could not have been received as the Commentators on the Ord^{ce} of 1667, seemed to agree that such testimony could not be received agt. any act or deed in writing whether authentic or sous "seing privé" -

see Jousse - Bornier - & Pothier -

Boiceau - however seems to be of a different opinion - see Danty on Boiceau. partie 2^{e}. ch. 6. p. 506. N^{o}. 14. & 15. -

Philips
&
Fisher

The Court considered the law under which the pltffs motion was founded to leave it to the discretion of the Court whether they would grant the Commission Rogatory or not — and as the present case was to be tried by a Jury, and no ground shewn why the Wr to be examined could not attend the Court next June, it was considered most suitable to the ends of Justice that the Wr should be held to appear in person — and therefore denied the motion — the expence also of suing out a Com. Roy. Exam'ts same is much greater than that attends the journey of a Wr to Town —

Perrault
&
Desperanes

Turgeon
& Ratelle }

1. Jean Bte. Malouin

a assité à la livraison du morceau de terre vendu 2 ou 3 semaines après la pentecôte, mai 1815.

Que le 28 Mars 1815 le Demandr. avoit fait de l'abbatis & defrichage sur le morceau de terre en question — Que il y avoit 2 Jours que le Demandr. y travailloit lorsque le Defendr. est venu avec deux hommes (Jos Bte. & Nicolas Bertrand & une autre — le Demandr. lui a fait defenses d'y travailler, comme le terrein etoit à lui — Que le Defendr. a commencé comme nonobstant les defenses & abbatre du bois, disant qu'il avoit marqué la place, & qu'il etoit maitre avant-lui — le Defendr. a continué à faire du bois pour construire un moulin

2 Francis Ethier

Possession of Duquette is proved to have been for four years before

3 Michel Hurteau

Hall
&
Baker

On sufficiency of affidavit to hold Def^t to Bail

4 Taunt. 15A. Polleri v. De Souza — An affidavit to hold to bail must shew on what account the debt became due, and the Deponent's addition and place of abode —

=

1 T. R. 717. & Butler J. In one instance the Court held an affidavit, "that the defend^t was indebted to the plff in £5000 for money had and received & for which he had not accounted" to be insufficient —

3. T. R. 573. Williams. v. Jackson — An affidavit that the defend^t is indebted to the plff in £20 according to the Bill delivered by the Plff to the Def^t is insufficient — it must be positive — and 3. T. R. 364 must state positively that the Defend^t is indebted to the Plff in so much —

1. H. B. 10. Cooke. v Dobree — An affidavit to hold to bail must shew how the debt arose. —

7 East. R. 194. Perkes. v. Severn — An affidavit stating only that the Defend^t was indebted to the plff in £54 for goods sold and delivered, not stating by the plff to the Defend^t" was held insufficient. — and 8. E. R. 106 Cathrow v Hagger — an affidavit stating only, that the Defend^t was indebted to the plff for goods sold and delivered to him the Defend^t, without saying by the plff, is insufficient" —

But the St. 12 Geo. 1. Ch. 29. Sec. 2 requires that "that an affidavit of the Cause of action be made and filed"

Duplessis. & Northedge

On question, whether the Proprietor can have an action at the ~~bail~~ against the Tenant, Lessee of the Tenant, who has not entered into possession, but transfers his right to a third. —

4 Feb. 1817. Lease by Taff to Mark Moss for 3 years, from 1 May. —
22. May. 1817 Sublease by Mark Moss to William Northedge of half the house.
6 May 1818. Sub-lease by Wm. Northedge to Geo. Stanley of a part of the house —

The 162 art. of the Custom says — "S'il y a des Sous-locatifs peuvent être pris leurs biens pour loyer et charges de "bail; Et neanmoins leur seront rendus en payant le loyer "pour leur occupation" —

This article evidently contemplates the obligation of the sub-tenant which arises from actual occupancy — and it is this occupancy only upon which the claim of the landlord seems to rest, in regard of third persons, with whom he has no contract or special undertaking —

The Commentator on this art. 2. Gr. Com. p. 1056. No 2. upon the question — Si le proprietaire peut saisir les meubles des Sous-locataires says, Il semble que le proprietaire n'ait point droit de saisir les meubles des sous-locataires, puisqu'ils ne sont point obligés envers lui, ni par un Contrat, ni par un presque Contrat, ni par autre Cause, — parceque les Sous-locataires ne sont obligés qu'envers le principal Locataire dont-ils tiennent à titre de loyer leur habitation — He then goes on to state upon what the obligation arises — Neanmoins l'obligation des meubles se contracte re-ipsa, d'autant qu'ils occupent la maison du Propre

see also No 7 — —

See also on art. 171. Glose 1re No 29. p. 1240. — on the question — Si le proprietaire peut exercer son privilege sur les meubles du second locataire — that is as to the droit de Suite" — he says — Si le Locataire a retrocédé son bail à un autre, le proprietaire aura le même privilege sur les meubles de celui à qui la retrocession a été faite — La raison est, que le privilege est fondé sur l'occupation des meubles, et non sur le bail — ainsi il n'importe que le second locataire, n'ait point contracté avec le proprietaire, ses meubles ne laissent point de lui être obligés & hypothequés, parcequ'ils occupent sa maison. —

Perrault
Talon } Is an aubergiste, or Inn-keeper - a trader in the consideration of law -

Crisp v. Pratt, Cro. Car. 548. See authorities against it - 2. Chr. Bankr. Laws. p. 10. 11 - & authorities there cited -

Newton. v. Trigg - 3. Mod. 327. -
1 Show. 96 - 268. -
3 Lev. 309. -
Carth. 149 -
Salk. - 109. 1690. -

That he may be considered as a Trader - see

Saunderson. v. Rowles. 4. Bur. 2064
Buscall - v. Hogg - 3 Wils. 146
Patman v. Vaughan 1 T. R. 572
Ex parte Mc Gennis - Rose. 84.

See 1. Montague's Bankr. Laws. p. 15 - & cases cited.

Action for promissory note made by Defend^t. payable to one Scant B^n Espriance, or order for value rec^d. for a sum of £156. 16. 1 Cy. & indorsed to plff - Indorsement in blank - The declaration states the Defend^t - to be an "aubergiste" - and the testimony adduced, states Defend^t - to be a Trader and Tavernkeeper, buying & selling liquors -

Boucher - Instit. Commerciales - p. 15. N^o 73. - speaking of what constitutes a merchant or trader so as to bring him within the Bankrupt laws - says - Une occupation mecanique, ou il n'y a rien a vendre ni a acheter, et qui par consequent n'exige pas une extension de credit pour le fond de son Commerce, ne rendra pas

"un (sur p. 33)

Jacques & Jacques & Tremblay & Minors Jendron mis en Cause

as to minors being represented by their father & mother in the defence of their rights —

vid. Merlé. p. 5. Il est rare que des mineurs qui ont pere et mere vivans, aient rien qui n'appartienne aux pere et mere; Cependant, si durant la minorité il etoit acquis quelque droit aux enfans separement de leurs pere et mere, on pourra pourvoir de Tuteur ou de Curateur pour la conservation des droits des enfans mineurs, encore bien qu'ils ayent pere & mere vivans. a

—

No 1060.

Duplessis v. Moss & al.

Action for house rent. — default case. —

~~Decl^n stated.~~

The action is brought against Mark Moss of Montreal, Shoemaker, William Northedge of the same place Sugar-baker, and George Stanley of the same place, Shoemaker — and the Declaration states, that by act passed before Sobin Not^y on 4^t. Feb^y. 1817, the plff leased to the said Mark Moss from 1 May 1817 to 1 Mai 1820, a certain house and lot, in consideration of £100 rent & an. to be paid quarterly. — That Moss took possession of the said premises on 1^t. May 1817 —

That by act passed on 22^d. May 1817, the said Mark Moss sub-lett to the said Northedge from that day to 22^d. Mai 1821, a part of the said house, in consideration of a sum of £50 — payable — quarterly and in advance — That by virtue of the said lease the said Northedge entered & took poss^n. of the premises leased —

That by another Sub-lease made by said Northedge to the said Stanley by act bearing date the 6 May 1818, s^d. Northedge sub-lett to s^d Stanley from 1 May 1818 to 1 May 1819. for one year the premises he s^d. Moss had leased of s^d Moss in consideration of £45 — payable quarterly and in advance — and under s^d. lease Stanley ent^d. into possession of the premises leased —

That on 1 Nov. 1818, a quarter's rent became due by Moss to Plff and on 28 Dec. 1818 s^d. Moss, abandoned said house and carried off his effects & left the Province — Since which time, to wit, on 1 Feby. 1819. another quarter's rent became due by s^d. Moss to said plff —

That

That on 1 febr. 1819 – a quarters rent became due by said Northedge to Moss, which is still in arrear and unpaid – and on same day a quarters rent became due by Stanley to Northedge which is also in arrear and unpaid –

That the pltff is entitled to his action Solidaire ag.t Defend.rs to obtain from them, to obtain from them the ~~sum~~ quarters rent so due by the said Wm Northedge & Co Stanley being £12.10 – in consequence of their occupation of the s.d part of the s.d house so leased to them – and therefor concludes to pay.t of £12.10 – due on 1 febr. 1819.

Perrault – Talon – } un homme banqueroutier reguliers – Un aubergiste même ne sera pas regardé comme un banqueroutier, attendu que ses profits ne proviennent point des choses qu'il vend ou qu'il achete sur le pied de marchandise, mais particulierement de l'usage de ses apartemens, de ses meubles, de son service &c.a –

Id. N.o 89. Si un aubergiste fournit des aliments à un marchand ou artisan; un Cabaretier du vin; un frippier, menusier, – tapissier, des meubles par vente ou louage, par Compte, ou par billet à ordre, portant la valeur reelle, et qu'il survienne à ce sujet quelques contestations, les tribunaux de Commerce n'en – pourront connaitre, parceque le marchand ou artisan, n'a point fait l'achat de ces objets, pour les revendre, mais pour l'usage de sa maison. –

Id. N.o 92. Mais si le marchand, artisan ou autre, avaient acheté du vin, acheté ou loué des meubles, comme etant aubergiste ou louant en chambre garnie, que cela soit par compte ou par billet portant la valeur reelle; s'il s'elevent quelques contestations sur lesquelles l'une des parties voudra procéder, elles devront être portées au Tribunal de Commerce. –

N.o 93. Enfin toute personne qui achete une chose pour la revendre quelque soit sa nature, est reputée Marchand par rapport a cette chose;

et

à toutes personnes, negociants, marchands ou autres qui achetent une chose quelque soit sa nature, pour son usage, n'est point reputé marchand pour cette chose, —

—

No 633. —

Smith vs Roi — and E contra

Action for balce of act for bricks sold
32,400 bricks a 35/ p m. —— £56. 14. —

Cr
By Cash - in two payts —— 40. 18 —
Balce £15 . 16

4 . 3
11 . 12

Incidental demand

Overpaid, value of bricks delivered £10 —
Damages in not delivg brick as wanted 20 £30 —

2000 = £3.10
400 = 14
4. 4

42 —
4. 4

3. 6
14 —

au Evidence No 3

—

Ordce de 1673. Tit. 12. art. 10 —

Les Gens d'Eglise, gentilshommes & bourgeois Laboureurs, vignerons & autres pourront faire assigner pour ventes de bled, vin, bestiaux, & autres denrées procedant de leur crû, ou pardevant les Juges ordinaires, ou pardevant les Juges & Consuls, si les ventes ont été faites à des marchands, ou artisans faisant profession de vendre,

No 670
Corbin
&
Cadotte
&
Piquette

On Interruption of prescription —

De Charnage. des Prescrips Ch. 9. p. 59. 60. —

Si le demandeur s'est desisté de son assignation, ou s'il a perdu son proces, l'assignation ne pourra lui servir pour en induire une interruption. — L'on pretend qu'il en est de même s'il a laissé perir l'instance, ou que l'assignation soit declarée nulle; parcequ'etant aneantie dans tous ces cas, elle ne doit avoir aucun effet, et cela quand même elle n'auroit été annullée que par rapport à l'incompetence du Juge —

Jur. on 113. art. 5 tom 5. No 8. in fine — 0 ays — à plus forte raison, une simple Sommation ou interpellation dans poursuivie ne peut-causer de trouble ni d'interruption de la prescription —

No 838.

Mc Nider & al
vs
Delorme

Copy of the note declared on

En presence des notaires Soussignés, Sr Etienne Delorme de St Mathieu, marchd a reconnu & confessé devoir bien legitimement à Sr Louis Marchand de la ville de St Jean, marchd à ce present & acceptant la Somme de Six Cents vingt cinq livres cours actuel pour valeur reçu par deux mille Minots de bled froment que led Sr Debiteur a reconnu et confessé avoir eu et reçu de Sr André Bizaillon fils, associé du dit Sr Louis Marchand au commencement du mois de Juin dernier, laquelle Somme led Sr Debiteur a promis rendre bailler & payer au dit Sr Creancier ou ordre le huit du mois de Septbre prochain pour tout terme prefix à peine de dre sans interets jusqu'au tems dit, et pour l'execution des presentes led. debiteur a elu son domicile en sa demeure susdite — auquel lieu &c nonobstant &c Renonceant &c Obligeant &c Fait & passé en l'Etude l'an mil huit cent dix huit le sept du mois d'Août apres midi, Et ont les dits Srs Créancier et Debiteur signés avec nous Notaires, de ce enquis, lecture faite —

Etienne Delorme
Louis Marchand

L. I Soupras
Nre

Fr. Mcd Pelrimoulx
Nre

No particular words are necessary to make a bill or note — any order or promise which from the time of making it cannot be complied with or performed without the payt. of money — is a bill or note — Bayly. p. 3 —

See also. Chitty on Bills — p. 53. —

See cases cited —

Chadwick. v. Allen. Str. 706 — A Note was in these words — I do acknowledge that Sir Andrew Chadwick has delivered me all the bonds and notes for which £400 were paid him on acct. of Col. Sayre, and that Sir Andrew delivered me Major Graham's receipt and bill on me for £10; which £10 — and £15. 5. balance due to Sir Andrew I am still indebted and do promise to pay &c — and upon demurrer to the declaration, the Court held it a note within the Statute —

Trasn. Smiles. & Deshantels. Oppts

On priveledge of the Landlord — Whether he can prevent the Sale of his tenants effects without Security for his rent —

See 2 Vol. Grand Cout. art. 171 — p. 1271 N° 19 —
Denizt. artt de Notariat — p. 224. 5 — see also p. 404 & 5

Nichols & Sanford
Jos: S. Adams — } action on promissory Note endorsed to Pltff by Pre De Rochiblave for £73. 11. 1 —

Plea — Defendt agreed to deliver goods to Pltffs to value of said Note to be by them sold & disposed of at certain limited prices & not otherwise out of which they should retain the amount & pay the balance if any to Dfts — That in consequence on 16 Novr 1817 the Defendt did deliver goods to the said amount —

2d Payment — 3d Pltff indebted to Dfts in a sum of £173. 11. 1 for divers goods wares & merchandize to be by them sold & disposed of & on his account, & ought to be compensated with the said demand

At the bottom of the Invoice of goods sent by Defendt to Pltffs is stated — The above are not to be sold less on any account — 16 Novr 1817 — J. S. Adams —

Dfts Mr Jo Seymour — Pltff endeavoured to effect their Sales as well by public Vendue as by private Sales — remainder of the gun-powder — have not yet been able to sell or dispose of —

Saml Adams — Pltff represented that the goods had not been sold and and that they could not bring the limited price —

See Smith v. Clarke. 12. Vez. 477. and cases there referred to —

№ 578.

Gagnon & Bourassa & Coutlee

Pltff by his declaration states, that by an agreement entered into between him & J. W. Clarke on behalf of his Majesty, dated 13 Sept. 1815. he the pltff undertook to furnish and deliver for the Cavalry of his Majesty then posted at Chambly and Blainfindie, all the hay they should require, from 1 Oct. 1815, to 24 July 1816, at the rate of 10 dollars & C. hundred

That it was stipulated by the said Agreement, that the quantity of hay requisite to be furnished at the said posts would be for about 300 horses — but not less than 275 nor more than 325 —

That by a certain act or agreement of 15 Sept. 1815, the Pltff conveyed to Defendr all his right in the said Contract, to be executed at the risk and diligence of the Defendr & for which the Pltff stipulated and agreed to pay the Defr £2. 5 - for every hundred bundles of the hay so furnished

That by the said last-mentd act the Pltff reserved the right to furnish and deliver at either of the said posts, the quantity of 7000 bundles of hay for at the above stipulated price of ten dollars & C. to be paid to him by the Defendr as they shd be delivered

That the Defendr promised & agreed to pay a penalty of £500 to the Pltff in case of failure in his said agreement, & for the performance of all & whole stipulations on the part of the Defendr one Louis Payan de Ste Ange, became bound as Caution. —

That at the time of passing the said last-mentd Contract the Pltff pd to Defendr in advance thereon a sum of £187. 10, and promised to pay on demand to the Defr £312. 10 - to complete the sum of £500 pd Pltff had rec. from Govern. on acct of this Contract — which sd sum of £500. was to be paid & accounted for by the Defr to the sd Pltff — which sum of £312. 10. the Pltff, afterwards pd to sd Defendr

That Pltff p.r to Defend.r regularly for all the hay delivered by him according to s.d agreement viz.t

27 Nov: 1815 —	£247. 10 —	for 1100 bundles as p.r receipt
24 Dec.r " —	236. 5. —	— 10,500. d.o — "

exclusive of 600 bundles delv.d by Pltff in consequence of the reserve made by him! —

25 Janv. 1816	£150.15 —	for 6700 bundles, exclusive of 2000 delv.d by Pltff as above

That Defend.t after month of January 1816, ~~furnished no more hay than~~ receipt to hay delv.d by him not p.d to Pltff the above sum of £500 p.d in advance to him

That between 24 Janv. & 24 March 1816, the Defend.t furnished and provided only the quantity of 21,700 bundles of hay, from which ought to be deducted 274 bundles delivered by Pltff in discharge of two bons given by Defend.t in order to complete the quantity of 10,500 and of 6750, included in the receipts given in by Defend.t to Pltff in Janv. & December aforesaid — of which quantity of 274 bundles, 100 were furnished by Pltff to complete the quantity of 3000 bundles part of the 7000 which he reserved to furnish as aforesaid, so that the Defend.t only furnished & delivered 21,426 bundles of hay, for which he is entitled to have and receive from Pltff on 24 March 1816 a sum of £482. 1. 8 — That this sum of £482. 1. 8 being compensated with the above sum of £500, which the Defend.t was held & bound to pay to Pltff on 24 feby. 1816, the s.d Defend.t will still owe to Pltff on p.r 24 March 1816, a sum of £17. 18. 4 as the bal.ce ~~of~~ that sum —

That although on the said 24.th March 1816 the s.d Defend.t was thus indebted to the Pltff in the s.d bal.ce of £17. 18. 4, and also in another sum of £50, for money lent as appears by his promissory note

note, bearing date 20 Febry preceding, yet the Defendt under the false and unjust pretence that the Pltff was then indebted to him, discontd to provide any more hay at the sd ports of Chambly and Blainfindie as he was bound —

That on 29 March 1816 one Auguste Kuper, notified the Pltff, that hay was wanting for the said ports, which notice the Pltff signified to Defdt and required him to provide the necessary hay in conformity to his sd agreement, but of the Defendt refused to do — in consequence of which failure occasioned on the part of the said Defendt the Pltff was obliged to purchase hay at an advanced price, between the said 24 March & 24 July 1816, to the extent of 38,025 - bundles of hay, for the use of the said ports of Chambly & Blainfindy.

That the pltff pd for the said 38,025. bundles of hay a Sum of £1895. 17. 5, whereas in consequence of the aforesaid agreement of 15th Sept. 1815, that quantity would have cost him only a sum of £855. 11. 3 — so that the Pltff has suffered a damage of £1040. 6. 2 — which sum the Pltff is entitled to recover from the sd Defendt, also another sum of £150 - for the labour & trouble the Pltff has in procuring hay on the default of Defendt - making in all a sum of £1200. — Wherefore &c

The Defendt pleads 1st an ex cep. per. en droit to the Pltff action - contending that the matters & things stated and set forth by Pltff in his declaration are not sufficient to entitle him to maintain his action —

2dly Denies the matters of fact & law alleged by Pltff

3d That Pltff failed in performing his part of the agreement, and

Incidental demand for £1000. for hay sold & delv^d by Defend^t to Pltff — quantum meruit thereon — &c —

Replication joins issue &c Plea of non-aff^t to Incid^l demand

Exhibits filed by Pltff

N^o 1. Contract between Pltff & I. W. Clarke, dated 13 Sep. 1815

N^o 2 Transfer of that Contract by Pltff to Defd^t 15^t &c &c

N^o 3 Receipt, dated 27 Nov. 1815, by Defend^t to Pltff. for £247. 10 — being pay^t of 11,000 bundles hay furnished by Defend^t at Chambly + also contains —
Receipt, dated 24 Dec. 1815, by Defend^t to pltff for £236. 5. for 10,500 bundles of hay delv^d by Defend^t at Chambly — also for 600 bundles of hay delv^d by Pltff on acc^t of the 7000 — he reserved a right to deliver — also
Receipt, dated 25 Jan^y. 1816, by Defend^t to Pltff for £150. 15 — for pay^t of 6700 bundles hay delv^d by Defd^t at Chambly — besides 2300 deliv^d by Pltff — on acc^t of the 7000 —

N^o 4. Protest by Auguste Kuper to Pltff dated 29^th March 1816 —

N^o 5 Protest by Pltff ag^t Defend^t — dated 30 March 1816

N^o 6 Protest by Pltff ag^t D^o Payan dated 1 April 1816

N^o 7. Copy of a promissory note by Defend^t to pltff for £50 — dated 20 feb^y. 1816. —

№ 8. Statement of hay purchased by Capt Alexis Daigneau for Pluff – 10,069 bundles £443. 2. 6

№ 9. Dº purchased by Pluff himself – 15,652 – £805. 9. 1½

№ 10 Dº purchased by Vital Bonnafsa for the Pluff – 14,207 bundles – cost £222. 13. 11

№ 11 Dº purchased by Alexis Lamarre for Pluff 3790 bundles cost £216. 2. 6

Witnesses exᵈ –

№ 1. Wm Ross – brings up the books of Entry of the delivery of hay at the post of Chambly & Blanfundy from 25 June to 24 July 1816 – the other books being in the possn of Augustus Cuper, gone to England – says, that Pluff delivd between 25 June & 24 July 1816, 7971 bundles hay

№ 2. William Watson – delivd for Pluff between 18. May and 24 July 1816, 12,390 bundles at £5. 7. ℔ Cᵗ making in all £663. 15. –

№ 3. Alexis Daigneau, purchased for Pluff between 3ᵈ. May & 3ᵈ April 1816, and afterwards between 3ᵈ June & 3 July, about 13 or 14 thousd. bundles hay, from 10 to 25 dollars ℔ Cᵗ

No 4. John Jeffreys + Defendt left off delivers hay about the end of March 1816, & of this the Wr was desired to inform Pltff, that he might provide for the necessary supply +

No 5. Jeremie Campbell – price of hay from april to July 1816 was from 20 to 24 dollars – Pltff furnished the hay in July –

No 6. Franc Blondain – Receiver of hay at Chambly – kept books of entry – sent to Quebec last may + took an extract from the book before it was sent away of the quantity of hay that had been delivered at Chambly between 1 April & 24 July 1816, amounts to 31,525. – That between 25 Dec. 1815 & 31 March 1816 there was furnished of hay at Chambly 20,172 by Defts – after this period it was pltff who furnished the hay –

No 7, Alexis Lamarre, – purchased 3800 bundles for Pltff for Post of Chambly in april 1816 + price of hay 20 to 24 dolls & C

No 8. Louis Barbeau – the pltff furnished all the hay required from 1 april to 24 July –

No 9 Vital Bourassa – The Defendt – desisted from furnishing hay after 24 or 25 March 1816 – price of hay then was from 12 to 20 dollars – & in may from 20 to 24 – after 25 March – the Pltff furnished the necessary hay – Purchased 6485 bundles for Pltff verifies the ant. pltd – rec. from Pltff £245 – & 2/6 & C. bundles signs his name to deposition – –

No 10 – Marc Antoine Louis Levesque – produces a copy of Judgt. rendered at suit of Pltff & Defts 18 Ap. 1817 for £50 – the amt. of a promissory note dated 20 febr 1816

Defts Wr No 11. Charles Robert – Between 16 & 26 March, heard Defts ask for money for the receipts of he had given him, of Pltff refused to pay – Defendt had then delivered to the extent of 21,000 bundles of hay to Pltff

This deposition is not closed

Interrogatories to Pltff on faits & articles

Taking the amount of hay furnished by Pltff
after Defendt left off doing so, that is from 1 Sep. to 24 July
1816 as per testimy. of Blondain No 6 — 31,525 Lbs
The average price to be £5 per Ct ~~a £50 per M.~~ 50
1550
25
12.10
1587.10

The Pltff was to allow Deft. £2.5 per C. on
this quantity or £22.10 ~~per M.~~ bundles
of straw 714. 7. 6
Surplus £ by Pltff — £873. 2. 6

№ 754.

Franc Lavoie
Medr de Longueuil

action to obtain a title & grant of a lot of land

The Declaration states; That the Defendt as proprietor of the Barony of Longueuil, was bound, as well by the deed of Concession thereof, as by the laws of this Province, to grant to the Inhabitants, lots & concessions of unpatented land in the sd Barony upon their demand upon the same terms and conditions & subject to the same burdens as the other lands in the said Barony, without being entitled to ask any sum of money as a consideration for such grant or concession on pain of being deprived of his right in such lot of land.

That in the month of May 1815, a certain parcel of land in the said barony of Longueuil being en bois de bout & ungranted, the Plaintiff and divers other persons being desirous of obtaining a grant thereof in order to establish themselves thereon and cultivate and improve the same, demanded of the agent of the said Barony a grant of such land upon the same terms & conditions as the other lands had been granted and particularly the said Pltff demanded of the said agent a grant of a certain part of the said land vizt (describd) but which the said agent refused to grant —

That on the 5th day of August 1815, the refusal of the said agent to make such grant was duly notified to the sd Defendt and a demand then made by the ministry of two public Notaries of the sd Defendt to grant to the said Pltff the said lot of land in manner as aforesaid, and protesting against him in case of his refusal for all such costs & damages as the Pltff might suffer — but that the sd Defendt did nevertheless then & there refuse to make such grant to the said Pltff

That

That the pltff, in consequence of such refusal, considering that he had a right to have and obtain a grant & concession of the said lot of land, entered upon and took possession thereof in May 1815, & cleared the road on the front of the said lot —

That in February Term 1816, the s^d Defend^t as Seigneurs and proprietor of the said Barony of Longueuil, instituted an action en complainte against the pltff for the possession by him taken of the said lot of land, and by Judg^t of the Court of the 19: Apr^l 1817, the Pltff was adjudged to quit and abandon the s^d lot of land —

That in consequence of the said Judg^t the s^d Pltff, on 13 June 1816 abandoned and delivered up the said lot of land to the said Defend^t —

That on the 18 June the s^d Pltff demanded anew from the said Defend^t a grant & concession of the said lot of land to be by him held and enjoyed as aforesaid, which the said Defend^t refused & still refuse —

That the Pltff is in consequence well founded in demanding of this Court a Judg^t against the s^d Defend^t condemning her to grant the aforesaid lot of land to him the Pltff, and further to pay to the Pltff the sum of £100 — for his damages

Concludes, that Defend^t be condemned to grant to the Pltff the aforesaid lot of land in manner as aforesaid, and to make & execute a good title to him in this behalf in 15 days, and on default thereof, that the Judg^t to be rendered be held and considered as a sufficient title, to the s^d lot of land, on the charge & condition of Pltff's paying to the Receiver General of His Majesty, the same rights & dues as are pd by the other lands of the s^d Barony, to the exclusion of the said Defend^t her heirs & assigns — also that the said Defend^t be condemned to pay Pltff for his damages aforesaid the said Sum of £100 & Costs —

Defendt pleads plea to the Jurisdiction.—

No. 619.

Roi
~
Main

action to rescind a lease of part of a house &c to Defend^{r} on the ground of possessing it by Pl^{ff} the Proprietor in person —

Defend^{r} pleaded fa exception 1^{o} That Pl^{ff} had united in the same action demands not capable of being united 2^{d} That Pl^{ff} halt in & by his declaration demanded a sum of £25. fa rent without having stated or shewn in his said declaration that any rent had been stipulated or become due —
3^{d} Fa that it appears in and by the s^{d} Declaration, that the said sum of £25 — therein & thereby demanded is not yet due —
4th Fa that it appears p^{r} that the s^{d} pl^{ff} is in possess^{n} of and occupies the house in question —

That the said Pl^{ff} impleaded the defend^{r} in this Court in June 1818, in a certain action fa the rescision and annullement of the said lease, and fa the obtaining the possession of the same apartments, cellar and premises whereof the possession is demanded by the present action, in q^{h} Sent^{ce} was given dismissing the same on 20 Oct. 1818, from q^{h} Sent^{ce} Pl^{ff} instituted an appeal which is still pending — wherefa prays Judg^{t} —

Replication joins issue —

The parties admit, that at the time of the institution of the said action, an appeal to the Court of Appeals from the Judg^{t} rendered in a certain other Cause of the same pl^{ff} & the same Def^{rs} — on the 20th day of Oct. last mentioned in the Defend^{r} peremptory Exceptions in this Cause, subsisted and was pending as mentioned & given depuis Constitution

5.6
4
9.6
2 2

see Nouv. Pazzau. 1 Vol. p. 58. – au Concours d'action –
Nouv. Denizt. Vo Concours d'action. –

Z. Thayer
&
Ed: Hartley
&
Moore Opp.

On opposition of Defendrs wife –
On claim founded on her marriage Contract of an exclusion of Community –
But see Poth. Comte No 461. 2. 3. 4 & 5 –

Rea
vs
Solomons

Action for wages & on Contract to manufacture Snuff for Defendants, who are Snuff & Tobacco manufacturers
Quest. – Whether the nephew of Defend. Solomons can be heard as a Wit for him –

see – Toubeau – Instit. du Droit Consulaire. Liv. 1. Tit. 15. Cls. 13 –
Juris dic. Consul. –

№809

Chamberlain
to
Charles

action of assumpsit on the general money counts —

Plea — 1. Non-assumpsit.

2. That Defdt gave a bill on L. Craigie in favor of Pltff for £353.10 which was accepted by the sd Craigie

3. Payment —

The Defendt examd on faits & articles, admits a certain part of the demand but says, that he paid this by the draft given Pltff on Mr Craigie —

№291.

Moreau
&
Tocasse
&
Payet Gar.

Action petitoire.—

The action is instituted by ~~Rose~~ Moreau dit Duplessis of the parish of St Rock, widow of the late Pre Payet dit St Amour, fils, as Tutrix, & in the name & behalf of Joseph Payet, minor child of her marriage with the said late Pre Payet — by Rose Payet and Pierre Payet, the two other children of the said marriage, ag.rs Gabriel Tocasse St Raymond — The Declaration states, that on the 15. day of March of the year 1787, by act passed before Raymond, N. ours, Dame de Boishebert, Seigniress in possession of the Seigniory of St Ours made a grant or concession to Pierre Payet dit St Amour, pre, and to the said Pre Payet dit St Amour fils, then a minor, (who afterward intermarried with the said pltff Rose Moreau & had issue by her as above named,) under the name and discription of Pre Payet dit St Amour, pre & fils, the said Pre Payet pre, being then present and accepting as well for the said Pre Payet fils, as for himself, a certain lot of land in the said Seigniory, containing 3 arps in front by 30 in depth, according to the report of Survey of Jean Peladeau, of the 26 Oct. 1762, —

And the plaintiffs state, that before obtaining the said concession, that is to say, on 29 April 1786, the said Pre Payet pre, caused the lines of division & bornes of the said lot of land to be verified and ascertained, by Jos. Raymond, Surveyor, who drew up his P.V. stating, that by consent of the parties, he had surveyed and bounded the said lot of land, two thirds of which was to belong to the said Pre Payet fils, and the other third for the said Pierre Payet pere — on which he found the two boundaries planted by the said Peladeau in 1762 —

That by means of the said deed of concession the said Pre Payet fils became proprietor of the undivided half of the said lot of ground of which he had been in possession until the time of his death, and that since his death & during the minority of the said Children the Reffs, the said defend.r had possessed himself thereof, claiming the same as his property, and now with-holds & detains the same —

In april Term 1818 - The said Gabriel Tocasse & Raymond brought in his Garants, Joseph Payet dit St. amour and Jean Payet dit St. amour, and by his declaration stated, that by deed of Sale of 14 May 1803, passed befor Raymond, Notary the said Joseph & Jean Payet, sold to the Pltf. said lot of land with warranty agt. all trouble & disturbance for and in consideration of the sum of 5700th. -

That the said Tocasse entred on the poss. of the said lot of land in May 1803, and quietly enjoyed & held the same until the institution of the present action of his, and hath greatly improved the same to the amount of one thousand pounds Current money of the Province - and concludes that Defnd. may indemnify & hold him harmless &c -

In June Term 1818, the said Garants Jos. Payet dit St. amour and Jean Payet dit St. amour put in suit as their Garant, Pierre Payet dit St. Amour, their father and Francois Tareau his wife - and by their declaration state, that by Deed of Donation made & executed on 11 Dec. 1802, the said Pre. Payet & wife made a Deed of Gift to them of the said lot of land, with usual stipulations of warranty, for and in consideration of the reserves, clauses & conditions in that deed expressed - that they are now troubled by the demands & garantie of the said Tocasse - Whereto

Gabriel Tocasse, by his plea states, that the Pltffs cannot maintain their action against him, inasmuch the said Pre. Payet dit St. was never in his life time, nor his said Children since his death, proprietor of any part of the said lot of land the said Defnd. formally denying that the said lot of land was conveyed in manner as alledged by deed of concession passed befor Raymond, public Notary & Witness, on 15 March 1787

1817, or at any other time to the said Pre Payet & St Amour père and the said père Payet & St Amour fils —

And for further plea the said Focaste says that the said lot of land belongs to him by having purchased the same of Joseph and Jean Payet & St Amour by deed of 14 Mai 1803 to whom the said lot of land belonged by having acquired the same by deed of gift from the said Pre Payet & St Amour their father and Franc Lareau, the arrier-Garants, the said deed bearing date the 11 Decr 1802, and of which said lot of land the said Defendt & the other proprietors aforesaid have had the quiet and peaceable possession and enjoyment for more than 30 years —

That Defendt has made improvements on land to extent of £1000 —

Jos. & Jean Payet — by their plea, state same matters as Defens

The Plffs in reply, contending that the late Pre Payet fils was during his life time & the Plffs since his death were & are the true & lawful proprietors of the lot of land in question — That Defendt cannot set up a prescription of 30 years without title as Plffs — inasmuches the said Pre Payet was proprietor for an undivided moiety of the said lot of Land, in which case no prescription can take effect — and further because the Defendts have acknowledged the rights of plffs by an agreement entered into with them —

=

"The Testimony adduced by Defendt & Garants, shew that Pre Payet fils, never had any possn of this land, but that it was his father who alone cultivated the same & paid rents &c —

The whole will rely upon the interpretation to be put upon the Deed of Concession /

No. 33.

Wm. Hutchison
v.
Lester Taylor & Co } action of assumpsit

Declaration contains Six Counts —

1st Count. the special circumstances & agreement respecting the sale of goods in question — Goods sold to amount of £1342. 8. 2 on 28 Oct. 1817, payable as follows that is to say £691. 4. 1, one half, in a promissory Note indorsed by Defendts to Pltff, & payable in 4 Months from said date, and to be paid in approved Bills of Exchange at par — and the other half of the said principal sum to be paid in Six months by a similar note —

2d. Count — states same Circumstances — wt. this difference that the bills of Ex. were to be at 60 days —

The other Counts were for goods sold & delivered & the usual money Counts —

Plea —

1. Non assumpt —

2. That the Defendts have paid the amount demanded before the institution of the present action, to wit on 28 Oct. 1817

3. That the goods in question were purchased by the Defendts as agents of one Henry Wilcox, of whom the Pltff received the paymt wt. by two promissory Notes made and given by the said Hy. Wilcox & indorsed by the Defendts to Pltff, & by Pltff received in paymt of the goods

4. That the goods were sold at an advance of 12 p. Cent on Stg Cost in England, & the Stg Cost in England of the goods did not amount to more than £600 Stg, and not exceed £675 Cy —

5 That Defendts were deceived & defrauded by Pltff in the sale

And for plea to the first & second Counts, the Defts say, that they delivered the several promissory notes indorsed to the Pltff, payable at four & six months, and in manner as in the said declaration mentioned, & which the Pltff took and received in pay[t]

~~Has~~ no replication — Can the Case be said to be at issue without it ? —

It is a question here whether the promissory note given by Defend[ts] can be considered as a novation of the Pltffs debt — If it was a mere collateral security, it has not the effect of barring the action —

In looking at the English authorities we find the following distinctions — In the Case of Drake v[s] Mitchell. 3 East. 251 — upon covenant against three for non-payment of money, the Defend[ts] pleaded that one of them had given a promissory note for the amount, upon which the Plaintiff had obt[d] Jud[gt] — this was held to be no defence — the ground of the decision was, that it was not stated that the note was accepted in satisfaction — but it was said by L[d] Ellenborough, that one may agree to accept of a different security in satisfaction of his debt — But in another Case of Hearslake & al. v[s] Morgan. 5 T. Rep. 513. it was held that a plea to assumpsit, that the Defend[t], who was the payee of a Promissory note, indorsed it to the Pltff, "for and on account of the said debt, and which was accepted and received by the said Pltff accordingly," was a good plea. On the other hand see case of Tapley v[s] Martens. 8. T. Rep. 451. —

1 Evans Poth. 381 —

Were the goods here considered as paid for by the Receipt given ? — or is it only understood. that they were to be paid for by the bills at 4 & 6 months ? — Was it a contract with time given for the payment ? — or was it a contract satisfied under a particular payment immediately made ? — Was it a Sale of goods upon Credit ? —

By the evidence of Coleman it appears that at the time the goods were

" were sold it was agreed upon between the Pltff & Defts that
" one half of the goods should be paid for in 4 months, & the other
" half in six months from the time of the purchase, on the said
" Defendts furnishing their indorsement for each half-yrs amount
" or their acceptance for the same" —

This shows that the sale was on credit — and the giving of those notes was part of the original Contract for securing the payt — not a separate contract, or new undertaking to pay what had been before purchased — May this evidence the receipt given by the Pltff — is explained — and must be considered more as evidence of the contract than a discharge of the debt contracted — If Perspective the mode of payment proposed by Defendts has been inefficient — they must be held to pay by the present action. the value of the goods sold and on this point the Case of Brooke & al. vs White — 1. New Rep. 330 — is very apposite —

№ 242.

Pickle Jr
&
Hunter
and
Contra

Action on award for — £81. 0. —
deducts found in favor of Defdt — 3. 0. 8
£77. 19. 4

damages laid £160 —

1st Count in Declaration is on the award for £81. 0 —
2d do — money expended for costs of award being, Defends moiety — 5 —
3d do Insimul computasset — 73. 14 —
160 —

Plea —
1, Denies the facts & law alledged in Declr
2. Non assumpt — The award null & void — not made accordg to the Submission, and irregularly made by arbitrators —

Incidental Demand

Act of Trespass on part of Pltff, in carrying away the wood & materials — damage £500. — shutting up the house, & prevents Defendt from completeg his work
= Trover & Conversion of wood & materials belongg to Defdt — damages £500 —
= Goods, wares & merchandises sold & delivd £500
= Quantum meruit, on similar goods — £500
= Work & labor done & materials furnished — £500
= Quantum meruit thereon — — — £500

—

Ins objections raised on the testimony adduced, when the point was reserved for decision —

"Qud. as to examination of arbitrators touchg their report? —
The Pltff states that arbitrators may be called upon to explain

explain their award — Cites — Rép. v° Arbitrage p. 546 —

Lorsqu'il se trouve quelque obscurité dans le texte d'une Sentence arbitrale, il n'est pas nécessaire d'interjetter appel de cette Sentence, et l'on peut s'addresser aux arbitres pour la faire interpreter, même apres l'expiration du tems porté par le compromis.

see also 1 Pigeau p. 27. — Latter part of last paragraph of the Chapter.

Will these authority extend to the case before us of bringing up the Arbitrator as a Witness, without any doubt having been suggested against the award? Ought not the Court to have directed what was to be done in this respect? — But it is questionable whether under any view of the Case an Arbitrator can be heard in explanation of his report — he is a Judge — this Sentence is treated much in same manner as that of a Judge, except in regard of its execution —

see Kyd on awards. p. 138 — cites case of Rowe v. Farmer 4 T. Reps. 146. — Rowe v Farmer

№ 281

Henshaw
vs
Dwight
Dwight oppt

On opposition of Defendt. a fin d'annuller. —
On following convention between the parties

" Whereas Judgt is about being rendered between Joshua
" Henshaw as Tutor &c & Jas Dwight in N.B. upon an award
" made by Horatio Gates & Ralph Taylor, Esqrs the said Henshaw
" agrees to receive such articles in conformity to said award, as were
" sold to the said Dwight by H. Cop deceased, in part payt of sd Judgt at
" the prices at which they were sold to the said Dwight, including
" the charges, and the balance to be settled as formerly agreed
" between us &c " —

The only question here is, whether under this agreement the interest charged on the goods and running thereon up to the time of payt was to be deducted upon the goods as taken back in payt

oppt — 13 Feby. 1818 — award of Gates & Taylor — £1244. 17. 7½
16 dr — " agreement between parties
£727. 6. 0. value of articles re-delivered
13 May 1818 — Protest by Puff as oppt
— Dr — Dr — Finder of Indorsed notes £267. 12. 7 cast
535. 5. 2

Puff — Value of articles re-delvd £658. 7. 8 —
Balce due ——— £593. 13. 8

Millar & Parlane.
vs
Donnelly. en
& Indians Oppts

A certain number of Indians of the village of St. Regis, stiling themselves chiefs de guerre & de village, and Seigniors of the Seigniory of St Regis, make an opposition afin d'annuller and state,

That the said Opposants on the 7th October 1763, and a long time prior thereto, were the true & lawful owners and proprietors of all that certain lot of ground commonly called the Seigniory of St Regis, and of the lot of land in question, which had never been sold or alienated by them.

That the Sheriff of this district having nevertheless seized and taken in execution the said lot of land as belonging to the Defendt. who had purchased and acquired the same from one Jos: Bivon, as acting for & on behalf of the said Indians, & having anounced the sale thereof, the said Indians made an opposition thereto by the ministry of Le Sarault, Notary, - notwithstanding which opposition the said Sheriff sold and adjudged the said lot of land -

That the said Defendt never had any legal right or possession of the said lot of ground, which always belonged to the said Indians for 56 years last past & upwards

That the money arising from the sale of the said lot of land being brought into this Court, the said Opposants have thereby founded in demanding not only that the sale of the said lot of ground be declared null and void, but also to oppose the payment & delivery of the said money, for the preservation of their rights therein in case the said sale so made by the Sheriff should be confirmed

They

They therefore pray, that in the case that the said Sale should be confirmed, that the said money be adjudged to them as the owners & proprietors of the 2d Lot of land in ment Hors. —

Plea — That Opposants were not at any time proprietors of the Seigniory of St Regis nor of the Lot of land in question —

The testimony adduced shews a possession in the Indians — but does not establish any sufficient authority in the Opposts — as their legal representatives —

Quo — Ought not communication of this claim to be given to the Attr Genl, as the Crown may have some rights to the property in question —

№ 210

Marie Cl. Perrault
vs
Wm M. Fraser
and
E Contra.

Action by Pluff, as Auctioneer & Broker ag Defdt for the recovery of four promissory Notes drawn by him in favor of Mrs Jane Fraser and indorsed to Pluff

payable 6 months.	1st Note	dated 10 June 1816	payable to Jam Fraser or order	£291. 12. 3	
do do	2d do	19 Augt "	do do	643. 0. 7½	prot.
3 months do	3d do	14 Oct "	do do	200. 9 —	
6 do do	4th do	" — "	do do	200. 8. 11½	prot
				1335. 10. 10 —	
				2. 12. 6	
				1338 3 4	

Plea. —

1 Non-assumpsit

2. Compensation — for goods sold — & deliv'd to be sold at auction —

3. Payment —

Incidental Demand for £743. 8. 5½ value of goods deliv'd to Pluff to be sold at auction at certain limited prices — which Pluff sold below the value — also for money had & received by Pluff for the use & benefit of Defdt

Replication takes issue on all the matters of law & fact

3 Wits adduced on part of Pluff — prove the signatures to the notes and Indorsement thereon —

№ 4. Edw Phelan — for Defdt — proves delivery of goods to Pluff for Sale at certain limited prices — from 17 to 28 May 1817 — proves signatures of John Ed. Lockel — Ewen McMillan & John L. Sims Pluff's Clerks, & exhibits filed by Defdt —

X

says that Pluff carried on trade in partnership with one I. Am. Carter from & after 1817 — & when goods were deliv'd by him

Nº 5. Jos. Ovide Turgeon – On 16 Decr. 1816 delivd all the goods to Pluff for sale, comprised in exhib. Nº 12. between 16 Decr. 1816 & 8th Jany 1817 wt an Invoice & instructions as to limited prices – and on 8th Jany. 1817 – he afterwards delivered all the goods comprised between that date & the 14th of same month – to be sold in same manner – and on 14th & 21st days of same month, he delivd to Pluff all the goods stated between 14th Jany. & 3d Feby – of same year – to be sold in same manner –

x

Heard in beginng of Janv. 1817 that one Jac. Aug. Cartier had become a partner wt. Pluff, and saw him at Pluff's Stores in Janv. & it was he who recd. the goods & Invoices from Wt –

Nº Venant-Lemaire St Germain – Wt exd. on Comn. Rogte states that he delivd goods to Pluff on behalf of Deft for sale, some of which were at limited prices as charged on 4th. 5th. 10. 11. 12 & 24th days of Feby 1817 in exhib. Nº 12. –

=

It would appear by the testimony of Phelan & Turgeon that certain fixed prices were limited to the goods delivered by them to Pluff – but the testimony of St Germain is not so decided – it says, only that some of the articles were limited & some not – how Can the Court decide upon so as to take up this testimony & draw the line? – this testimony may therefore be laid aside as not affecting the Case – But it must first be settled whether Pluff is the person accountable for these goods – or the firm of Pernault & Cartier –

=

The decision of the Case of Pernault Nt. Jane Fraser – Nº 403 will be guided by the opinion held on the foregoing –

№ 205

Perrault & Dutelle } action on 2 promissory Notes as Deft as maker

The evidence is made out — & there must be Judt for Pltff — Incidental Demand dismissed

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Chas Bowman & Charles Lewitt & Wm Barnitt Oppt — } On opposition afin de conserver —

The Oppt states that on the 8th Octr 1818, there was due & owing to him by the Defdt a sum of £56. 5. — for work & labor, care & diligence as an hired servant & Journeyman of the Defdt — at the rate of 30/ ℔ week

2d Count — Quantum Meruit for other work &c —

Concludes for a balance due to him of £31 — to be paid by privilege & in preference to all other Creditors, &c. interest &

None of the parties pleaded to the opposition, and the opposant obtained an order for the examination of the Defdt upon faits & articles, after having examined one witness in support of his claim — personal service was made of the interrogatories upon the Defendant who did not appear — and as these Interrogatories if taken pro confessis are sufficient to establish the opposants demand, he therefore prayed Judgt —

№ 474.

Taschereau & al
Amable Pion &

The Plaintiffs state themselves to be Seigniors and Proprietors of the Seigniory of St Denis, & that they have held and enjoyed with all the rights and privileges thereunto attached, particularly the right of Banalité for several years — That the Defendant is one of the Tenants in the said Seigniory, as as such bound and liable to the said right of bannalité, publicly held and enjoyed by the Seigniors of the said Seigniory — That the right of banality consists not only to compel the Censitaires of the said Seigniory to grind their grain at the banal mill thereof, but also to prevent them from carrying their grain to be ground elsewhere, or to build mills within the limits of the said Seigniory — That the Plffs are also founded in opposing the building of any such mill by the said Defendt — as other Censitaires would wish to erect, or have already erected within the said Seigniory, and are warranted in considering the erection of such a mill as a trespass & trouble to the said Plffs in their said possession of the right of bannalité —

That Defendt nevertheless about the first day of October last, erected or caused to be erected without the permission of the Plffs within the said Seigniory a certain Wind Mill for grinding grain, in which the Defendt has caused grain to be ground belonging to several of the tenants of the S. Seigniory — to the great damage of Plffs — £200 — Concludes — That by the Judgt of the Court the Plffs be maintained in the possession of their said right of banality — That Defendt be enjoined to cause the trouble by him occasioned to cease, & forbid to renew the same — That Defendt be condemned to — demolish immediately the said Wind mill by him erected, or on default thereof that the Plffs be authorised so to do — & Defendt condemned to pay £200 in damages & Costs —

Plea of Exception & Defense -

1. That action is unjustly brought & cannot be maintained and supposing all the matters in the declaration contained to be true, yet not sufficient to maintain the action -

2. That supposing the Plaff. had & possessed the right of banality within their Sr. Seigniory, yet however the Defr. denies, that Plaffs. are bound to keep & maintain in good and repair, good & sufficient banal Mills for the use of the Inhabitants of the Sr. Seigniory, and in default thereof the Censitaires are authorised to build sufficient Mills to which the right of banality becomes attached - That in all the extensive Seigniory of St. Denis there is only one Wind Mill, in bad repair and insufficient for the wants of the Tenants - which obliges them to carry their grain elsewhere to be ground to a great distance & at great expence - That the said Mill being so insufficient the Defendt. was authorised to build one or more Mills in the said Seigniory, and to acquire the right of banality thereon

3. That Defendt. did in consequence erect a Wind Mill as aforesaid, and began to grind therein about the end of August or beginning of Sept. 1817, that is to say, more than a year before the institution of the present action & hath continued to grind somewhat time -

Concludes that Plaffs. action be dismissed, & that they be enjoined not to disturb the Defendt. in the enjoyment of their right of banality in the Sd. Mill -

The Replication joins issue —

Witness examined —

1. Benjamin Chevrier — Poss. of Defts & mill erected by them — that it is in bad order & no such mills not suffd for want of the Tenancy —
2. Jn Bte Cadieux. &c

No 398 —

Pre D. Debartzch
Julien Moreau

action for recovery of Lods & Ventes —

The decln states that Pltff is propr. & possessor of that part of the Seigniory of St Hyacinth, called the Seigniory Debartzch, in which the Defendt on the 2d Dec 1816, purchased and acquired different lots & parcels of land from Jn Bte Plamondon & Louis Plamondon, for & in consideration of a sum of 11,400 payable at different periods — That upon the said purchase there became due to Pltff for Lods & Ventes a sum of 950 —

That afterwards the said Defendt exchanged a part of the said lots of land with one Pre Ledoux with certain other lot of land on condition that the said Pre Ledoux to aid & assist the said to pay for one half of the Lods & Vents on 7000, for the purchase of the land given in exchange to the sd Ledoux, & also that the sd Ledoux should pay on behalf of the said Defendt to Jn Bte Plamondon & the heirs Plamondon the sum of 11,400, agreeable to the conditions of sale by the Heirs Plamondon to Defr — That upon this exchange and mutation there became due to the Pltff for the Lods & Vents on the return given by Ledoux to the Defendt of 11,691. 13, a sum of 974. 6 —

That on the 20th March 1817 by act of that date the sd Pre Ledoux retroceded to the Defendt the lot of land which sd Defendt had so given in exchange which said Defendt agreed to take back and agreeing that the said ~~deed of~~ exchange & all things regarding the same should be held taken & considered as rescinded & annulled — the said resiliation made on the condition that the Defendt to pay to the said Seignior the Lods & Vents on the return mentioned in the said deed of Exchange which the said Ledoux had undertaken & become bound to pay, & to which Defendt promised to furnish a receipt & discharge to the sd Ledoux in January following, and in consequence the parties again re-entered on the possession of the lands so exchanged —

That

That upon the lot of land thus last-acquired by the sd Defendt there is due to the Pltff for Lods & Ventes upon 1275£. 19. the price of his acquisition, a sum of 106£. 19.

That on the said 20th day of March 1817, by act of that date the said Defendt did voluntarily retrocede to the said Louis and Jean Bte Plamondon, the lands he had acquired of them, the parties consenting that the deed of sale in this respect should be held and considered as annulled and null and as if it had never been made upon condition however that the Defendt should pay to the Pltff the Lods & Ventes as well of his purchase as of the sd retrocession.

That upon this last-mutation there became due to the Pltff for his Lods & Ventes, a sum of £39. 11. 8 — which said several sums of money making £164. 1 — Cy for Lods & Ventes as aforesd the Defendt refuses to pay — wherefore &c

Plea — Denies law & facts stated by Pltff in his declaration. — That none of the acts mentioned in the sd declaration were ever perfected or carried into entire effect and execution, no tradition having ever been made of the different lots of land intended to have been sold and exchanged in & by the said several acts & deeds, the same having been resiliated before such perfection

Replication joins issue —

Admission on part of Defendt — That Pltff is Seignior of that part of the Seigniory of St Lambert called Debartzch —

In the deed of resiliation of the 20th March 1817 from the Defendt to Plamondons — it is stated, ~~that the Defendt~~ — La présente résiliation
" ainsi faite à la charge des droits Seigneuriaux, c'est à dire, que
" Ledit St Julien Moreau promet & s'oblige de payer au Seigneur dont
" relevent les dites terres, les lods & Ventes de son acquisition, & ceux
" de la présente remise, si toutefois le Seigneur l'exige &c — Et —
" aussi à la charge de payer au Sr Jean Bte Plamondon un and d'intérêt
" de la Somme de 3265th dans le cours de Janvier prochn —"

In the deed of resiliation between the Defendt and Ledoux

there is the same clause in regard of the Defend.s obligation to pay Lods & Ventes to the Lord, and further, "et en outre pour le moyennant le prix ou somme de quatre vingt dix livres, ou chelins de vingt coppes, que led.t S.r Julien Moreau promet et s'oblige de bailler & payer au dit S.r Pierre Leroux ou à son ordre dans le Cours de l'annee prochn.e"

Note of D.r Pensey on Dumoulin Traité des Fiefs p. 102.

Le lod est dû plutot pour le changement de mains et par l'apprehension de l'heritage, qu'en vertu du seul Contrat — Henrys. 2 Tom. liv. 3. quest. 29. — un arrêt rapporté par M.r De Bouteiller a jugé le contraire Salvains - Traité des Fiefs. ch. 45 —

Ferrinville

Pratique des Terriers. 5.e Vol. p. 804. —

Si l'adjudicataire cede son droit à un tiers, avant qu'il ait pris possession, les lods en seront ils dûs? —

(Du pap. 3) Tacheau v. Allard

Maynard liv. 4. ch. 51, dit que par arrêt du Parlement de Toulouse dont il etoit rapporteur de l'année 1582 il a été jugé, que l'adjudicataire qui cede son droit à un tiers avant qu'il ait pris possession des choses à lui adjugées, les Lods ne sont pas dûs par l'Adjudicataire, mais seulement par celui auquel il a cedé son droit; la même chose a été jugée par arrêt du Parlement de Bretagne du 30 Octr.e 1576 rapporté par Chopin sur la Coutume de Paris. l. 1. tit. 3. N.o 13, parce qu'il ne s'est fait aucune mutation

Dumoulin Tr. des Fiefs. annot. p. 101. note (10)

Il faut donc tenir pour certain que c'est la tradition qui fixe irrevocablement les droits du Seigneur, mais suffit-il de la tradition feinte qui s'opere par les clauses de Constitut, de Precaire & d'usufruit. — Const.d to p. 97)

№ 667

Marie Ch. Lemoine de Longueuil &c
vs.
Charles Richette

Action of Complainte, & damages £1000.

The decl^r states, that Pltff is propr & possessor of the Barony of Longueuil, and in the quiet & peaceable enjoyment thereof and of the right of banmality, or right of grinding into flour the grain of the Tenants of the said Seigniory to the exclusion of all others & and whereas by a deed of Sale bearing date 14 March 1812, the defend^t purchased of Touss^t Tougas senr, a certain piece of land or emplacement in the said Barony, being part of a land granted by Jos. Fleury Deschambault as Tutor &c to one Jac. Renaud by deed of Concession bearing date 10 Aug^t 1763, which grant being subject to the follows charges + "sujet au moulin de la dite "Baronie de Longueuil, a faire de confiscation des grains et "d'amende arbitraire" + That the said Defend^t with a view of disturbing the s^d Pltff in the enjoyment of the said right of banmalité on the 30^t Dec^r 1817, did unlawfully build and erect on the said emplacement a certain windmill with all the necessary apparatus for grinding grain, & thereafter viz on the said 30 Dec^r 1817 did grind & still doth grind corn & grain into flour for the Tenants of the said Barony, and did take & receive a toll or grain for the same, & did thereby disturb and molest the said Pltff in enjoyment of her said right of banalité to her damage £1000 +

Concludes + That she may be maintained in the quiet & peaceable enjoyment of the said right of banmalité — that Defend^t be condemned to demolish & destroy the said windmill, & in default thereof that Pltff be authorised so to do at the charges of Defend^t + That Defend^t be enjoined not to grind any grain in future for the said Tenants or any others — nor to molest the Pltff in the enjoyment of her said right, and that Defend^t be condemned to pay to Pltff for her damages £1000 with interest & Costs +

Plea of Exceptions & defenses —

1. That the matters & things contained in the pltff's declaration supposing them to be true are insufficient in law &c —

2. That Defend^t is not guilty in manner & form &c

3. That by the laws in force in this Country, all proprietors of Seigneuries, in this Country, part of what was called New France, to be entitled to the right of banality of a mill, are bound to build & erect good and sufficient banal Mills for the use of their Tenants, and in default of their doing so, any of the said Tenants were authorised to build and erect such mill with the right of banality attached thereto — That in the whole extent of the Barony of Longueuil which consists of two Concessions, one of 2 leagues in front by 3 ½ in depth, & the other commencing at that depth & running to the River Chambly, in which said Concessions there never have been more than three mills, which are considered as banal mills, namely, one at the Island of S^t Helen in the first Concession, and the other two upon the little River Montreal in the second Concession — That these three mills have always been insufficient for grinding the necessary wheat for the wants of the Inhabitants, the Defendant averring that none of the said Mills can turn or make flour between the months of November & April, while the river is frozen, That it is only during a part of the Spring that they go while the water is high, that is between two & three months in the Year, in consequence whereof the Tenants of the said Barony of Longueuil have been and are often obliged to carry their grain to other mills out of the said Barony in order to have it ground for their subsistence — That as the said Mills could not be considered as sufficient banal Mills, the Defend^t was entitled to build and erect one or more mills in the S^d Barony & to have the right of banality thereunto attached, and in consequence in the month of July 1815, that is to say, more than a year and day before the institution of the present action, did build and erect upon the emplacement mentioned in the declaration, a

certain

certain Wind mill, which began to grind and make wheat into flour in the month of January 1816, and hath since that time continued to make flour to the great benefit & advantage of the Inhabitants of the said Sugshing, which said Mill is in good order and sufficient to grind all the wheat that may be brot. to it — That the said Defendt having thus built the said Mill is entitled to demand that the right of banality be thereunto attached as of right, and that all persons and particularly the Plff be enjoined not to molest the Defendt in the enjoyment of the said Mill — Whereupon the

Replication joins issue on Plea, & demurs thereto

№ 693.

M'Gillivray &c
vs
M'Kenzie — 3

Action by Plffs as only two Executors of the late Simon M'Tavish in this country, on deed of sale made by them to the Defendt of the Seigniory of Terrebonne, in order to obtain payt of the purchase money. —

Plea — That the Executors of the late Simon M'Tavish were not authorised by law to dispose of his real Estate —

That by the will of the said late Simon M'Tavish, it is required, that the majority of the Executors of the said will should concur in the Sale of such Real Estate — and at the time of the said Sale there were four Executors surviving, namely Wm M'G— John Fraser and Isaac Todd & Jo Reid. —

That before proceeding to the Sale of the said Estate it was necessary to have established the necessity for doing so, and the Sale ordered in the due course of Law, which was not done. —

That the formalities required for the Sale of real Estate belonging to minors ought to have been observed, which was not done under the authority of the Court under the course prescribed by law

That the will of the said S. M'T. contains a Substitution the formalities for the Sale of entailed property ought to have been adopted before effecting the Sale of any part of the said Estate

That the plffs as Executors as aforesaid had no right or title in the said real property, and that they could not, and have not transferred or conveyed to the Defendt any right or title thereto

That the pretended Sale made by the said plaintiffs, is wholly null and void in law

That William M'Tavish the residuary legatee of the said Simon M'T. having died on 4 May 1818, after the

age

age of majority and intestate, the said Estate has devolved to his heirs, by whom the said Defend. may be troubled and molested in the possession thereof

On the right of fishing in a public River to the exclusion of others, under grant from the King —

—

3. Disp. 212 No. 1 — Aujourd'hui en France tous les Fleuves navigables et leurs Rivages appartiennent au Roi —

Id. p. 213. No. 3 — Neanmoins aujourd'hui en France, puisque la mer, les ports & les fleuves appartiennent au Roi, il s'ensuit que le droit de pêche dans la mer, Ports, ou es dits Fleuves appartiennent au Roi — cite Bac. Tr. Inst. ch. 30. No. 18.

— Seulement le Prince peut permettre la pêche à un certain endroit de la mer, et la defendre en l'autre — car le Prince a toute puissance sur les choses, qui de leur nature etoit autrefois communes —

d° — du — Celui que durant dix ans entre presens ou 20 ans entre absens a prescrit le droit de pêcher en certain endroit d'un fleuve public & navigable, peut empêcher qu'aucun autre ne vienne pecher au meme endroit du fleuve —

Id. p. 214 No. 4. — Et comme les dits fleuves navigables appartiennent au Roi — aussi n'est il permis de batir des Moulins és dits fleuves, que par la permission du Roi —

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Se also. Pratique du Terrier. Vol. 4. p. 572. 3.
du — p. 663 — ou quest. 18e —

De Longueuil vs Fréchette & Taschereau & al vs Prov. en ——

As to the right of Bannalitz — whether it is attached by Law to Fiefs & Seigniories —

Relevée of the Provincial Law on this head. —

1 Juillet 1675. — Ordonnance concernant les moulins a Vent & a Eau Bannaux. —

This is an ordinance of the Superior Council made upon the Requete of one Morin, miller at the mill of the Seigniory of Maure agt. one Pre Lefevre a Co-Fermier of the said mill, praying that Lefevre should be condemned to restore the flow he had taken out of the Sack of St. Morin — and as the mill in question was not Banal, that he should be allowed to hunt up what to be ground from such persons as might be disposed to give it to him, without any molestation on the part of said Lefevre — Here the Council, after dismissing the pretentions of Morin, ordered, "Que les moulins, soit à eau, soit à Vent, que les Seigneurs "auront bâtis, ou feront bâtir à l'avenir sur leurs Seigneuries, "seront bannaux, et ce faisant, que leurs Tenanciers, qui se "seront obligés par les titres de Concession qu'ils auront pris "de leurs terres, seront tenus d'y porter moudre leurs grains"

The concise wording of this Ordinance leaves us much at a loss with regard to the true interpretation thereof.

It would seem that prior to this Ordre there were no banal mills in the Country, and that it was considered an advantageous thing both for the Seignior and Tenant, that all the mills built by the Seignior or to be built within the limits of the Seigniory should be declared Bannal. —

Now the question is, what is to be understood by thus declaring all these mills bannal? — Does it give any new right to the

the Seignior over his Tenant, which he had not before —

By declaring these mills Bannal — does it impose on the censitaire the obligation of going to them only, & to none other, to have his grain ground ? —

If it did impose this obligation — when was the necessity of declaring by this ordre that those who were bound by their deeds of Concession, should be held to go to this mills — as this would imply, that the tenants who were not bound by the deeds of Concession should not be bound to the bannal mill ?

And again — If by the Deed of Concession the Tenants were bound to go to the mill of the Seignior to have their Corn ground — what greater effect could this ordre give to that stipulation than it had before ? —

The language of this ordre is too consise & contradictory to draw any conclusive construction from it in favor of either party upon the question before the Court — If the words —

" et ce faisant, que leurs tenanciers qui se seront obligés
" par les titres de Concession qu'ils auront pris de leurs
" terres, seront tenus d'y porter moudre leurs grains &c —

had been left out, there would have been less difficulty in explaining what the meaning & effect of this bannalité would have been, but by declaring the mills to be bannal, only in regard of those who were before bound to this bannalité — seems to be leaving the ~~question where it was~~ Law in this respect as it stood before —

We have next —

4 Juin. 1686 — an arret du Conseil d'Etat du Roi held at Versailles this day —

By this arret it would appear, that the Seigniors, who are designated as the persons having the right + bound Wards had neglected to build bannal mills in the Country — Then Seigniors were by this arret enjoined to build such mills within the year and day, as necessary for the "entretien de la "Colonie" — and in default of their doing so, an authority is given, "à tous particuliers, de quelque qualité & condition "qu'ils soient", to build such Mills, to which should be attributed and annexed the right of bannalité. —

This arret does not elucidate the point in question, as it must be presumed, that the right of bannalité attached to the Mill built by Individuals, was the same right which the Seignior enjoyed — but it does not determine the nature or extent of this right — The arret however is introductory of a new principle, namely, that the banalité may be detached from the Seigniory in this particular case. —

If this arret is to be construed as having been made ~~by~~ without reference or consideration to the foregoing ordonnance of 1675, ~~was considering the obligation of the Seigniors and~~ but as establishing a certain principle of right of banality as useful to the Colony, independent of and paramount to any Provincial decision, this droit de banalité, may in that can be construed to carry with it an obligation on the Censitaires of every Seigniory to carry their grain to such banal mill —

But it becomes a consideration whether the ordre of 1675

1675 being ~~the~~ law ~~of~~ in the Country at the time this arrêt was made whether it ought not to be presumed, that the arrêt was made with a view of enforcing the Ordre, and ought to be so interpreted, or at least to have an interpretation consistent with what was the law of the Country at the time — The concise wording of the arrêt leave us to take this interpretation, for by abbreviating to the Mills to be built by other Individuals on the default of the Seignior the right of banality - it does not explain to what extent, nor over what persons this right of banality shall hold, and unless we adopt the principle, that it was the same right of banality which the Seignior would have been entitled to, we shall be at a loss how to explain - and here again we are driven to find out, what the right of banality was to which the Seignior was entitled - and this is explained only by the above Ordre of 1675 —

13 Sep. 1706 We must find - a Permission à Madame De la Forêt de faire tourner son moulin, jusqu'à ce que le Seigneur ait fait rétablir le sien —

This permission was given under the particular circumstance of the Seigneurial Mill being out of repair - it acknowledges the right of bannality in the Seignior, and directs that one half of the mouture to be received by Madre de la Forêt should be paid to the Seignior of the banal Mill — pour son droit de bannalité. —

14 Juin 1707. Ordonnance pour le moulin de la Seigneurie de Mille Isles.—

By this Ordonnance it appears that the Tenants of the Seigniory of Terrebonne had summoned their Seignior, Mr Dupré, that he might be condemned to build a banal mill, or on default thereof that they should be authorised to build one for themselves, and be thereupon discharged from all right of banalité towards the said Seignior, — which was adjudged to them upon the Consent of the said Seignior.—

Here we see the course of proceedings taken on the part of the Tenants, when the Seignior has no sufficient banneal mill — which is highly proper in a question of this kind, and is besides consistent with the general principles of law.— all Tenants ought also to be parties —
1 Bac. Dr. Just. 429. N° 17.—

7 Juillet 1710.— Arrêt, ordonnant que l'arrêt du Conseil d'Etat du Roi, du 4 Juillet 1686, réglant que les Seigneurs feront bâtir des moulins sera enregistré en la Jurisdiction de l'Acadie établie au Port Royal du 7e Juillet 1710.

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10 Juillet 1728. Ordonnance de Claude Thomas Dupuis qui tient les Habitants du Sieur de la Perade à moudre au moulin banal, suivant leurs Contrats de Concession.—

This

This arret is founded upon the deeds of Concession of the Tenants, — as it states — "vû les dits Contrats de Concession
" des dits habitants, par les quels ils se sont obligés ind ispens=
" ablement de porter leurs grains moudre au Moulin de
" lad.e Seigneurie &c." — and it seems a good argument in the mouth of the Defend.r here, — "why should the ~~Intendant~~ Council ground his Judgment upon the private act of the parties, ~~rather~~ it the public law of the Country bound the parties to the same thing? — this seems to argue rather against than in favor of the banality —

12 Nov.bre 1742 — Arret du Conseil Sup.r qui condamne les Habitans de la Riviere du Sud à aller moudre leurs grains au moulin banal —

This arret was rendered on an appeal from the Sentence of the "Juge Bailly de la Juris diction de la Riviere du Sud, to the Court of Prevoté at Quebec, and from that Court to the Superior Council, — The complaint of the Habitans was, that the Seigneurial Mill was insufficient and the Millar incapable to grind their grain so as to make good flour — but upon a visite & rapport d'Experts, this fact was found aft the Habitans, who were thereupon condemned —

It appears from the Statement contained in the arret, that the Contract or deed of Concession between

the Seigneur of the Rivier du Sud and then Habitants had provided for the grinding of their grain at his Mill became by the Sentence rendered in the Inferior Jurisdiction it is stated — "it fait defense aux dits appellants de porter
" à l'avenir moudre leur blés ailleurs qu'au moulin
" banal de lad^e Seigneurie, si ce n'est aux conditions
" portées par leurs Contrats, &c" — what these conditions were, is not stated, but this shews, that these Contracts contained stipulations on this head — & the reasonable presumption is, that they were bound by their Contracts to carry their grain to the Banal Mill, except under certain circumstances, provided for by these Conditions. —

But the question here does not turn so much upon the right of the Seigniory to compel the Defend^t to carry his grain to the Banal mill of the Seigniory, as the right to prevent the Defend^t from erecting another mill within his Seigniory, and which depends upon nearly the same principles; —

1 Bac. Dr. Just. p. 430. No 19. By the Custom of Paris, the Droit ~~de Seigneurie~~ de Fief, et de banalité, are ~~separate and unconnected~~ not necessarily rights, ~~and may~~ not depends on each other, altho they cannot be held separately — But by the Arrêt du Conseil d'Etat du Roi of 4 June 1686, as well as by the Ord^ce of 1 July 1675 — these rights of Fief and banalité are united, and ~~cannot be held separately~~ the droit de banalité depends on the Fief except in the Case thereby provided for, arising from the insufficiency of the banal mill —

Here the right of banality being in the Seignior, he can prevent any of his tenants from erecting Mills within his Seigniory.—

1 Gr. Cout. p. 1038. N° 13 — Quand le Seigneur est fondé en droit de banalité de moulin, il peut empecher les meunier voisins de venir chasser & quêter dans sa terre &c — Il peut aussi empêcher ses Sujets de bâtir des moulins a bled sur sa terre, & que d'autres n'en fassent batir, & intenter contre eux le cas de Saisine & de nouvelleté — comme il a été jugé par arret du 2 Août 1558. — rapporté par Brodeau —

Au cas qu'ils en eussent fait bâtir, le Seigneur peut les contraindre de les demolir, et même intenter contre eux, le cas de Saisine & de nouvelleté, comme etant un trouble fait contre sa possession — Brodeau sur l'art. 172. N°. 6. —

Id. N° 15 Quand un Seigneur n'a point le droit de banalité de moulin, il ne peut point empecher les particuliers d'avoir chez eux des moulins à bras &c — mais ils ne peuvent pas bâtir des moulins sur eau ou à Vent sans son consentement. —

2°. Prat. Des Ter: p. 328, ch. 3. quest. 28. — Il en doit être dit de même pour les Fours, Moulins à eau, a vent, pressoirs, que les Sujets ne peuvent faire construire pour leur usage particulier, au prejudice de la banalité, le Seigneur est fondé à les faire — demolir, quelque possession qu'eut le sujet, s'il manquoit de titre, ou s'il n'avoit point une possession de 30 ans. —

See also. 1. Bac. Dr. Just: ch. 29. N° 5. p. 428

En ce cas il n'est permis a aucun des Sujets edifier four ou pressoir en sa maison ni batir moulin sur son heritage sans le Congé du Seigneur, lequel les pourra faire abbattre & demolir; D'autant que le droit de banalité est prohibitif & exclusif de tous autres moulins, fours & pressoirs —

Davantage il convient entendre que quand un Seigneur est troublé & empêché en son droit de banalité; parceque l'un de ses Sujets au préjudice de son droit de banalité a fait édifier un four, un pressoir en sa maison, ou fait bâtir un Moulin sur son heritage au dedans des Fiefs, Terre & Seigneuries du Seigneur, fins & limites de sa banalité, ou autrement en quelque sorte que ce soit; Le Seigneur peut dedans l'an & jour du trouble agir possessoirement & former sa Complainte en cas de Saisine & nouvelleté; ou bien peut agir petitoirement actione negatoria ☞ Voyez sur cette forme d'action demand & conclusions +

Brodeau Sur Loüet. Lettre M. 17. p. 174

Il resulte de ce qui a été dit ci-dessus, que dans les Coutumes, même en celle de Paris, où le droit de banalité n'est point feodal, Seigneurial, patrimonial, ordinaire & universel, mais extraordinaire, exhorbitant & contre la nature des Fiefs, & comme tel requiert titre & possession, quand le Seigneur est fondé en droit de banalité, il peut empêcher les mêmes voisins de chasser & quêter, & ses banniers de bâtir des moulins à bled dans sa terre sans sa permission, comme il se voit par l'arrêt cité ci-dessus — il peut même intenter le cas de Saisine et de Nouvelleté contre celui qui s'ingere de bâtir un moulin dans sa banalité comme il a été jugé par arrêt du 2 Août 1558 donné au profit des Doyens, Chanoines & Chapitre de St. Marcel les Paris. —

Denizart. Vo Complainte. No 22. — Un arrêt rendu le 5 Mars 1718, en la Grande Chambre, sur les Conclusions de Mr Chauvelin, avocat-General, a jugé, qu'un Seigneur peut intenter complainte pour raison de terrage, Champart, et autres droits Seigneuriaux — même contre le debiteur qui denie les devoir & refuse de les payer —

Same authority in — Dic. de Droit. de Fer. Vo Complainte —

(Sec. Part.)

No 796.

Gagnon & Primault & Richardson Oppts

On opposition and claim for Lods & Ventes & Cens & rents —

The question in dispute whether Lods & Ventes be due on a Retrocession made by Pierre Mapsi & Jos. Plante of a lot of land they had purchased from the Defendt —

The words in the deed of Retrocession run thus — Lesquels (Mapsi & Plante) se voyant hors d'etat et incapables de faire audt Vendeur les paiemens stipulés au dit Contrat, et de remplir les charges, clauses & conditions mentionnés en icelui, ont volontairement retrocedé &c au dit Jean Bte Primault, tous les droits et prétentions que ledits Retrocedans peuvent avoir &c — La presente Retrocession ainsi faite à la charge par led. Primault de bien & duement payer les Cens & rents dont ladite terre peut être chargée tant du passé qu'à l'avenir, & de payer les Lods & Ventes de l'acquisition des dits Retrocedans ainsi que ceux de la Retrocession, si aucuns sont dus & en outre pour demeurer quitte envers led. Primault Vendeur, pour raison du prix de ladite Vente — The sd Primault, Defdt. further undertaking to exonerate & save harmless the sd Mapsi & Plante from the payt of a rent & premium reciapse due upon the sd Land & which by their purchase from sd Primault they were bound to pay —

The purchase pr 150th — on executing deed of Sale. & the Retrocession was made to remain quit for balance of 750th —

3

see authorities. & after p. 91. 96. marked +

Authorities of Law touching right of Lods & Ventes on resiliation of a Deed of Sale —

Dumoulin. Tr. des Fiefs. Tit. 2. Du Relief. p. 101. —

Le Seigneur peut-il exercer double droit, lorsque la Vente est resiliée, les choses n'etant plus entieres? —

Il faut distinguer la Vente des autres Contrats: dans le cas de vente si l'acte est resilié en vertu d'une convention inserée au Contrat, ou qui y ait été ajoutée, rebus integris, il n'est dû au Seigneur que les droits resultans de la premiere mutation. Il est vrai que le Vendeur rentre dans son Fief en quelque sorte par une Vente nouvelle, mais cette retrocession est moins un nouveau Contrat, que l'execution du premier. Ce premier Contrat doit donc donner seul ouverture aux droits feodaux — Si au Contraire c'est uniquement par un changement de volonté que la vente est resiliée, alors il est dû au Seigneur deux droits de Quint, ou apres avoir exigé le Quint pour la premiere Vente, il peut user du Retrait à raison de la retrocession, pourvû cependant que la vente ait été consommée par la tradition, et le paiement du prix, et qu'il se soit ecoulé quelque tems entre la vente et la resiliation — Car c'est bien assez de payer un droit de Quint pendant l'espace d'une année, comme nous le dirons plus bas. — Il en seroit autrement si la vente n'etoit pas entierement consommée, si l'acquereur n'avoit pas encore payé le prix, quoiqu'il fut deja en possession du Fief. Comme lorsque les choses sont encore entieres, on permet aux parties de resilier la vente au prejudice des droits acquis au Seigneur par cette Vente; à plus forte raison lorsque les choses ne sont point entierement consommées, les parties peuvent-elles frustrer le Seigneur des droits qui ne sont point encore echûs? — D'ailleurs ce n'est pas une veritable vente, c'est un simple Retrocession, qui remet le Fief entre les mains du Vendeur;

le

le Seigneur ne pourra donc rien prétendre à raison de ce second Contrat, et les parties ne seront obligées qu'à lui donner le Quint du prix de la premiere vente. — Il faut convenir que cette retrocession opere un changement de vassal, cependant je pense qu'elle ne donne point lieu au relief — Cet article declare qu'il est dû au Seigneur toutes les fois que le Fief change de main. — Cette disposition ne doit pas etre prise à la rigueur, mais modifiée par les temperaments que l'Equité exige —

Id. Tit. 3. Du Quint — p. 166. —

Lorsqu'un Fief a été vendu avec tradition, moyennant certain prix payable dans tel tems, habita fide de pretio, et que faute de paiement le vendeur rentre dans la propriété de son Fief, une vente ainsi resoluë donne-t-elle ouverture au Quint? — La tradition ayant suivi la vente, le Droit est acquis au Seigneur, il ne peut plus en être privé, par aucun fait de la part des Contractans. — Cependant si les choses sont encore entieres de la part du Seigneur, je pense qu'il ne lui est rien dû pour une Vente ainsi resolue — Parceque le Contrat est anéanti — Parceque le Vendeur est préféré sur sa chose à tous les autres Créanciers, et meme qu'à leur egard il peut la revendiquer

Ou the Note by Mr De Pinsy — p. 168

Si dans ce Cas, l'Acquereur étant hors d'état de payer au terme prescrit, le Vendeur rentre dans sa chose sera-t-il dû au Seigneur double droit — un pour la Vente, un autre pour la resolution du Contrat. — Dumoulin

pense

pense que la vente seule, donne ouverture au Quint, et qu'il n'est rien dû pour la resolution du Contrat, — parceque il est de l'Equité de regarder cette reprise comme une resolution necessaire, comme ayant son principe dans une Condition tacite inherente au Contrat — Basnage pense de meme — Il n'en doit pas un nouveau pour reprendre la possession de Son Fief — sur l'art. 169. de Norm: Et telle est la Jurisprudence des Parlemens de Paris, d'Aix et de Dijon — Celui de Toulouse donne au Contraire double droit au Seigneur. — C'est ce qui resiste à l'Equité naturelle Berroyer sur Bardet. Tom. 1. liv. 2. ch. 96 — Car le desistement n'est pas une seconde Vente — Poth. sur l'art. 112 d'Orleans. idem

Les auteurs qui ont ecrit sur cette Jurisprudence ajoutent, que pour donner lieu, à l'exemption de ce Second Lods, il faut que la reprise du fond, soit exactement dans la forme d'une simple resolution; c'est à dire, que moyennant cette reprise, l'acquereur reste quitte du prix et recouvre ce qu'il put en avoir deja payé — Car si le vendeur exige quelque dedommagement pour la reprise qu'il veut bien faire de Son Fief, c'est plutot alors une acquisition nouvelle, qu'une resolution de la premiere

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— Prudhomme — Des Lods & Ventes. — liv. 3. ch. 46. a p. 350. a —

La Jurisprudence a été plus loin — elle a établi que dans le Cas meme ou le Vendeur n'a point stipulé cette faculté de rentrer, si du consentement de l'acquereur il reprend l'heritage acquis pour le prix qui lui est encore dû, il ne doit point de droit — C'est ce qui a été jugé par Arret du 8 Janvier 1627 rapporté par Loret, lettre R. N°. 2.

Voyez

Voyez Bardet. Tit. 1. Liv. 2. ch. 96. — Dumoulin sur l'art. 33. de la Coutume de Paris. glose 1. N° 20. — La Coutume d'Orleans. art. 112. — Et cela parcequ'on presume, que les parties ont mieux aimé se departir de la Vente que de contracter de nouveaux engagements, et qu'elles regardent un Contrat de vente dont le prix n'est pas payé, — comme une vente qui n'est pas encore accomplie. —

Mais si le vendeur reprend son heritage pour un — nouveau prix à de nouvelles Conditions, en deduction de ce qui lui est dû, comme à un prix au-dessous de la premiere Vente, en se reservant le surplus de ce qui lui est dû du prix du premier Contrat, pour s'en faire payer sur les biens de son Debiteur, pour raison de quoi il s'est reservé l'action personnelle & hypothecaire — alors les droits sont dûs tant pour le premier Contrat que pour le second; parceque c'est une nouvelle Convention, un nouveau Marché, qui donne ouverture aux droits — Voy. Pocquet de Liv. Tit. des Fiefs ch. 3.

Claude Pocquet de Livoniere. Tr. des Fiefs. Liv. 3. Ch. 6. p. 216. 217. a

La difficulté est de savoir si les Ventes sont dûës pour la reprise. — Quelques uns ont pretendu que le vendeur ayant une fois été exproprié, n'a pû rentrer dans son heritage que par un nouveau titre, qui a produit une nouvelle mutation dont ils concluent qu'il est dû de nouvelles Ventes, et pour soutenir cet avis alleguent l'arrest du 26 Avril 1672, rapporté au Journal du Palais. Tom. 1. part. 2. p. 469 — Cependant nous croyons qu'il faut tenir pour Certain, que lorsque le

vendeur

Vendeur rentre dans son heritage quoique vendu a terme, faute de paiement du prix, il n'est point dû de nouveaux droits feodeaux, parceque ce n'est pas tant un Contrat qu'un Distract, pourvû que cela se fasse par voie de reprise — par forme de resolution du premier Contrat, ce que Dumoulin appelle, Contractus retro similis. Telle est la doctrine de cet Auteur sur l'art. 33. de la Cout. de Paris. gl. 1. N° 20. & Suiv. et de Dupont sur la Coutume de Blois aux endroits ci-dessus cités. —

Cela se trouve ainsi jugé par arrêt du 8 Janvier 1627 rapporté par Brodeau sur M. Loüet. let. R. ch. 2. N° 1. et encore plus exactement par Bardet. tom. 1. de ses arrêts. liv. 2. ch. 96 — ou il concilie la disposition de cet arrêt de 1627 avec celui de 1672 qu'on pretend contraire, et qu'il fait voir — n'avoir decidé qu'une hypothese particuliere, dont il sera parlé ci-apres — Il y a un pareil arrêt du 22 Nov. 1638 du Parlement de Provence rapporté par Boniface liv. 3. ch. 1. C'est la disposition precise de l'art. 112 de la Coutume d'Orleans —

Si le Vendeur reprend son heritage faute de paiement du prix, non pas par forme de Resolution du premier Contrat mais pour un nouveau prix et a des nouvelles Conditions — Par exemple, si ayant vendu son heritage vingt mille livres il le reprend pour dix ou douze mille livres, et se fait payer du surplus sur les autres biens de l'acquereur, ou demeure Créancier du surplus, dont il reserve l'action & l'hypotheque — En ce cas et autres semblables il est dû doubles Ventes, savoir, pour le premier Contrat & pour le second, parceque ce second Negoce n'a pas été fait par voie de resolution du premier, par actum retro similem, ni par ce qu'on appelle Distract, Distractus, par le moyen duquel les parties sont remises au même état qu'elles étoient avant le Contrat de Vente — Au contraire les parties ont traité par un nouveau Contrat de Vente, contenant un autre prix et des conditions differentes; C'est un nouveau negoce qu'on ne peut appeller autrement

que

que datio in solutum, qui donne ouverture aux droits de Lods & Ventes —

Argou tom. 1. liv. 2. ch. 4. p. 170 —

Si le contrat est resolu pour une cause qui survient dans la suite, par exemple, lorsque le vendeur rentre dans la chose vendue, faute par l'acquereur d'en pouvoir payer le prix — le defaut de paiement qui cause la resolution du Contrat est une nouvelle Cause qui n'est point dans le contrat même, et qui n'en tire point son Origine — C'est pourquoi en ce cas, les droits du premier Contrat sont dûs au Seigneur, mais il n'en doit point avoir de la resolution, parcequ'elle n'est pas volontaire. —

Guyot. Traité des Fiefs. Tom. 3. ch. 12. §. 19. max. 3. p. 489,

Troisieme maxime — Quand la resolution est volontaire, ex intervallo, il faut que res sint integræ, c'est-a dire, qu'au moins le prix ne soit pas entierement payé, et que la resolution soit — Distractus Contractus; c'est à dire, re et pretio hinc inde restitutis + Il y a en cela Cause interente au Contrat saltem casualiter, et alors les Seconds droits ne sont pas dûs, les premiers sont dûs. —

Repertoire de Jur. v° Lods & Ventes. Dist. 28. p. 725. 726. —

After stating the opinion of some writers who do not admit of the resiliation without Lods & Ventes being due to the Seignior, even when made from the inability of the purchaser to pay, he lays it down that this principle is not admitted neither in Paris, nor Aix —

Temoins

Temoins, et l'arret du 8 Janvier 1627, rapporté par Bardet tom 1. ch. 96. - et celui du 22 Nov. 1638, qui se trouve dans le recueil de Boniface. tom. 1. liv. 3. tit. 4. ch. 2, - Ces deux arrets, dont l'un est emané du Parlement de Paris, l'autre du Parlement de Provence, ont jugé, que la resolution operée forcement par le defaut de paiement du prix dans le terme convenu par l'acte de Vente laisse bien subsister le premier droit Seigneurial, mais n'en engendre pas un Second. -

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Pothier - Introduction au Traité des Fiefs. max. 9 p. 102. Cout. D'Orleans. a

N°131. Apres la tradition, tant que le Contrat n'est pas executé de la part de l'acheteur, par le paiement entier du prix, les parties peuvent bien encore se desister du contrat

La raison de la premiere partie est que le Contrat de Vente, tant qu'il ne consiste que dans le droit qui nait du consentement des parties, peut bien être aneanti par un consentement contraire, parceque, omnia quæ jure contrahuntur, contrario jure pereunt - Mais il n'en peut pas être de meme lorsque la vente a été effectuée par la tradition réelle, qui est un fait exterieur - quia facta pro infectis haberi non possunt." -

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Arrets de Loüet. 2e vol. p. 458.

Mais quand un acquereur, auquel par le Contrat il est donné terme de payer le prix, etant poursuivi apres le terme, et n'ayant pas moyen de payer, consent la resolution du Contrat qui est ordonné de son consentement, il est bien vrai que les Lods d'Ventes de la vendition sont dus, et ayant été payés, ils ne peuvent plus être

repetés

repétés — mais il n'est point dû double droit, en conséquence de la Sentence, parce que ce n'est point une nouvelle Vente, mais une résolution de la premiere faite sans fraude pour une Cause nécessaire, comme il a été jugé par Arrêt Confirmatif de la Sentence de Messieurs des Requêtes du Palais donné en la Chambre de l'Edit, Monsieur Seguier, President, Vendredi 8 Janvier 1627 —

Voy. Recueil de Bardet. tom. 1. liv. 2. ch. 96 —

Prat. des Terriers. 5. Vol. p. 782. 3. — On the question of Lods en reprises par le Vendeur faute de paiement

+ Si l'acquereur n'ayant payé qu'une partie du prix, le Vendeur voulant être payé du restant il rentre dans son heritage faute de paiment en rendant l'argent qu'il a reçu; en ce cas il semble qu'il ne devroit aucuns Lods; mais s'il retenoit l'argent qu'il avoit reçu sous pretexte de ses dommages et interets ou autrement, il devroit les Lods d'Ventes — C'est ce qui est decidé par Dumoulin sur l'art. 33. de la Cout. de Paris. gl. 1. n° 29. —

—

3. Guyot Fiefs p. 489. — Quand la resolution est volontaire, ex intervallo, il faut que "res sint integræ", c'est à dire, qu'au moins le prix ne soit pas entierement payé, & que la resolution soit distractus Contractus, c'est à dire, — & et protio hinc inde restitutis. — il y a en cela, Cause inherente au Contrat Saltem casualiter, et alors les seconds droits ne sont pas dus — les premiers sont dûs. —

Debartchze
vs
Moreau — } Contd from p. 70 —

Dumoulin, d'Argentré, et quantité d'Auteurs
Celebres, ont decidé que la tradition feinte ne suffisoit
pas — ils en donnent deux raisons — La premiere — Que cette
espece de tradition ne consistant qu'en Convention, il
est naturel qu'elle puisse se resoudre par une Convention
contraire, et la seconde, que le transport de dominité
qu'opere les clauses de précaire, de Constitut, d'Usufruit
est Conditionné de sa nature, et n'a lieu qu'autant que
la partie veut bien en user, en prenant reellement la
possession. —

Dumoulin
Tr. Fief
p. 101. Nob
(10)

Traditionem, id est executionem Contractus. D'Argentré.

D'argentré etablit fortbien que la possession Civile n'est
pas suffisante, et que jusqu'a la tradition reelle, il n'est
rien dû — Brodonnier sur Henrys. Tom. 2. liv. 3. quest. 29.

Dominus directus non potest petere laudimia venditionis antequam
emptor accipiat realem possessionem rei sibi venditæ. Gui-Pape.
quest. 101. nº 7. & 8. Il ajoute que cela se juge ainsi au Parlement
de Grenoble —

M. La Peirere, dans ses decisions est de même avis —
Il rapporte un arret du Parlement de Bordeaux du 21
Mars 1644. qui l'a ainsi jugé, quoique le desistement
fut posterieur à la Vente de trois mois. —

Au Contrary opinion of Boutaric & Salvaing —

See Case where a man sells an Estate to different
wheih of the purchasers owe the Lods Ventes — and it
is rightly determined that he who first obtains the possession

altho

although he should be the last purchaser, alone avec the Lods d'Ventes — see 5 Vol. Prat. des Ter. p. 730 —

1 Prevot-de la Jannes. p. 265. Rzh. 18.e — N. 232

La mutation seule ne suffit donc pour donner ouverture aux profits, si elle n'est jointe à un titre d'acquisition — Le titre d'acquisition ne suffit pas aussi, s'il n'est accompagné d'une mutation effective; car suivant le principe general, le profit n'étant que le prix du consentement que donne le Seig.r pour que son Fief change de main, tant que le fief ne change pas de main, que la vente n'est pas suivie de mutation, il ne peut être dû de profit — ce n'est donc, ni le titre seul, ni la mutation seule, mais la mutation qui arrive en vertu du titre, qui produit les profits — D'ou il suit — Que s'il y a plusieurs titres d'acquisition, et une seule mutation, il ne sera dû qu'un profit — et que s'il y a plusieurs mutations, et un seul titre d'acquisition, il ne sera pareillement dû qu'un profit — Ainsi si l'acheteur avant que la tradition lui ait été faite, revend à un autre l'heritage — que cet autre le revend à un tiers — et a tiers à un quatrième — qui enfin est mis en possession, le quatrième seul devra le profit —

(see p. 119)

Aylwin
v.
Cuvillier

On motion that Sheriff amend his return, and state names of the persons by whom the obstruction to the seizure of the Defendrs effects was occasioned

Impey's Sheriff. p. 290-

Returns by the Sheriff, are nothing else but his answer, touching that which he is commanded to do by the Kings writ, and are but to inform the Court of the truth of the matter. &c

Id. p. 289. It ought to answer the point and be certain. -

and to apply this principle to ~~Cases~~ similar to that before the Court - Rescue - It is then said, That the return of a rescue ought to be certain - and it is necessary to shew, the year, day, and the persons who made the Rescue - Id. p. 179.

Sheriff is liable for goods rescued. Id. 96.

Craven
vs
Nichols & Sanford

On question how far the Defendts are liable for their want of care in the storing & keeping a certain quantity of beer, which was damaged —

Jones on Bailments. p. 119. —

The rules which may be considered as axioms flowing from natural reason, good morals and sound policy are these —

1. A Bailee, who derives no benefit from his undertaking, is responsible only for gross neglect —
2. A Bailee, who alone receives benefit from the bailment, is responsible for slight neglect. —
3. When the bailment is beneficial to both parties the bailee must answer for Ordinary neglect. —

—

p. 118 Ordinary Neglect — is the omission of that care, which every man of common prudence, and capable of governing a family, takes of his own Concerns

p. 21 — Ordinary neglect — levis Culpa, is the want of that diligence which the generality of mankind use in their own Concerns, that is, of Ordinary Care. —

The King
v.
The Justices

On motion of A. Cuvillier, the Defend. on the Conviction before the Justices, now prosecuted the Certiorari, that the return of the Justices be quashed, on affidavit, that they had not annexed to and returned with the Certiorari & Conviction a certain Manuscript copy of the Regulations of police which had been used in evidence before them by the Defd.—

Paley on Convictions.— p. 53.— The Court will not presume injustice or partiality in Magistrates but gives them credit for the truth of the facts stated, subject to the peril attending the wilful abuse of that credit by a false Statement 10 Mod. 382.—

" — 119 It is now established as a General Rule, with one exception only, that the evidence must be set out particularly, and that sufficient proof must appear on the face of record to sustain every material part of the charge, and to warrant the adjudication.—
It is laid down by L. Mansfield as an undoubted maxim, that in a Conviction the evidence must be set out, in order that the superior Court may judge of it.— 1 Burr. 1163.
It would not be supported, if in the Conviction the result only of the evidence were stated.— R. Lloyd. 2 Str. 999.—

228–9. All matters introduced into the return by way of explanation or otherwise, except those expressly ordered to be certified, are impertinent and will be altogether disregarded by the Court, and can neither affect the Conviction nor supply any defect in it.— 2. Hawk. P. C. ch. 27. s. 73.—

231. According to modern usage, no plea is admissible to a Conviction, nor does the Court in examining the Conviction take notice of any thing but what appears upon the face of it.— They will not therefore receive affidavits that the fact was done in assertion of a right, though that, if true, would oust the jurisdiction of the Magistrates. R. Bullen. 1 Salk. 368.—
Nor will the Court notice any facts in the return to impeach the Conviction. R. v. Liston. 5. T. Rep. 341. a

So—

So neither will it advert to anything stated in the return to supply what is defective or omitted, but everything necessary to support it must appear on the Conviction &c &c. 2 Salk: 493.

Richardson vs Scott. — In case of entiercement of moveables, the Defendt. is entitled to retain the possession of them, on giving security. —

Poth. Cou. Prop. N° 313. —

Sur l'opposition formée à l'entiercement par celui qui étoit en possession de la chose, et sur qui l'entiercement a été fait, il doit en avoir main-levée par provision, et la chose lui doit être rendüe, en donnant par lui caution — ou même s'il est solvable, en faisant seulement ses soumissions de représenter la chose lorsque le Juge l'ordonnera. —

La raison est, que la possession qu'il avoit de la chose le fait présumer propriétaire, au moins par provision, tant que celui qui l'a entiercé, n'a pas encore prouvé son droit de propriété

La main-levée de l'entiercement qu'obtient celui sur qui il a été fait, n'étant que provisionnelle, la chose entiercée ne lui étant rendüe qu'à la charge de la représenter toutes fois et quantes que le Juge l'ordonnera, la chose entiercée est toujours censée demeurer sous la main de Justice, jusqu'à la fin du Procès, et il ne peut en disposer. —

Rep^re v^o Revendication. p. 620.

Lavoie
vs
De Longueuil

On action to compel a grant of land by Seigneur
On plea to Jurisdiction. — see p. 45 —

The first point to be considered is whether the power given by the King by the arrêt of 1711, was Judicial, or merely an authority emanating from the Sovereign as Seigneur Suzerain The words of this arrêts, would imply only the latter construction as it is there directed, that on the refusal of the Seignior, the Tenants should apply to the "Gouverneur, et Lieutenant General "et l'Intendant du dit Pays, aux quels Sa Majesté ordonne de "concéder aux dits Habitans les Terres par eux demandées &c"
This seems to contemplate no course of legal or Judicial proceeding but the mandate of the Sovereign to his Servants to execute his orders in this respect —

But if we consider the terms and dispositions of the "Declaration "du Roi concernant les Concessions dans les Colonies" of 17 July 1743 we then find a similar authority vested in the Governor Lieut General and Intendant, but ~~in the former~~ here they are to proceed as Judges, under certain forms, to hear the contestations brot before them, and to adjudge thereon — and from their Judgt an appeal was given to the Superior Council —

The Jurisdiction here given was therefore a Jurisdiction extraordinaire, distinguished from the ordinary Courts in the Country, as being for a particular purpose — and this Jurisdiction extraordinaire was a part of the Justice Royale — ~~as such has been~~ and falls within the authority granted to the Council by the Judicature Act —

All Justice emanates from the Sovereign, and it is his right and his duty to administer it to his Subjects — 1 Pegeau 83 —
But as he cannot do this in person he has delegated his certain powers & divided his authority among them in such way to answer the purpose —

Actes de Not. p. 228. note (d) — Fer. Dic. vo Justice & Jurisdiction.

See Couchot I Vol. p. 8 & seq

Par ce que l'on vient de dire, on voit que la Justice, relativement à ceux qui la font administrer, est partagée en trois branches —
L'Ecclesiastique — la Seigneuriale — & la Royale. —

1 Pegeau. 84. 1. Ecclesiastique — consiste dans le pouvoir de vuider par la voie Judiciaire les differends (mixtes personnels) entre Ecclesiastiques

cont.d p. (109)

№ 178

Donegany
vs
Bush

The Declaration states, that on 30th March 1816, one James M'donall, one Daniel W. Eager, one Abijah Bigelow and the said John C. Bush were Merchants & Copartners, carrying on trade together at Montreal under the name & firm of James M'donall & Company, and being such Copartners, then & there made their certain promissory note, to the said John C. Bush then and there acting for them and on their behalf & his hand being to the said note set and subscribed, by which they promised to pay to the s^d Donegany £86.15 to order for value received — By reason whereof they the said James M'Donall Daniel W Eager, Abijah Bigelow and the said John C. Bush jointly and severally undertook to pay the said Sum of money in the said Note specified according to the tenor & effect thereof —

And whereas afterwards to wit on the 6th day of May 1819, they the said James M'Donall Daniel W Eager, Abijah Bigelow and John C. Bush, were Merchants & Copartners as aforesaid, and then & there made their certain other note in writing & the handwriting of one of them, viz^t. of the said James M'Donall being thereunto set & subscribed & then & there delivered & whereby & the sum of £317. 13. 8 — By reason whereof they the said James M'Donall, Daniel W. Eager, Abijah Bigelow & John C. Bush jointly and severally promised and undertook to pay &c —

And whereas afterwards to wit on the 13th day of July now instant, the said Copartnership so subsisting between them the said James M'Donall Daniel W Eager Abijah Bigelow and John C. Bush was by mutual consent dissolved By reason whereof an action hath accrued to the said Joseph Donegani to have and recover the said Several Sums of money and each of them from the said James M'donall Daniel W. Eager, Abijah Bigelow John C. Bush, & from each of them severally — & Concludes &c Damages —

Plea of Exception to the Pltffs declaration —

1 That Pltff has no right of action agt Defendt individually he being at the time of Issuing out the writ in the Cause one of the partners of the firm of James M'Connell & Co

2 That as the partnership existing between them was a joint concern, all the partners were equally bound and liable for the payt of the debts contracted by them jointly or severally for or on acct of the said Copartnership —

3 That the Defendt is not answerable alone, but the other partners ought to have been joined with him —

4 That Pltff does not state any demand having been made on Defendt

—

Jean Bte Marien Lalonette Lebeau
Pierre Marien Lalonette Lebeau vs

The Declaration states, that by a deed of Exchange made & executed on 15 April 1819, between Defendt and one Mathurin Brisson, the Defendt became bound to make construct and rent for said Brisson a house and barn in consideration of the matters contained in the said deed, the ~~Defendt~~ Pltff binding himself to deliver the house at St. Michel, and the barn at harvest time — That by a certain agreement made and entered into between Pltff & Defendt bearing date same day the Pltff undertook & became bound to make finish & deliver the said house and barn for the said Defendt at the time limited by the said deed of Exchange, for and in consideration of one hundred pounds, one half of which to be paid on the delivery of the Barn, and the other half on the delivery of the House — That the said House & Barn have been made & delivered by the Pltff to the said Brisson, who received the same & was satisfied therewith as well as the said Defendt — Thereon concludes for balce of £87. 10

Plea — That Defend^r was always ready & willing to complete, & make up the sum of £50 — by paying the balc^e of £37. 10 s to Pl^ff which was the only sum he owed to the Pl^ff at the time of instituting the present action — And as to the demand of the sum of £50 demanded for the house, the same is premature, as by the agreem^t and Exchange and agreement, the house was to be delivered at St. Michel, and the Defend^r had term till then to pay for the same — That by the delivery of the house the Pl^ff could not advance or hasten the term of payment before the time agreed upon —

Burton
vs
Collin
&
Forte & Ivy

Ou droit de Louage of Landlord

see Coutu. Com. art. 161. Glose unique. N° 16 — p. 1045

Pour ce qui est des choses prêtées au Locataire, elles cause plus de doute, car si elles ont occupés la maison, pendant un tems considerable, en sorte que le proprietaire ait pû y mettre la seureté de ses loyers, ou que des meubles ayent été loués au locataire, j'estimerais indubitablement que le proprietaire pourroit les saisir & executer & les faire vendre pour être payé sur iceux par preference de ses loyers — Celui qui les auroit prêté ou loué, devant s'imputer cette perte, autrement il ne seroit pas difficile de rendre inutile le privilege de préference que notre Coutume donne aux proprietaires des maisons en l'art. 171, sur les meubles qui sont en icelle c'est l'usage du Chatelet qui ne doit pas faire difficulté —

N° 815
Blanchette
Foretier

Ravent. pp. 9 –

Du Libelle de l'exploit d'ajournement

L'Ordonnance de 1667. tit. 2. art. 1. explique ce qu'elle entend, lorsqu'elle exige que l'exploit soit libellé, en ajoutant qu'il doit contenir l'objet de la demande, et sommairement les moyens sur lesquels elle doit être fondée

Les actions personnelles sont celles qui naissent de l'obligation de la personne, et elles proviennent, des Contrats – quasi-Contrats – Delits – & Quasi-delits — qui sont les sources des Obligations des hommes —

Les Contrats sont toutes les Conventions par lesquelles on s'oblige de delivrer quelque chose à un autre, ou de le faire pour lui — Pour libeller un exploit fondé sur un pareil titre, il faut conclure à ce que celui que l'on assigne soit condamné à delivrer une telle chose, ou à payer une somme qui est duë au Demandeur en vertu de la Convention faite entre les parties, dont il faut expliquer la nature et les clauses principales. — On doit conclure en même tems aux interets &c —

1. Pezeau. 137. Le motif de la Loi, en exigeant une designation aussi expresse, est comme elle le porte, afin que le Defendeur ne puisse ignorer pourquoi il est assigné —

Griffin vs M^c Leandar } Action by Pluff as Indorsee Holder of note agt Indorso -

Plea - Pluff has no Interest - only Custom of Bank -

Bayley 54. There must be an interest in the person, who indorses - to give a title to prosecute by the Indorsee - Mead. v Young, 4 T. Rep. 28 - So ought the Indorsee to have an interest & right in the bill to entitle him to the action

Bill payable to "Pric or order for the use of Calvert" right to indorse is Pric - on Cath. Rep. 5. Evans. v Cramlington. -

Chitty 87. Bearer must shew he gave consideration for the Bill - so whenever a defence of want of consideration is set up the Pluff should be prepared on the trial to prove what value he gave for the bill -

An agent may indorse a note - may receive payt of it - but he cannot bring an action in his own name for what belongs to his principal - To entitle agent to bring action in his own name, he must have a special property in, and not the bare custody of that which is the subject of the Contract - Paley's Pr. & Ag. 241 - { Allayne & al. v. Amber 2 Esp. Rep. 493 - Special property in Contract

Banfill. v. Leigh 8 Term Reps. 571 -

Pothier. Tr. Change N°151. Lorsqu'on en vient à l'assignation, elle doit être faite à la requête du propriétaire de la lettre de change; elle ne seroit pas ~~recevable~~ valablement faite à la requête du Porteur de la lettre mandataire de la propriétaire, quoiqu'il puisse faire le protêt pour le propriétaire de la lettre. - La raison est, que selon nos usages, il n'y a que le Roi qui ait le droit de plaider par procureur. &c -

Brownlow Scott - 4 Taunt. 1 - Master of Ship, in this respect only the agent of the Owners, cannot an action in his own name on an implied promise to pay Demurrage -

Lavoie — Delongueuil — cont.ᵉ p.ᵐ (103)

2. Seigneuriale —

La Justice exercée par les Seigneurs emane aussi du Roi, qui la leur a concedé, ou tacitement en gardant le Silence sur l'arrogation qu'ils s'en sont faite — ou expressement par une Concession — Haute — Moyenne & Basse —

3. Royale. Id. p. 86 —

Outre que la Justice Royale est Superieur aux deux que l'on vient de voir, elle est infiniement plus etendu, en ce que les Rois ont reservés à leurs Officiers la Connoissance de nombre d'affaires. —

1 Brat. Coutumes 8. — La Jurisdiction Royale est Ordinaire, ou Extra-ordinaire. Denizt. vo Juges. No 7. —

Reps.ᵗ vo Juges p. 589. — On nomme Juges Ordinaires, ceux qui connoissent de toutes sortes de matieres à l'exception de celles pour les quelles il y a une attribution à d'autres Juges — tels sont les Juges des Seigneurs — les Prevots & Chatelains, les baillifs et Senechaux — les Presidiaux — Les Lieutenants Criminels les Conseils Superieurs — & les Parlemens —

Denizt. vo Juges. No 8

Les Juges Extraordinaires, sont ceux qui ne peuvent juger que certains matieres, & connoitre de certains crimes, pour lesquels ils ont une attribution speciale; Tels sont les Prevots de Marechaux — Les Lieutenants Criminels de Robe Courte — Les Juges des Elections, — des Greniers à Sel — des monnoies — les Intendans des Provinces — les Bureaux des Finances — Les Eaux & Forets — Les Amirauté — Les Tables de Marbre — Les Conseils — Les Chambres des Comptes — Les Cours des Aides & des Monnoies. —

Do No 9

N°10 Tout-Tribunal établi comme Tribunal Ordinaire a dans ce Seul Titre la plenitude de Toute Justice sur toute matière, et sur toutes ~~those~~ personnes — Son autorité s'étend sur tout ce qui n'est pas soustrait par une exception particulière — Au Contraire le Tribunal Extraordinaire et d'attribution a besoin de trouver dans son titre d'erection le detail et l'expression de l'autorité qui lui est confiée; — parcequ'il ne peut connoitre que des matières qui lui ont été nommement attribuées. —

"By St. 34. Geo. 3. ch. 6. s. 8. it is enacted — That
" the Courts of K. B. shall respectively in the Superior
" Terms aforesaid, have full power & Jurisdiction, and
" be competent to hear & determine, all plaints, Suits
" and demands of what nature soever, which might
" have been heard and determined in the Courts of Prevôté,
" Justice Royale, Intendant, or Superior Council, under
" the Government of the Province prior to the year 1759; —
" touching rights, remedies, and actions of a Civil nature
" and which are not specially provided for by the Laws
" and Ordinances of this Province since the 5th year 1759." —

Repse. vo. Juges p. 589.

Les Juges Royaux sont des officiers en titre pourvus par le Roi pour rendre a la Justice à ses Sujets dans l'etendu de leur ressort —

En un mot tous les tribunaux etablis par le Roi, sont composés de Juges Royaux —

Ellice
&
Dezarnaud

Qud. If a witness heard in the cause can be reproché as an Expert on behalf of the party producing him —

Jousse Tit. 21. art. 9. Les causes de recusation contre les Experts ont lieu dans tous les Cas, ou l'on peut reprocher les temoins —

Id. Tit. 23. art. 1 — On peut encore regarder comme un moyen valable de reproche contre des temoins, si la partie s'etoit assurée par ecrit de leurs dépositions — Journal des audiences Tom. 5 — arrêt du 11 Aout 1696. —

Fer. Gp. Com. art. 184 — Interpretation de M. — N°. 6

Toutesfois si un Expert avoit vû les lieux, & donné son avis verbalement ou par ecrit, à l'insçu d'une partie, tel rapport qu'il pourroit faire dans la suite pourroit etre rendu nul, et c'est le plus puissant moyen pour recuser un Expert sans reproche qu'une partie puisse avoir, que de lui reprocher qu'il a vu les lieux clandestinement, & qu'ensuite il s'est transporté pour faire un rapport d'iceux —

Id. Dic. de Droit. V°. Expert —

Un Expert nommé par une des parties en un Proces peut être ouï en temoignage par l'une ou l'autre des parties au même Proces, quoiqu'il semble avoir été affidé et comme Juge — La raison est, que les Experts ne sont ni Juges, ni arbitres — mais comme temoins subsidiaires de ce que les Juges ne peuvent connoitre par eux memes —

see also. Dic. de Brillon. V°. Experts. Estimateurs —

Henshaw
Lovigh — 4

amendment

1 Jousse. 56 — tit. 5 art. 5 — obs. p. 7 et 8

Serpillon. Tit. 2 art. 1.

4 Rep^re 352 — "conclure"

2. Nouv. Denizart. 456 — Appropriation
§4. N°. 4. à la fin —

Dict. Droit. Demande de moins qu'il
n'est dû —

6. Fr. Instit. p 133. note —

D° — p. 134 — liv. 4. tit. 6 — Sec. 36 —
note

D° — p. 135 —

Torrance
vs
Jones
&
Jones Opt

On opposition a fin d'annuller on grounds that no legal notice or publication of the Sale was made at the Church door—

It appeared that under the warrant of the Sheriff on an Execution sued out in this Cause, one Ball, a bailiff on the 13th May 1819, seized the goods & chattels of the Defendt at St Johns — He made no publication of the Sale himself, but directed one Stones to make that publication at the Church door of the Parish of St Lue notifying the sale for the 26th May That he rec'd a letter from Stones, saying he had directed the public Crier of the parish to publish the Sale, and in consequence went to St Johns in order to effect the Sale of the Defendts Effects on the 26— But the Defendt having objected to the Sale from want of publication an opposition was put in by which it was stopped That without this opposition, he the s'd Ball would have sold the Defendts Effects — Has no knowledge of the publication of Sale, other than what is stated in Stones's letter to him & the Certificate of the Parish Crier signed by a mark, but without witnesses — The Bailiff Mabyn swears positively that no publication of Sale was made at the Church door the Sunday next after the Seizure of the Defendts Effects —

№584

Jas. Henderson
Eliz: Babutz.

action on Promissory Note said to be lost — on indemnity Security indemnity —

Plea — non assumpsit — That before loss of Note in question the Pltff by his indorsement thereon transfered same to Mssrs Frost & Porter & Merchants — That Defend. is a Banker & Trader — That Pltff has no interest in this Cause & cannot maintain it —

It appeared that on 15. Oct 1817 the Defend. made and signed a certain promissory Note for $100 payable to the Pltff or his order w. interest for value received which note was made in consideration of a like sum paid & advanced by Pltff to one Plunkett — This note was afterwards indorsed by Pltff to Frost and Porter, by an indorsement in these words — "Pay Mssrs Frost & Porter or order, & signed, James Henderson, and the Pltff thereupon rec. the amount of the Note from the Indorsees — That about the 20. Oct 1817 the day the said Frost rec. the said Note from Pltff, Frost put it in his pocket, & went home, where happening to stand near the fire on same day he took a piece of paper out of his pocket concerning it to be waste paper, tore it & threw it with fire & burnt it — This he conceives was the Defend. note as he could never find it afterwards — Frost says he has now no interest in the Cause, as he has made over his whole right in this note to his partner Mr Porter & been paid therefor — & whatever way this Suit goes he will neither gain nor lose by it — That Pltff being examined upon Interrogatories, says, That he has no interest in the Cause, that he has instructed the Counsel to Mr Rolland

to

to institute the Suit, but that he only lends his name for this purpose, but will neither lose nor gain by the event of the Suit, and that he stands indemnified as the pays. of Costs — That he gave a power of Atty to M. Roland to institute the present action, & to recover the money for the legitimate owner —

Ex parte
Rex
Donnelly

On mo. for Certiorari —

Impey's Pract. 7. —

If a cause has been removed from an Inferior Court, this Court will grant a procedendo if the debt or damages appear to be under 40£ — 1 Brownl: Brw: Judg. 140 — 2. Brown. 82 — Moyle 69 — But in an action for an assault brought against Excise Officers, the Court refused to grant a Certiorari the damages being under 40£ — because it appeared that the Defendt could not have an impartial trial in the Inferior Court — and see Case Daniel v Phillips. 4 T. Rep. 499. —

The second objection was that the damages were laid under 40£, and therefore the Court would not take cognizance of it — To this it was answered that however that might have held as an objection in general cases where the action was brot to recover a debt under 40£ — yet this was an action for an assault brought agt Excise Officers who could not have an impartial trial there — the Court was satisfied with this reason, and discharged the Rule for quashing the Certiorari. —

Impey. 7. As the Inferior Courts which are not of record regularly cannot hold plea of debt &c or damages, but under 40£; so the Superior that are of record cannot hold plea of debt &c or damages, regularly unless the sum amount to 40£ or above. 2 Inst. 311.

St. 6. Ed. 1 c. 8. which enacts. That none shall have writs of Trespass bfor Justices, unless he swear by his faith that the goods taken away were worth 40£. —

1. Lut Prac Dict. 284.

And the Court out of which the Certiorari may be issued must have jurisdiction of the Inferior Court have; and if the Inferior Court have not Jurisdiction or do not proceed according to law, although the Cause cannot be determined there, K. B. may before Judgt issue a Certiorari. Lil. P. R. 253. — and in case of the Inferior Court proceeding in a course different from that of the Common law a Certiorari will lie after Judgt Groenvelt. v. Burwell. 1 Salk. 263.

D. — 286

Besides the authority vested by this St. (19 Geo. 3.) in any of the Superior Courts of record, it is held, that the King hath the superintendance of all Inferia Courts; and that thereon their proceedings are removable into the Court of K. B. —

See also. Impey's Prac. 2. 5, 6. 7.

It lies from K. B. to all Inferior Courts, though the Statute giving Jurisdiction say that the Sentence shall be final & without appeal, for the Jurisdiction of the K. B. cannot be taken away without express words. —
2 Com. Dig. Tit. Certiorari p. 178. (A1)

Donezamy
v.
Bush

On description of promissory Note

Purcel. v. Macnamara. 9. East. 160
Ld Ellenborough. There are two sorts of allegations
The one of matter of substance, which must be substantially
proved; the other, of description, which must be
literally proved.

Ld Lawrence. J. Where the day laid is made part of
the description of the instrument referred to, which
instrument is necessary to be proved, the day laid must
be proved as part of that instrument

But an immaterial allegation need not
proved. see Chitty on pleads. 1 Vol. 383

cases where allegations held immaterial
5. T. Rep. 496. Peppin. v. Solomons. see Ind. Butler's ps min
2 Camp. N. P. Rep. 307. on note Coxon. v. Lyon.
4. Dr. do. 209. Freeman. v. Jacob. date of pamphr.

Debartchze
Moreau

Cont^d from p. 98 —

Lavonier Tr. Fief. liv. 3. ch. 6. Sec. 3

p. 211 — 212

Si les parties se desistent, les choses etant entieres et avant la tradition de la chose ou il n'est pas dû des Lods & Ventes, ni pour le Contrat ni pour le desistement — Parce qu'il n'y a pas eu de vraie mutation de proprieté — Les choses etant demeurées aux termes d'un simple consentement prêté, peuvent être resolues par un acte d'une volonté contraire —

cite various authorities — q^t. ou —

La difficulté est de savoir ce qu'il faut entendre par le Terme "Tradition", et si les clauses d'ensaisinement que les notaires ont coutume d'employer dans les Contrats de vente operent une Tradition suffisante, pour fonder l'action du Seigneur pour les Lods & Ventes nonobstant le desistement des parties

Pour moi, j'estime, que cette tradition fictice, qui se fait par les clauses d'ensaisinement, n'est pas suffisante pour donner lieu aux Lods & Ventes quand le desistement a été fait dans un bref delai — Il faut, pour établir la demande du Seigneur, qu'il y ait eu de la part de l'acquereur une prise de possession réelle et actuelle, ou qu'il soit entré en Jouissance, parceque les clauses d'ensaisinement ne transferent pas le Domaine, si ce n'est d'une maniere feinte, mais donnent seulement à l'acquereur la liberté de se mettre en possession, et d'entrer en jouissance —

Tel est l'avis, et le raisonnement de Dumoulin sur l'art. 20. de la Cout. de Paris. —

Further — La Seconde difficulté est de savoir, si

apres

après le payement des arrhes, muni d'une partie du contrat, et après avoir donné caution du surplus, ou peut-avant la tradition se départir impunément du contrat de vente —

Dumoulin tient l'affirmative sur l'art. 20. & sur l'art. 78 — ce qui est fondé en raison, — parceque, ce n'est-n'est que par la tradition, ou prise de possession que se fait la mutation du vassal au du Censitaire, et les Lods & Ventes ne sont dus qu'à cause de cette mutation —

See Extract from Pothier's Introduction au Traité des Fiefs — (ante p. 95.)

The clause in the Deed of Sale from Plamondon to Morcau, which Plff contended amounted to a tradition feinte was this —

Pour des dittes parts de terre et dépendances en jouir, user, faire et disposer par led. Acquereur ses hoirs et ayans Causes, comme de chose à lui — appartenante en pleine propriété au moyen des présentes, à commencer la jouissance de ce Jour à l'avenir — Sera tenu ledit Acquereur entretenir les Conventions verbales qu'il y a entre led. Jean Bapte Plamondon et le fermier jusqu'à la St. Michel prochain (1817) —

See also Pothier. — Introduction au traité des Fiefs — p. 101. Maxime 8. —

Quoique le Contrat de Vente ait été d'abord valablement fait par un vendeur qui avoit droit d'aliéner son heritage; si

si par la suite, "avant la tradition reelle", la chose étant entiere, les parties se desistent du Contrat, le Contrat est censé par ce desistement aneanti et reduit "ad non actum" et le profit auquel il avoit donné ouverture, cesse d'être dû. — La raison est — Que le contrat ne consistant encore que dans le consentement des parties, ce consentement peut facilement être detruit par un Consentement contraire —

Cette maxime a lieu, quand meme il seroit intervenu une tradition feinte, telle que celles qui se font, par la retention d'usufruit, les clauses de Constitut — de Desaisine Saisine — Quoique ces traditions feintes transferent la propriété et operent une mutation de main — Car ces traditions feintes ne consistantes dans aucun ~~fait~~ fait exterieur mais dans le seul consentement des parties, elles peuvent être elles-mêmes detruites, aussi bien que le Contrat de vente par un Consentement contraire — cites Dumoulin on y8 art.

La maxime a aussi lieu quoique le Contrat de vente ait été effectué de la part de l'acheteur par la numeration du prix — car cet effet du Contrat est etranger au Seigneur il n'y a que l'effet qui consiste dans la mutation de main qui le Concerne —

Cette maxime a lieu, non seulement lorsque les parties se sont desistées, purement et simplement de leur Contrat, mais aussi lorsqu'il est intervenu entre elles, un nouveau Contrat qui renferme un desistement du premier —

Max. 9e —

Poth. Traité des Fiefs. Partie I. Ch. 5. §. 3. p. 167 —

Despeisses — 3 Vol. p. 80. 81 — No. 11. — Si celui auquel quelque chose a été adjugée par decret, avant de se faire mettre en possn de la chose, remet son droit à un autre, les lods ne sont point dûs de telle adjudication par decret; mais seulement ils seront dûs par celui au quel le decret a été remis, et ainsi ne sont dûs que Simples Lods, et non pas doubles Lods. — arret au Parlt. Toulouse 1582. Rapo. par Maynard — Loüette. Tr. des Droits Seigrs. — Arret du Parlt. Bretagne 30 Octbre 1576 Chopin. Cout. Paris. — Char. en ses Pand. 9e — [Car la chose n'ayant jamais appartenu à celui auquel primierement — elle a été adjugée, pour n'en avoir pas eu la possession: Et les Lods, comme dit est, n'étant dûs que pour le changemt de mains & translation de la proprieté de la chose, il s'ensuit qu'en ce cas ne sont dus que Simples Lods pour celui seul qui en vertu de la dite Cession a été mis en possession de la chose.]

Larroix
Morgan 4

2. Jette widow by retaining Chapus poss. of all the property of the Community without Inventory, is liable to the Creditors for the Debts —

Renusson. Comté — 2e partie Ch. 1. Nº 26. p. 113 fo —

Mais si la femme apres le décés de Son mari, demeure en possession, ou s'immisce en quelque maniere que ce puisse etre, és biens du mari, sans avoir fait faire Inventaire — si elle a laissé passer les delais de l'ordonnance, et qu'il n'y ait pas de cause raisonable qui l'ait empêché de le faire supposé même, qu'elle eut declarée renoncer à la Comté, elle ne doit pas jouir du benefice de la Renonciation, par la raison que les choses ne sont plus entieres, elle s'est immiscée sans faire Inventaire, les Créanciers sont en droit de la poursuivre au paiement des dettes —

C'est ainsi que s'entend l'article 237 de la Coutume de Paris, qui dit, qu'il est loisible a toute femme, noble, ou non noble de renoncer apres le trepas de Son mari, la chose etant entiere, et en ce faisant demeurer quitte des dettes dues par son mari au Jour de Son décés, en faisant faire bon & loyal Inventaire

De sorte que la femme, si elle desire se mettre a couvert de la poursuite des Créanciers de Son mari, ne doit pas s'immiscer dans les biens de Son mari, ni les avoir en sa possession, sans en avoir fait faire Inventaire, Elle le doit faire faire dans les trois mois du Jour du décés de Son mari suivant l'ordonnance, si ce n'est qu'il y eut quelque ~~raison~~ cause raisonable qui l'eut empechée de le faire faire — Voila quelle est la regle qui est-

fondée

fondée en grande raison, et on ne s'en devroit point dispatir, pour obvier aux fraudes, qui ne sont que trop fréquentes —

De Longueuil
Frichette —
Taschereau et al
Pion —

Cont.d from p. 87. —

Brillon, Dic. des arrets. Vo Complant
No 12. in fine

Si le Seigneur veut de son autorité particulier, expulser l' Emphyteote

Lepailleur
et
Turgeon — Ex

On question touching validity of the Award of Arbitrators, under the terms of the Compromis. —

By act of Compromis bearing date 29 Jany 1819, the matters in contest between the parties, were submitted to arbitrators, and it was stipulated — "C'est pourquoi elles (les parties) ont promis de remettre dans le quinzaine, les titres, pieces, & memoires dont elles voudront se servir, entre les mains des dits Srs arbitres qui seront tenus de rendre leur Jugement arbitral dans deux mois sur ce qui aura été produit pardevers eux, sans preclusion &c — And in a subsequent part, it is stated — Aussi que dans le cas, ou les dits arbitres ne pourroient juger dans le tems ci-dessus fixé et jugeroient necessaire de proroger leur pouvoir, ils le pourront faire tout aussi longtems que les Circonstances le leur feront trouver convenable.

The Arbitrators under this authority prolonged their authority from time to time, heard the parties & made up their report on 4 Nov: 1819 —

Authorities cited by Plff —

Repr — Vo — arbitrage. p. 547. 1re Col. —

" Cependant il en seroit differemment si le delai
" ne s'etoit ecoulé que par le fait des arbitres qui auroient
" negligé de juger, ou si le Compromis auroit autorisé
" les arbitres à prorogen le tems" —

Il finit par la revocation du Compromis, lorsque le tems n'y a pas été limité — Mais pour que cette revocation puisse avoir lieu, il faut que les choses soient entieres &c —

Jousse - Justice Civile. 2e vol. p. 703. —

Le pouvoir des arbitres finit

1o Par l'expiration du tems porté par le Compromis ou a moins que ce tems ne fut expiré par la faute et demeure des arbitres" — Ou que par le compromis, les arbitres eussent reçu pouvoir de prorroger le tems. — Les parties ont seules le droit de prorroger le tems du Compromis, lorsque le compromis ne donne point aux arbitres le pouvoir de le prorroger eux mêmes.

1 Pezeau 19. —

Outre les clauses essentielles au Compromis on y en met d'autres suivant les Circonstances — Voici les plus Ordinaires — 1o En fixant le delai dans lequel le Jugt sera rendu, les parties donnant assez souvent aux arbitres le pouvoir de le proroger jusqu'a tel tems, ou tant qu'ils l'estimeront convenable —

See also

2 Despeisses. 614. 2e Col.

Nota - apres que les parties ont subi volontairement la Juridiction des arbitres, usque ad finem negotii et que les arbitres ont rendu leur Sentence arbitrale les parties ne sont plus recevables à dire qu'il y a nullité au Compromis, de ce qu'il ne contient aucun tems limité — Ainsi jugé par arret du 5 Janvier 1626, sur les conclusions de Mr Bignon avocat General - Journal des Audiences. —

Jos. Leduc
Jerome Durand
& } Opposition afin de charge —
August Durand
Oppt

The Oppt. states that by Deed of Exchange of the 26th Oct. 1818, he exchanged a certain emplacement with the Defrs — and promised to Defrd — to pay him as a soulte or return a sum of £300, of which £100 was paid at the time of Executing the said deed — That he the Oppt. consented and agreed to make the said exchange in the faith and confidence that the emplacement he rec'd from the Defrd — was free & clear of all incumbrances & mortgages, whereas he now finds that the same is now, and at the time of the said Exchange was mortgaged for the payt. of sundry large sums of money, viz't — & — That the emplacement given in exchange by the Oppt — and now seized by the Sheriff, is by him specially bound & mortgaged with the payment of all and every the debts and sums of money with which the said lot of land given by the Defrd to Oppt was charged & bound at the time of the said Exchange —
Concludes that the said lot of land so given by Oppt in exchange & now seized, may be declared mortgaged & charged with the payt — of all the debts which were due upon or by the said lot so given in ex. to Oppt — & that the same be sold subject to the payt — of all such debts, & costs

Plea. denies right of Oppt. to have & obtain the conclusions of his Oppos — afin de charge — as mortgage of Plff in prior to that of Oppt —

Burton
Cottier
&
Forster & Try
T. Saisis

The Declaration states, that on 1st May 1819 the Pltff leased to Defendt a certain dwelling house in the City of Montreal, for the space of one Year, for & in consideration of a rent of £200 to be pd quarterly by the Dft Deft. That the Defendt possessed & occupied the said house from 1st May to 1st Septr 1819, when he absconded & left the Pltff house, leaving therein certain goods chattels & effects which became specially bound & mortgaged for the payt of the rent then due — viz the sum of £50 — which is still due & unpaid by Pltff — Whereupon Pltff brings suit and prays. But inasmuches it appears by the affidavit of Edwd Henry, Esq. that the Dft Defendt hath absconded with an intent to defraud the said pltff & his other Creditors, if such there be, whereby the said pltff will lose his said Debt — or sustain damage without the benefit of a writ of attachment against the Estate, debts and effects of the said Defendt to be forthwith issued according to law — and whereas there are now in the hands possession & power as well of the said Defendt now remaining in the house and premises so leased as aforesaid as in the hands of James Forster and Charles Try, divers goods chattels and effects which were at the time the Defendt so absconded in the house so leased as aforesaid, and were affected, mortgaged and holden as meubles meublans for the payt of the rent of the said house, part of which goods chattels & effects they the said Forster & Try have illegally taken possession of and among other things — of a Sopha with a Mahogany frame a mahogany table, one dozen chairs, and had been for a long time previous thereto — The said pltff prays that a writ of attachment be forthwith issued for attaching

the

the estate, debts and effects of what nature soever of the said Defend^t which now are in his possession, or of^e are in the hands, custody, possession or power of the said Foster & Try — that the same remain when seized attached and held to answer the judgment of this Court and further that the said Foster & Try be summoned to appear in this Court to declare what goods, chattels & effects belonging to the said Defend^t, or which are holden for the payment of the said Pl^ffs aforesaid debt, they have in their hands as aforesaid — and that in default of their personal appearance they may be condemned &c —

Upon this declaration a writ of attachment, or Saisie-arrest in the usual and ordinary form was sued out to attach and seize all such goods, monies, credits and effects belonging to the Defend^t which might be found in the hands possession or power of the said Foster & Try —

On the 2^d Octo. 1819, the said James Foster & Jn^o Try appeared in Court, and severally declared on oath that neither of them had in their hands any goods chattels or effects in his possession, custody or power, of or belonging to the said Defend^t —

On the 5^th Octo. the Pl^ff moved to be admitted to contest the declaration made by the Garnishees and to examine them upon facts & articles, which was granted —

By the answers of the said James Try taken on the 9^th Octo it appeared — That he had a knowledge that on or about the 4^th day of Sept^r 1819, the Defend^t — absconded, when the said Foster & Try sued out a writ of attachment of his goods & effects — That about the

the 5th of the same month, the said Forster caused to be removed from the house and premises mentd in Plff's declaration which had been occupied by the Defendt, one Sopha — one table & one dozen of Chairs ~~& divers other articles~~ which were the property of him the sd James Forster, the same having been lent ~~&~~ not sold to Defendt — That these articles had been in the possession of the Defendt — for about 4 months preceding, but does not what the Defendt had used them as furniture in the said house — That the said articles were not sold but hired to the said Defendt — as appears by a certain writing made & given by Defendt — That at the time of the Service of the process in this cause the said Forster & Fry had in their possession the said Sopha, Table & Chairs which are their property, but that they had nothing in their hands belonging to Defendt — —

The parties having been heard upon the aforesaid declaration & pleas of the Trias Saisis, the Court ordered that the said T. Saisis should plead in writing to the demand of the Plff. —

Whereupon the Trias Saisis pleaded — That the several matters & allegations contained in the Plffs declaration were unfounded in fact & insufficient in Law, to maintain his said demand & Trias Saisis — 1st Because the said declaration doth not set forth any grounds of action as the said Forster & Fry — 2d Because it is not alledged that the said goods & chattels so taken possession of by the said Forster & Fry were or are the property of the said Defendt — or how or in what manner the same became bound to the payt of the rent in question — 3d That Plff could be entitled only to their action as T. Saisis by reason of any thing alledged in the sd declaration —

4. Because, if any cause of action did accrue to the said Pluff, or any lien was created on the sd goods for the payt of the sd rent, the same hath ceased & hath become prescribed in law by the lapse of time in the suing out of the said Saisie Arret by the s^r Pluff —

The action agt Forster & Fry in this case ought to be that of revendication, & in the present proceedings enough is not found to support this principle, it must fail —

Denist. v^o Loyers. N^o 17 — Lorsque le locataire enleve ses meubles sans avoir payé ses loyers, l'art. 171. de la Coutume de Paris accorde au Proprietaire la faculté de les suivre — c'est-à dire, de les revendiquer par tout, ou ils sont trouvés — #

See also. 1 Bouj. p. 146. Le Propre a le droit de Suite & de revendication, sur les meubles de son Locataire qui ont garni la maison, encore qu'ils ne fussent pas saisis ni gagés à sa requete. //

Rep^se v^o Bail. p. 11 — Si les meubles qui garnissent la maison, n'appartiennent pas au preneur, mais à des tiers, le bailleur aura-t-il un privilege sur ces meubles pour être payé des loyers ? — La reponse est, que dans la regle il peut exercer son privilege sur tous les meubles qui garnissent la maison, soit qu'ils appartiennent au preneur, ou à d'autres personnes. — Cela est ainsi établi afin que les bailleurs ou proprietaires, qui pour assurer le paiement des loyers, comptent sur les meubles dont les lieux sont garnis, ne soient point abusés dans leur esperance —

D'apres cette decision celui à qui appartiennent les meubles dont une maison est garnie est censé avoir tacitement consenti qu'ils fussent obligés au loyer, puis qu'il n'a pas dû ignorer, que tout ce qui garnit une

maison

maison est assujeti à cette obligation. — Ainsi lorsqu'ayant loué une maison je la garnis des meubles que me prête un marchand, ces meubles répondront du loyer comme s'ils m'appartiennent — C'est pourquoi si le bailleur vient à les faire saisir, le marchand n'en obtiendra pas la recréance, il aura seulement une action contre moi pour me faire condamner à les lui payer —

and Id. p. 24 —

On peut exercer le droit de Suite par la voie de Saisie ou par la voie d'action — même contre une personne qui auroit acheté de bonne foi les effets transporté, et contre un Créancier à qui ils auroient été donnés en paiement ou en nantissement. —

The demand ~~is limited to one object only, namely to one of the two posts~~ —

1. The attachment of the property of the Defend^t, whether in the hands of the Defend^t or in the hands of Foster & Ivy, the question, touching the right of Pltff, by ~~droit de Suite~~ or otherwise, to other property, not belonging to Defend^t, but upon which the privilege of Pltff might have attached, is not before the Court — the privilege of Pltff here is limited to such property as belonged to Defend^t wherever it can be found — but as to property that did not belong to him, but upon which Pltff might have a claim, the parties Foster & Ivy are not before this Court to answer, they cannot be condemned for what they may have in their hands, if it is not the property of Defend^t and the Court is not enabled to say that the goods taken possession by F & I, were the property of the Defd^t

The declaration of the Pltff seems to point out certain effects upon which he claims a privilege for his rent, but instead of following this up by a Saisie Gagerie to have this privilege declared, he has sued out a Saisie Arret in the common course of the effects of his debtor in the hands of the Garnishees, in this respect the writ of Saisie Arret is variant from the Declaration and under the conclusion in that declaration not sufficient to establish the privilege claimed of the Garnishees —

N°. 940

Savary
vs
Meunier
et
Dupraz

On question whether the mother of the bastard child is entitled to sue for aliments for it—

Decisions de Fromental. Tit. Batards. p. 31—

L'ayeul du Batard n'est tenu de lui fournir des aliments que subsidiairement; et au cas que son fils Legitime, pere du Batard n'ait pas de quoi le nourrir, la fille abusée est personne legitime pour former la demande des aliments pour son Enfant batard — C'est ainsi que ces deux questions ont été jugées au Parlement de Toulouse dans l'affaire du Sr. de Varielery. — Voy. les Conf. de Paris — edit. 1735. tom 5. p. 204.—

1. Mesle Tr. de Minorité. 184. 185—

su circumstances of case — and arret —

La mere demeurant chargée par cet arrêt de l'education de son fils, touchoit la pension, sans avoir qualité de Tutrice, parce que ce qu'elle touchoit lui étoit dû pour la pension du mineur à qui elle donnoit l'education.
Un arrêt duement — Que le tout seroit payé par le pere, et cependant que l'enfant resteroit sous l'education de sa mere —

Ferrière. Tr. de Tutelle — p. 24 —

La mere est Tutrice legale, non seulement de ses Enfans legitimes, mais aussi de ses Enfans batards —
Bien plus, l'education des enfans batards appartient à la mere à l'exclusion du pere, selon les arrêts mentionnés par Boniface — ver —

Id.

Id. p. 25 –

La mere est si fort reputée Tutrice, qu'elle est en cette qualité obligée d'agir et de defendre, jusqu'a ce qu'elle ait fait nommer un Tuteur à sa place – voyez les arrets – a –

L'Education de l'Enfant batard confiée plutot à la mere qu'au pere – N. Denis. v^e Batard. §. 5. N.^o 3

Arrets de Loüet – 1 Vol. p. 18 – Tit. Aliments des Batards

Arrêt du Parlement de Provence, donné le 9^e Jour de Juin 1662. en l'audience de la Grand Chambre, par Mr le Premier President, par lequel M^re Barrel, avocat au dit Parlement, fut condamné, nonobstant la desistement de l'instance de mariage intentée par la mere, à donner à la mere, pour les alimens de l'Enfant qu'il avoit eu d'elle, savoir, neuf livres par mois, pour l'entretien d'icelui jusqu'à ce qu'il eut atteint l'âge de sept ans, et douze livres depuis 7 ans jusqu'a 14. et apres 14 de fournir 800^tt – tant pour lui faire apprendre metier que pour lui faire boutique &c –

Autre arrêt du 28 Sept^bre 1665 – Id.

2. Bacquet – Droit de Batardise. ch. 3. Som. 9. p. 152. – Dorne point –

Cartier & McDonald dal — } on action of Ship owners for loss of goods

So when goods are delivered to a wharfinger or Carrier and they are lost or stolen — case is the proper remedy & not Trover — Com. Dig. Action upon the Case 169 —

The proper form of action is the action on the Case before mentioned — 1 Selwyn N. P. 443 —

Orkney vs Orkney } On mo. for new Trial on discovery of new Evidence

See case Vernon. v. Hankey. 2 T. Rep. 113 —

The Court will not grant a new Trial to let the party into a defence of which he was apprized at the first trial —

Munn
v.
McKenzie

action on bill of Exchange

1st Count— 29 March 1815, at Montreal, one J. H. Brown drew a Bill on Messrs Drummonds, London in favor of Henry Drean for £150 Stg— on 20 days sight— which Bill for a valuable consideration, Brown, delivered to the late James Walker, with power to obtain the payt. of the said sum of money in the s.d Bill — or to negotiate the same — On same day s.d Walker indorsed the same — & directed contents of said bill to be paid to Puff — Puff indorsed to Henry Drean to receive the amt. from the Drummonds

Presnt.d 16th. Protest.d 7th. (7)

On 16 Sept.r 1815, Drean presented the Bill — acceptance refused — Protest 7th Sept.r 1815. And when Bill became due on 9th Oct.r 1815 — Protested for non-payt — of all which s.d Walker had notice, & thereby became bound & liable &c

Walker not Payee of the bill — could not transfer it to Puff — he could be only the agent of Brown & as such made Brown liable — but when Walker indorsed — the legal title to the Bill was in Drean Puff acquired no right or interest in the bill under this Indorsment —

2d— Count— on 29 March 1815 — Jas. Walker made his Bill of Ex. — directed to Drummonds, London — to pay at 20 days sight — to pay to Puff, or order £150 Stg — Puff presented it for acceptce on 16 Sept.r 1815 — Protested — notice to Walker and on 9th Oct. when due — Protested for non-payt — of all of which Walker had notice — & by reason thereof &c

The Instrument produced will not support this Count — altho'. Walker was a new Drawer — yet can be considered as Drawer in terms of Bill he indorsed — & not of a new or different bill — The bill was payable to Drean, not to Puff

This variance between the Instrument declared upon and the Instrument produced is fatal —

3d & 4th Counts — for money laid out & expended for late Jas. Walker — for money lent & advanced — & for money had & received — & Insimul computassent —

No Evidence — certified copies of depositions in another Cause not sufficient —

Arnoldi
vs
Panet

On question whether the presence of two Notaries is requisite to the passing an authentic act —

Nouv: Denz. Vo Acte Notarié — §7. № 13 —

Suivant l'usage Constant il n'est pas necessaire que les actes passés devant deux notaires ayent été faits en presence de ~~deux temoins~~ tous deux — La presence d'un seul suffit, si l'on se contente de la signature de l'autre qu'on nomme le Notaire en second — Jousse. Adm. ~~Civile~~ Justice. part. 5. Tit. 2. № 50 — cite un grand nombre de Reglemens qui autorisent cet usage —

Poth. Tr. de l'Hypotheque — Ch. 1. art. 1 §. 3. p. 422

L'usage meme a prevalu à l'egard des actes de Commerce ordinaire — Il suffit que le second notaire signe l'acte, quoiqu'il n'ait pas été present —

Denizart. Vo — Notaire — Signature en Second № 75 - 76. 77 & 78 -

Nouv: Den. Vo Faux Incident. §1. № 3.

Nouv. Den. Vo — Evd. — §. 6. № 6 —

Les moyens pertinens sont toujours admissibles, on ne doit pas refuser la preuve de faits qui peuvent établir en tout, ou en partie la fausseté de la piece dont est question —

Ce

Ce dernier principe reçoit exception à l'egard de certains usages abusifs, que leur generalité fait tolerer dans la passation des actes — Il est par exemple d'usage dans la passation de la plus part des actes que le Notaire en second ne voit pas les parties contractantes, et signe sur la relation de son confrere. Si on demande a prouver que le Notaire en Second n'etoit pas present lors de la passation de l'acte ce moyen de faux est pertinent, parceque etant etabli il prouve le contraire du fait attesté par les officiers publics. — Ce moyen quoique pertinent, n'est pas admissible — Il est de l'interet public, qu'on rejette un pareil moyen — parceque en l'admettant on porteroit le trouble dans la Societé — L'usage ou est le Notaire en second de ne pas assister à la redaction de l'acte est si general, qu'à l'exception des Testaments, il n'y a peut-etre point d'acte qu'on ne peut faire annuller comme faux, par un pareil moyen —

Le pallieur
c
Lurzeau
E contre —

Des Incidentes Demandes —

Rep.se V.e Reconvention — on appelle ainsi une action, une demande qu'on forme contre celui qui en a lui-meme formé une le premier, et devant le même Juge. —

Art. 106. Cout. La Reconvention n'a lieu en Com.ce, si elle ne depend de l'action, et que la demande en Reconvention soit la defense contre l'action premierement intentée, et en ce cas le Defend.r par le moyen de ses defenses, peut se constituer Demandeur — sec ⊕

Dens.t V.e Reconvention No 3 —

No 3. Cet article est mal observé — On admet la Reconvention pour l'interet des parties — mais on ne l'admet point en choses absolument differentes — par exemple, elle n'a pas lieu — quand l'un demande de l'argent, et que l'autre demande un Service, ou un heritage

No 4. Quand la dette qu'on veut demander par Reconvention est liquide et reconnüe, il n'y a qu'une Simple demande et Compensation a former ; Mais si elle n'est ni reconnüe ni liquide, il faut une demande en Reconvention, pour parvenir à la Compensation —

No 5 — La Reconvention est tolerée entre personnes domiciliées dans la meme Juris diction ; mais si la seconde demande est separée de la premiere, il faut regler les instances separement, et ne les pas joindre —

Dic. de Fer. V.e Reconvention —

This article (106) made to preserve the Juris diction of the Seigniors — Low Patrimonials —

Nonobstant

Nonobstant la disposition de cet article, auquel la plus grande partie des autres Coutumes sont conformes; la Reconvention s'est introduite dans les Jurisdictions Seculieres — Les Juges renvoyent le moins qu'ils peuvent les affaires qui se presentent pardevant eux; Car etant competens pour connoitre de la matiere, il semble aussi qu'ils peuvent connoitre aussi de la demande Incidente formée par le Defendeur contre le Demandr — et il est de l'interet public que plusieurs Causes soient vuidées par un meme Jugement —

C'est l'usage du Parlement de Rouen, et du Chatelet de Paris, quand la demande principale, et la — demande Incidente tendent à quelque somme d'argent dont la Compensation se peut faire — autrement il n'y auroit pas lieu a la Reconvention —

Cas an action of debt — & a real action —

Il seroit trop rigoureux, que le Defendr etant assigné pour une action tendante à quelque somme d'argent ne pût pas user de Reconvention, au cas qu'il fut bien fondé à lui faire une demande de quelque somme; autrement il arriveroit, que le Demandeur ayant obtenu ses fins, la demande Incidente ayant été renvoyée pardevant le Juge du Demandr — ou le Juge ayant ordonné qu'il se pourvoiroit comme il trouveroit à propos, le Defendr seroit obligé de payer la somme à laquelle il auroit été condamné, au hazard de ne pouvoir pas repeter un Jour celle à laquelle le Demandeur seroit condamné envers lui —

Seemingly the same observations by the Commentator on Bacquet's Droit de Justice. 1. Vol. Ch. 8. Nos. 10. & 11 —

p

Demarquet — Stile du Chatelet — liv. 1. tit. 3. p. 13 —

Posons le cas, qu'un particulier soit assigné pour payer le contenu en un billet — Il defend à cette demande et convient devoir la somme contenüe en son billet, offre la payer — Mais ce même particulier debiteur a fourni de la marchandise à son Créancier, supposons pour cinq cent livres — il demande incidemment que ce particulier Créancier soit tenu de lui payer ladite somme de Cinq Cent livres, et de lui en tenir compte sur son billet, à l'effet de quoi il se constitue Incidemment Demandeur

⊕ L'ajournement ou assignation qui se fait contre quelqu'un est appellée Conventio. — ainsi quand le Defendeur fait ajourner pardevant le même Juge le Demand^r — ou que par ses defenses il lui oppose, ou fait demande d'une autre somme — c'est re-Conventio — 2 Gr. Cout^me ou art. 106. — p. 103. N^o 1. —

=

1 Fer. Gr. Cout^me art. 106. p. 108 — N^o 10 —

Mais quand c'est une dette que pretend le Def^r — qui n'est pas fondée, ni sur la reconnoissance du Demand^r — ni sur aucun Jug^t. de condamnation, et qui peut être contestée par lui, comme s'il s'agit d'argent que le Defend^r pretendroit avoir employée dans les affaires du Demand^r —, en ce cas ce n'est pas une dette claire et liquide, et pour icelle le Defend^r doit intenter action contre le Demand^r —, et si cette dette etoit l'exception contre la demande du Demand^r, il en pourroit faire demande par Reconvention —

Vide Observations de Mr + ++ —

L'usage a prevalu sur la Coutume, et on a admis les — Reconventions en toutes sortes de Causes —

Sec 1. Pigeau 336. 7 — in clinis to Chi operemur

Les demandes Incidentes peuvent se former par une multitude de raisons — Argent prete — Ouvrage fait — tout est pr a bonne —

Green v. Farmer — 1 Black. Reps. 657. 8. Geo. 3. L^d. Mansfield

The Justice of allowing cross-demands is supported by natural Equity — the balance only, is really due in such cases —

See particularly. = Duplessis. Des act. Pers. Tit. 5. liv. 2. ch. 1. sec. 2, p. 600 —

Loquet, & Trudeau

On question whether the wife, on acct — of the absence of the husband, can be authorised by the Judge to alienate any of the Real Estate of the Community —

Pothier - Traité de la Puissance du Mari &c —
p. 459. §. 3 - N°. 12. —

Comme un mari pourroit refuser d'autoriser sa femme pour des actes qu'elle a interet de faire, ou — pourroit être trop éloigné pour donner cette autorisation aussi promptement que le cas exige — Nos Coutumes ont pourvû à cela, en permettant en ce cas à la femme de se faire autoriser par le Juge, sur le refus, ou pour l'absence de son mari — La femme doit en ce cas donner requête au Juge, par laquelle elle expose quel est l'acte pour lequel elle demande a être autorisée, l'absence ou le refus de son mari de l'autoriser — duquel refus elle fait apparoir par la sommation qu'elle lui en a faite — Le Juge en Connoissance de Cause, l'autorise par l'Ordonnance qu'il met au bas de sa requête — Cette autorisation du Juge, est reputée tacite de celle du mari, et y supplée; elle rend la femme habile à faire l'acte pour lequel le Juge l'a autorisée, de même si elle doit autorisée par son mari —

Jd. Sec. 5 - N° 76. p. 482 — Sur l'effet de l'autorisation

L'effet de l'autorisation du mari — et de l'autorisation suppletive du Juge, est de rendre la femme aussi capable de l'acte pour lequel elle est autorisée, qu'elle le seroit, si elle n'étoit point mariée. — En conséquence l'autorisation rend bien l'acte pour lequel elle est autorisée aussi valable qu'il le seroit si elle n'étoit pas mariée — mais elle ne lui donne pas plus de force qu'il n'en auroit eu — C'est pourquoi lorsqu'une femme mariée a souffert quelque lesion dans un Contrat pour lequel elle a été autorisée, l'autorisation ne rend pas le Contrat moins susceptible de rescision pour Cause de minorité, qu'il ne le seroit, si cette femme, eut fait ce Contrat étant fille. —

N. Denisart - V° autorisation - §. 3. N° 10 & 16 —

Le Juge ne doit au surplus accorder d'autorisation qu'en connoissance de Cause — Si des Circonstances relatives à l'interêt de la femme demandoient qu'elle fut autorisée à quelque alienation, ou à quelque engagement qui emporte hypotheque, le Juge ne devroit l'accorder qu'après avoir pris toutes les precautions pour empêcher que ces engagemens ou alienations ne tournassent à son detriment, soit en ordonnant le dépôt et l'emploi des deniers qui seroient empruntés, ou le remploi du prix des objets qui seroient vendus — La faculté de recourir à la Justice, n'a été introduite en faveur des femmes, que pour leur avantage — et une autorisation qui leur Causeroit quelque perte, ne doit pas avoir effet — Actes de Notoriété du Chatelet de Paris — 13 Juin 1682.

[p. 16.] De la maniere dont une femme doit être autorisée par son mari pour faire des actes valables —

Trois manieres —

10 —

1°— Par sa présence lorsqu'il signe l'acte —
2°— Par Procuration —
3°— La troisieme maniere d'autoriser une femme, est par Justice, lorsque le mari, peu soigneux des biens de sa — femme, ne la veut pas autoriser — et que la femme pour payer les dettes de la maison, veut vendre — ou pour établir ses enfans par mariage ou autrement, leur veut donner — alors le Juge en Connoissance de cause peut suppléer à l'autorisation du mari — mais il faut 3 Conditions —
1ere — Que le mari soit refusant, de ce faire interpellé, s'il est dans le Royaume —
2°— Qu'il y ait necessité — 3°— pour l'avantage de la femme, sinon pour donner lieu a dissipation —

On the note on 1st condition — the author remarks — si le mari n'est pas dans le Royaume, ou si ayant delaissé sa femme, on ignore le lieu de sa retraite, il faut le constater par acte de Notoriété, qui se — joint en ce cas à la requête, par laquelle la femme demande une autorisation au Juge —

Id — Acte du 22 Fevrier 1695 — p. 131 —

Mais à l'egard des actes et Contrats, ou il est question de vendre, obliger & hypothequer les Immeubles, la Coutume dans l'art. 223 — a decidé nettement & distinctement qu'il y avoit nullité dans les actes ou il n'y auroit pas, et le consentement & l'autorisation expresse — Ibm —

Il n'y a que le Juge qui puisse y apporter des temperamens en connoissance de cause, parceque si une femme delaissée par son mari — Separée de Justice — ou qui n'est pas en Communauté —

est

est necessitée de vendre ou hypothequer de ses Immeubles soit pour payer ses dettes, etablir des batimens, — marier ou etablir ses Enfans — alors le Juge y pourvoit, et apres avoir fait appeller le mari — en très grande connoissance de Cause, il permet — l'alienation des Immeubles, apres en avoir fait faire les estimations, et en meme tems pourvoit à l'emploi des deniers provenans des dites Ventes — Et ces autorisations judiciaires doivent être expresses et par cet acte seulement, il est juste que la Loi, et le Juge, qui en doit être l'ame, secoure les personnes qui s'y conforment, contre ceux qui voudroient abuser de leurs pouvoirs —

Repertr. Vo Autorisation. sec p. 847 — arrêt arrêt p. 848. — Cet arrêt a encor decidé, comme l'on voit que la faculté laissée à la femme par l'art. 224 de la Cout. de Paris, de se faire autoriser par Justice au refus de son mari, lorsqu'il s'agit d'ester en Jugemt a aussi lieu pour les Contrats et Alienations, quoique les articles 223. à 234. qui ont ces actes pour objet, n'en parlent aucunement —

1 Boujon. 581. — §. 22 — voyons à présent les effets d'une telle autorisation — Les engagements que la fem. contracte en consequence d'une autorisation en Justice, ne peuvent jamais nuire à la Communauté — ce qui la compose est independant du fait de la femme, et par telle voie que ce soit elle ne peut l'affoiblir ; En effet lorsque la femme agit autorisée par Justice, elle n'engage que la nüe propriété de ses propres, les fruits d'iceux restans toujours au profit de la Communauté, à la masse de laquelle, elle ne peut nuire.

Bridgeford
v.
Blackledge

Quest. whether the wife a marchande publique can be sued without her husband —

Observations du President Le Lamus sur l'art. 236. —

N°5.

C'est article est pour ce qui on fait hors Jugement car quoique la femme soit en droit de s'obliger sans son mari, parceque la Coutume dit precisement, que la femme mariée ne peut estre en Jugement — elle ne peut y être si elle n'est separée ou autorisée ; et comme elle ne dit point, que celle qui est marchande publique le peut faire, il faut demeurer dans les regles que celui qui veut agir contre une marchande publique non separée ni autorisée, doit appeller le mari, et le mettre en Cause pour la validité de la procedure, et du Jugement qui sera rendu —

Pothier. Traité de la puissance du Mari sur la personne & biens de sa femme — p. 477 —

Quelques Coutumes ajoutent une troisieme exception à l'egard des femmes marchandes publiques, aux quelles elles donnent le pouvoir d'intenter sans leurs maris & sans autorisation les demandes relatives à leur Commerce & d'y defendre — Telles sont celles de Dourdan — de Mantes &c —

Les marchandes publiques ont elles ce pouvoir dans la Coutume de Paris, et dans celles qui ne s'en sont pas expliquées ? — Je ne le crois pas. — Si la Coutume de Paris eut voulu donner ce pouvoir aux femmes marchandes publiques, elle les auroit comprises avec les femmes separées dans l'exception de l'art. 234 —

Ce alinéa est paragraphe — sans autre —

Rep^re v^o autorisation — p. 837 —
from bottom of first column till second

Sed v^d. { Contra
Grand Cout. 3^e Vol. p. 369. — art. 234. Glose 2 N^o 3.
Pigeau —

Fer. Dic. Droit v^o Marchand Publique —
same ~~authority~~ opinion v^o M^r Lebanus. —

Rep^re v^o Jugement — p. 632. N^o 3.

M'Culloch
&
Scott. ux } Question touching sufficiency of bonds in
a certain Coin of Silver pieces of 2/9 each —

Sheriff's return —

The Coin of one King is not current in the Kingdom of another — though our King by his Prerogative may make any foreign Coin lawful money of England at his pleasure by proclamation. — Law Dic. V° Coin —

If a man binds himself by bond to pay £100 — of lawful money of G. Britain, and the person bound, the Obligor, pays the obligee, the money in French, Spanish,

or

or other Coin, made Current either by act of parl.t or the Kings Proclamation, the obligation will be well performed. Ibid. —

It was enacted by St. 14. Geo. 3. ch. 3. Su. 42. that no tender of payment in Silver money, exceeding £25 – at one time, shall be a sufficient tender in law for more than its value in weight at the rate of 5/2 an ounce. — This was a clause in a temporary act which was continued till 1783, since which time it does not appear to have been revived. – Ibid.

In the 7.th Year of K. Wm. 3.d – an act was made for calling in all the old Coins of the Kingdom, and to melt it down and re-coin it – the defficiencies whereof to be made good at the public charge – Ibid.

By St. 19. Hen. 7.th c. 5. – Groats or pence, clipped or impaired except reasonable wearing, shall not be current – but it shall be lawful to any person, having such groats or pence clipped or minished to bring the same to the Kings mint to be changed, or convert the same into plate –

By St. 9 & 10.th Wm. 3.d c. 21. It shall be lawful for any person to whom Silver money shall be tendered, any piece whereof shall be diminished, otherwise than by reasonable wearing, or that by the stamp, colour or weight thereof he shall suspect to be counterfeit, to cut or deface the same piece – and if any piece so cut &c.a shall appear to be counterfeit, the person tendering the same shall bear the loss – but &c.a

By St. 13. Geo. 3. c. 71. – same thing is enacted as to gold Coin

By the Prov. St. 48. Geo. 3. ch. 8 - The weight & rate of gold coin, and the rate of Silver Coin ~~is established~~ to be current in this Province, is established — and the efficiency in weight of Gold Coin, & also its weight beyond the Standard, is settled — but nothing is said about the weight of Silver Coin. —

//

Fer. Du. Vc — Monnoie. — Monnoie est une espece d'or, d'argent, ou d'autre metal qui a Cours — c'est une portion de matiere à laquelle le Souvrain donne tel poids, et telle valeur, qu'il veut — pour servir de prix dans le Commerce, en un mot, c'est une matiere marquée du Coin public, dont l'usage et la valeur viennent plutot de sa marque que de sa substance —

In this Cause Exon ~~fi~~ fa. was sued out on the 19th Febr. 1820. ag. Defendt for £486. 16. 6 - debt, £15. 11. 1 - Costs, wt. on Interest on principal sum of £486. 16. 6, from 28 Sept 1819 until paid —

On 14th April 1820 — The Sheriff returned, that he had caused the Seizure of certain goods & chattels of the Defts to be discharged in consequence of Defts having deposited in his office a certain number of pieces of Silver Coin, viz — 4514 pieces, the greater part whereof, viz. 4257, were said to be French half Crowns, as a tender in payment of the debt interest & Costs in the said writ mentioned — And as the said last mentd 4257, pieces of Silver Coin, said to be French half Crowns, are not, nor any part thereof, are not of a description specifically and distinctly denominated or distinguished in the Act of this Province

of

of the 18 Geo. 3. ch. 8 — and as nearly the whole of the said 4514 pieces of Silver Coin appears to be much debased defaced and worn, and as I could not ascertain or — establish the exact value thereof, I proceeded to weigh the same, and did actually weigh that part of the said Silver Coin which was said to be French half Crowns as aforesaid, against the denomination of Coin mentioned in the said act and called French Crowns, & found that in the said 4257 pieces of Silver Coin said to be French half Crowns, when weighed against a corresponding number of the said Silver Coin called French Crowns a deficiency according to the actual weight & value thereof of £40. 5. 9 would arise — And I further certify & return, that I also weighed the said French Crowns, to wit, 170 in number, against which the said 4257 pieces of Silver Coin said to be Fr: h/ Crowns, were so weighed as aforesd. and also found that the said 170 Crowns — weighed 159 oz. 14 dwt. 21 grs — And I offered to take such part of the said Silver Coin as I might conceive in proportion to its weight compared with Crowns to be sufficient to pay and satisfy the debt, interest & Costs aforesaid, and to restore the Surplus if any should remain Defendr — but the said John Scott refused to receive a return of any part of the said Silver Coin — unless I should receive the whole thereof at a certain particular and specific estimation and value — specified by himself the said John Scott — by reason whereof I have the whole of the said pieces of Silver Coin in the actual state wherein the same were tendered to me and deposited in my office, ready to abide the future order of the Court —

Gale

Gale for the Plff moved — Inasmuchas it appears by the return of the Sheriff to the writ of Execution in this cause issued, that a number of pieces of Silver, viz^t. 4257 said to be French half Crowns, debased and defaced and likewise when weighed as French Crowns, deficient to the amount of upwards of £40. in Cy in the weight and value they ought to bear, have been tendered to the said Sheriff in payt of the debt interest & Costs in the s^d. exon mentd, which said pieces the said Sheriff hath now in his possession to abide the future order of this Court — And inasmuchas the said plff^s by accepting the said pieces by tale, would sustain upon the amount of their execution a loss exceeding £40 Cy — And inasmuchas also as by reason of the said pieces of Silver being as aforesaid debased, defaced and deficient in weight and value, the same are and ought to be — considered as no legal tender, but merely as goods & chattels — The said Plaintiffs therefore move, that in default of the said Defendt paying over to the said Sheriff the amount specified in the s^d Exon in other gold & Silver Coin Current in this Province, a writ of Vendt. Exp. may issue commanding the s^d Shff to proceed to the Sale of the s^d. pieces of defaced Silver, or of so many thereof by him received and now in his possession aforesd as may be sufft to satisfy the amount of the said debt interest & Costs in the said Exon mentd — And the said Plff^s further move, that in case the said Sheriff shall by the Judgt. of this Honble Court be ordered to accept in payt. such of the said Silver pieces as may happen not to be defaced, although deficient in weight, he may be ordered to take the same only at such rate as they may appear to be worth, when weighed

at

against Fr. Crowns (as being a lower denomination thereof) and in the same proportions, allowing 5/6 ℔ for the value of each of the said Fr. Crowns in conformity to the Stat. of the 48 of His Majesty cls. the 8th —

The Defendts by their Counsel moved — That the Sheriff be ordered by the Court to pay over to the Defendts in this Cause the sum of £117. 5. 10½ being a balance due and owing to the Defdts after deducting the amount of the debt interest & Costs in the execution in this Cause sued out by the Pltff, out of a larger sum of £620. 13. 6 by the said Defendants tendered to the Sheriff in Current French Silver money in this Province, which last mentd sum of £620. 13. 6, the said Sheriff detains at his Office subject to the order of this Court — as by the return of the said Sheriff on the fi. fa. in this Cause doth more fully appear — And that the pltff do enter satisfaction on the record in this Cause —

Beaujeu
Leveaut d'Baporne

Resp.ve vo Lods & Ventes. p

Il est bien vrai que si au lieu d'un arrangement de famille, le pere preferre de faire une Vente à son fils, elle est sujette aux Lods, selon un arrêt du 22 Juillet 1650, et l'avis commun des auteurs — mais c'est que dans ces Cas ils se sont traités comme etrangers, & que par conseguent, ils sont censés s'etre soumis aux obligations qui resultent ordinairement des Ventes —

refus to the following authors — Henrys. liv. 3. quest. 44. Guyot des Lods ch. 4. Sec. 7. dist. 3 & 7 — La Peyrere lettre V nombre 17. — Poquet de Livoniere. Fr. des Fiefs — ch. 5. Sa. 2.

See also Poth. des Fiefs. p. 152 —

Vve Chaboillez
Lavallée — }

Description of lot of land conveyed to Defendr —

Un emplacement situé au fauxbourg St. Antoine de la contenance de Soixante douze pieds plus ou moins de front sur 80 pieds plus ou moins de profondr — prenant pardevant a la rue St. antoine, pderriere à endre Dame Veuve Desse & a ses Enfans, joignant d'un coté à la ruë St. Merizpuente, & d'autre coté aux representans de feu Dame Josephte Guy ve — le tout suivant le plan dressé par Jacques Vezer, Ecr — deposé en l'etude de Me Doucet, l'un des notaires — pour

Smith . ats
vs
Aylwin, & al'
Cuvillier - Oppt
& Ob. Aylwin, Intervs

On 20th Febr. 1807. Pltff obtained Judgt ags Defts for £548.13.7 - wt interest on £500 ats from 17 Octr 1806 - & on £40.7.7. from 3d Febr. 1807. until paid & Costs - taxed at £8.5.1. ats

On 20 June 1814 - Rule to shew Cause on 1st Octr then next why Exon should not issue on sd Judgt ags goods & chattels of Defts for a sum of £578.4.4, for balce on sd Judgt wt interest & Costs &c

Austin Cuvillier, appd & shewed Cause ats

1. That balance demanded was greater than the Capital, & also bears interest -
2. That Thomas Aylwin, one of Defts had paid the amt of Judgt to Pltff & holds the receipt -
3. That Pltff cannot have Exon on a Judgt so satisfied, nor can Ths Aylwin make use of Pltff's name to sue out Exon thereon ags Cuvillier -

Issue raised - and wt exam'd -
on 2d Jany 1815. Cuvillier sued out a Comn Roz to Quebec for ex. of Thomas Aylwin, one of Defts - also the Pltff. on facts & articles - also Geo Jno Symes, Jean Cuvillier, & Obadiah Aylwin. - From the irregularity of the proceedings & notice given, nothing was done on this Comn - and on -
9th Febr. 1815 - the Rule for Exon of 20 June 1814 was made absolute. ats

On ~~19th Febr.~~ Exon was sued out in consequence & sundry goods & Chattels seized, when Marie Claire

Perrault

Perrault, the wife of Cuvillier, under separation, claimed by opposition the goods effects seized, as her separate property —

By Judgt. of 20. Febr. 1818 — her opposition was dismissed —

An appeal was had from this Judgt. and by Judt. of Court of appeals of 30 July 1819, the appeal was dismissed, & proceedings remitted. —

~~On 19 Febr. 1817, Exon was sued by Pltff. on their Judgt. —~~

On 20 Febr 1816 — Rule was made absolute subrogating Pltff in rights of Mary Anne Tavernier on the Exon. — sued out by her in case of her not proceeding. —

On 19 Febr 1817. Exon was sued out by Pltff. of moveable property of Defendr — to wh opposn was made by A. Cuvillier. —

1. No rule Nisi sued out within year & day —
2. That effects seized do not belong to Defendr
3. Judgt. paid & satisfied by Th. Aylwin
4. Th. Aylwin — no right to execute Judt. in name of Pltff
5. Goods already seized at suit of one Normand. —

Answer — 1 by Exc opn

To 1. 2. & 5 — moyens de nullité — not bound to answer —

To 3 & 4 — Question already decided by Judt. of 9 Feb. 1815.

2 by Plea —

1. Judt. was declared Executory by Judt of 9 feby 1815 —

2 Exon granted by Indt. of Subrogation of 20th Febs 1816 —
3 Goods the property & found in poss. of Cuvillier
4 That Pltff has not been paid by the Asylum
5 That the Asylum has obtained no transfer of Indt —
6 That Seizure is effected, even had Normand made a Seizure.

On 20th April 1820 — The oppost. obtd. an order for issuing out a Com. Rog. to ex. Pltff on pairt & art. at Boston, and another Com. Rogs to ex. Wits. at Quebec —

№ 490

M^c Intosh
vs
Bowron

Action on Promissory Note —

Montreal 20^t Nov^r 1819.

Three months after date I promise to pay Mr Peter M^c Intosh, or order, at the office of the Montreal Bank here, the sum of Sixty one pounds eight shillings ℔. value received —

Wm Bowron

Plea — Non-assumpsit — 2^dly if ever Defendt became & was indebted to the Pltff in the sum of money demanded — he paid same — Repl^n. Joins issue

The declaration stated a demand of payt & refusal at the Montreal Bank, when note became due, but no proof of this was made at the Enquete.

Objection — that Pltff had not proved a demand at the Montreal Bank —

~~Ex parte~~ on Hab. Corpus

The King
vs
Alex^r Hart

An question touching the possession of an illegitimate Child —

5. T. Rep. 278. The King. v. Moses Soper. —

A Child of three years of age, being brought up at the instance of her mother on an Habeas Corpus by the putative father, on whom an order of filiation had been made, and who had obtained the possession of the Child by fraud — Borrough, objected to the Child being restored to the mother, on the ground that, as the Child had been adjudged to be the Child of Soper, he had a right to the Custody of her — But L^d. Kenyon Ch. J. (stopping Garrow, & Dampier, contra) said that the putative father had no right to the Custody of the Child, and she was accordingly restored to the mother —

—

5 East Rep. 224. on Note (a) —

The King. v. Mosley —

Mingay moved for a writ of Ha. Corp. to the Defend^t — to bring up the body of a bastard Child of five years old, which a young woman had had by the Defend^t — and he cited, The King. v. Soper, as in point — where it was holden that the putative father had no right to the Custody of the Child —

See also. 1 New Rep. 148. Ex parte. Ann Knee — L^d.

Vu Chabottier
Lavallée — E

Mais lorsque le Vendeur n'a pas dit
précisément la mesure, mais simplement que
le fond qu'il vendoit, contenoit tant d'arpens
ou environ, il n'est pas obligé de la parfaire
1 Desp. 47. N-15-

Lemoine de Martigny
&
Beauchamps —

Quest. whether Lods & ventes are due on a transaction in a marriage Contract where father conveys a lot of land to his son — makes a gift of a part of price & rent to be p.d to father —

Principes du Droit Coutumier & du Droit Ecrit p. 134

Les droits Seigneuriaux sont dus pour ventes pures & simples de Fief, ou de Roture — selon l'art. 23. & 78 de ladite Coutume de Paris, & quoique du Pere à fils, ou du fils à pere, ou pour equipollent à Vente — Cependant plusieurs Docteurs du Droit Franc tiennent que pour Vente faite du pere à fils, il n'est rien dû, parceque le fils y auroit succedé — mais c'est contre la regle — Nos Coutumes chargent les Ventes des droits Seigneuriaux sans distinction —

Decisions de Fromental. V° Lods — p. 470. —

argent prêtée. Suivant l'avis de Bretonnier. tom. 1. p. 343 — il est dû des Lods de la vente que le pere fait au fils, comme de l'expedition qu'il fait en sa faveur de quelque fonds, en paiement de l'argent qu'il lui avoit prêté. —

Questions de Droit &c par M° de la Mothe — Tit. Lods & Ventes sur question — "Lods sont ils dus de Vente du Pere à fils?" — Quoique la Loi ne presume pas de mutation de Vassal ou de personnes dans toutes les manieres de succeder, cependant, elle en presume une s'il arrive que le pere vende son bien à son fils, au lieu de le lui donner; ce qui fait, qu'à la faveur de cette mutation les lods sont dus par le fils des heritages que lui a vendu son pere. — Arret du 29 Fev. 1649. & une Sentence de Lyon du 29 Juin 1643. conf. par arret du 12 Juillet 1650 — rapporté par Henrys & Bretonnier Tom. 1. liv. 3. ch. 3. quest. 44. —

Hervé - Theorie de matières feodales & Censuelles -
3e. Vol. p. 126 - 131 -

Puis que tout Contrat qui a veritablement la nature et l'effet d'une Vente, est equipollent à la Vente et donne ouverture au profit de Quint, il faut regarder comme tels -

p. 131 - 6e - L'alienation qu'un pere ou une mere fait à prix d'argent à son enfant - de la même maniere qu'à un etranger; une pareille alienation ne doit pas être regardée comme un Simple accommodement de famille, ni comme une Succession anticipée - C'est une vraie vente qui doit être sujette au profit de Quint comme les ventes entre etrangers y sont sujettes. -

Renauldon. Dic. des Fiefs. Vo Lods & Ventes - No. 204 - p. 65 -

Il n'y a pas aussi lieu aux Lods & Ventes lors qu'un pere fait une donation à son fils à la charge de payer ses dettes &c — Dissert. if a Stranger -

But he says. p. 66. Si le fils, Créancier du pere - prend du fond en paiement, il doit les Lods & Ventes quia tunc filius, non ut filius, sed tanquam extraneus, acquirit Henrys. Tom. 1. liv. 3. ch. 3, quest. 44. -

See Henrys at place cited - where arguments on both sides are fully stated -

Renauldon. Tr. des Droits Seigneuriaux liv. 2. ch. 2. p. 164.

Here it is to be observed that the land is not given subject to the charge of paying a certain sum to the donor, or paying certain debts due by him — but the land is conveyed, & alienated — that is sold to Defendt for a certain sum of money — and part of this money only is given in avancement d'hoirie, & by giving a part, the rest is understood not to be so given, but to be for the valeur or prix of the land — the Defendt would owe no rapport to his Co-heirs in the Succ. of his father but for the part he was so paying —

Pocquet p. 184 — en arret

"The words of the contract are — cedé, quitté dès maintenant & a toujours, &c" un arpent & demi de terre sur laquelle dte terre les dits Cedans lui font valoir la somme de cinq mille livres, sur & en deduction de laquelle dite somme ledit futur epoux retiendra par devers lui, celle de 1500 livres, dont les dits Cedans, ses pere & mere, lui font donation en avancement d'hoirie, & dont sera tenu faire rapport à leurs successions futures — & les 3500ᵗ restant, ledt Jnpte Beauchamp futur epoux, sera tenu les bailler & payer aux dts Cedans ses pere & mere, en quatre paiemens &c — Et ladte terre demeurera propre audt futur epoux, & aux siens de son coté & ligne". —

This Cession must be considered as a Sale to the Son

1. Duplessis p. 87. ch. 2 Sec. 1re

c'est-pourquoi toutesfois & quantes qu'on voit un Contrat d'alienation d'heritage, ou il y a prix, ou chose equipollente & reductible en prix, il faut dire, que c'est une vendition, dont le quint, & les ventes sont dûs au Seigneur —

L'avancement d'hoirie est une Succession anticipée,

dans

Lwoisier p. 189. 90. dans laquelle le fils est considéré comme heritier presomptif de son pere, et recoit en cette qualité l'heritage qui lui est donné — par conseguent doit être exempt de droits feodaux —

—

Denizart. V° Lods. N° 47.—

Mais quand le pere, debiteur de ses Enfans, soit pour emprunt, qu'il leur a fait, soit pour les reprises de leur mere, soit pour reliquat de compte de Tutelle leur cede et abandonne, par forme de vente, des heritages qui lui sont propres, pour demeurer quitte envers eux, les droits Seigneuriaux sont dus; et on ne pourroit les refuser, que dans le cas ou l'abandon seroit fait ~~pour s'acquitter~~ par forme de demission ou de Donation ou lorsque la Cession seroit faite pour s'acquitter d'une liberalité promise par le pere, comme d'une Dot. &c

N° 48 — Cette maxime qui est certaine, est établie par Duplessis, traité des Censives, liv. 2. qui cite plusieurs arrets — par Brodeau. & Auzanet sur l'art. 26 — de la Coutume de Paris — par les auteurs des Notes sur la Coutume d'Orleans & autres —

N° 49 — C'est aussi ce que la Cour a jugé de nos jours par deux arrets modernes —

Le premier — a été rendu le 18 Mars 1735 — en la — troisieme chambre des Enquêtes, au rapport de M^r Doublet & a jugé que la Cession & le delaissement faits par une mere à sa fille et à son gendre d'une maison située dans la Coutume d'Orleans, pour demeurer quitte envers eux d'une somme qu'ils lui avoient prêtée — doit une vente dont les droits étoient dus au Seigneur —

Le second —

Contrary to these cases in that cited under
N°. 50 — & relied on by Defendt — as in point

There is a distinction taken between the clauses in a donation or other deed by the father to the son, whereby the son undertakes to pay a certain sum to a third person as a debt due by the father — & to pay that sum to the father himself — in Poth. Pers. p. 1. ch. 5. p. 153. 4 —

Poth. Cout. D'Orleans — Introduction aux Coutumes p. 29 —

Heritage donné en paiement de la somme promise en dot — &

Observez, que si l'heritage etoit cedé a cet enfant pour une somme plus grande que celle qui lui etoit dû pour sa dot — l'heritage ne seroit propre qu'a proportion de ce qui etoit dû pour la dot, & acquet pour le surplus.

Wilson Roberson & Co
Malcolm M. Donell & Ors

on question whether a mistake of name of one of Plffs in entry up final Judgt 3 Oct. 1812 can now be corrected — & by other Judges than those who sat in Court

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see 4. Taunt. Rep. 875 —
Bail pcss amended by supplying name from Charles to John. —

4 M. & Selw. 94 — Judgt amended in a Subsequt Term

2. Sellon's Prac. 408 —
admitted — held to be within the sound discretion of the Court, & for the furtherance of Justice —
Ld Kenyon. 7. T. Rep. 703. —

Dec. Droit de Fer. vs Erreur de Calais —

Repse — vs — Sentence —

1 Taunt. 227 — Man. v. Calvert & another —
In Scire facias agt the bail, if there be a failure of the record, through a mis prision of the Officer of the Court the Court will permit the Recognizance to be amended. —

see here - Opin. of L. Mansfield —

Valin
&
Dezen
&
Valin oppt

The Pltff obtd a Judgt against the Defendt on the 19th June 1819 - for certain arrears of a rente & pension viagere, and on 7th July after sued out an Exon thereon, returnable 1st Feby. 1820. —

~~On the 11th October 1819. after seizure & advertisement of sale of the Lands &c~~

By virtue of this Exon, the Sheriff seized the Lands in question and advertised the Sale thereof to be had on the 30th day of November after — by advertisement in Quebec Gazette of 24 July 1819. —

On 11th October 1819. the pltff filed an opposition vs. the Sheriff, afin de charge, claiming that the land in question should be sold subject to the charge of the rente & pension viagere — return made in Court on 12th Oct. — On the 16th day of October, Instt. was rendered, supporting the opposition, ordering sale of Lands subject thereto —

On 21st October new Exon was sued out, directing sale to be made subject to the charge of the Rente & pension, returnable 1 Feby 1820 —

On 14th Feby. 1820 — the Sheriff returned that he had sold the land subject to the charge in question to one Etienne Daigle, for £50 — but that he could not return the money, as the purchaser had not paid same —

† That he had by his advertisement notified such sale to be so made

On 16th Feby. 1820 — Order for sale of Lands at the folle enchere of the Sr. Daigle —

On 26th Feby. 1820 — a new writ of Vend. Exps. was

was sent out in conformity to this order Ret.d 1 April. 1820.

On 20.th March 1820 – the lands were sold, in conformity to this writ & subject to the above charge to one Louis Plamondon for £3 –

On 24 March 1820, Mr Debartzch filed his opposition to granting a title to Plamondon under this Sale – and in consequence on 29 March, the Sheriff made his return to the Court, –

The moyens filed by Debartzch in support of his opposition state –

1. That this lot of land is situated within his Seigniory –
2. That there is due to him thereon for Lods & Ventes & other Seigneurial rights a Sum of £56. 4. 8 –
3. That by Collusion between Plff & Defendt a Judgt. was obtained on 16.th Oct. 1819, whereby it was ordered, that the land in question should be sold subject to the rent & pension Viager in favor of the Plff which Judgt – by reason of the opposants interest in the thing sold, was not de plein droit in regard of him – That as a privilege exists on the s.d Land has a right to have the said Judgt set aside, and declared null, as also the Sale and adjudication made of the s.d lot of land in consequence thereof to the said Louis Plamondon, as otherwise the S.d Oppost would be deprived of his rights & thereon claims. That a new Sale be had &c –

a Creditor may propose reasons of nullity agt. a Decret but this is received only where all necessary formalities have not been observed — even according to the authorities cited by the Oppost —

Have all necessary formalities of the Sale been here observed? The formalities required by the Ordre of 1785. Ch. 2. S. 33. are —

1. Seizure by the Sheriff — on a certain day
2. advertisement of Sale 3 Several times in the Quebec Gazette ~~of a certain day~~ to be made after the expiration of 4 months, from the date of the first advertisement
3. He shall proclaim the Sale at the Church door of the parish in which the premises are situated, immediately after divine Service, on the three Sundays next preceding the Sale
4. A copy of the said advertisement to be fixed on the door of the parish Church —
5. A Sale so made by the Sheriff, without any other formality, shall have the same force and effect, as the decret had heretofore —

Can the Opposant be received to contest the validity of the Sale where these formalities have been observed even upon the supposition, that the right claimed by the Oppost of having the land sold subject to the charge of a rente & pension, was not such, as by law ought to be considered as a charge réel on the same —

I do not see that it is anywhere required that the conditions of the Sale, should be published, or made known by any advertisement — and the usual course is, I believe, to make them

them servants at the time & place of the Sale —
See however: Duplessis — Des Saisies Reelles — p. 635.
Ch. 5 — "Il faut aussi expliquer les charges auxquelles
l'adjudication se doit faire, comme des rentes foncieres &
autres — But observe this is part of the formality
required under the Congé d'adjuger, which we do not
follow —

The following questions submitted to the Judges by His Ex.y the Governor in Chief, touching the trial of Marine felonies in this Province —

1 Whether the Stat. of 11 & 12 Wm 3. is, or is not in force in this Province? —

2 If it is in force then whether under the said Commission issued in 1802, a Court legally can or cannot now be convened? —

3 If it is not in force, then what is the legal course for the trial in this Province of murders & other felonies committed on the High Seas? —

Here arises the consideration whether the introduction of the Criminal law of England by the St. 14. Geo. 3. can be held as abrogating the particular Stat. of 11 & 12: Wm 3. wh had been made for the Colonies —

19 Viners Ab. Tit. Statutes — p. 519. N.o 85.

When two Statutes cross one another, and no clause of non-obstante is contained in the 2.d Stat., so that the one may stand with the other, the exposition ought to be that both stand in force — ℔ Dyer. C.J. Weston's case

Id. N.o 86. If laws and Statutes seem contrary to one another, yet if by interpretation, they may stand together they shall stand ℔ Dodridge J. who said it is a rule in law. King v. Foster

Id. No 132. p. 524

It is a rule that, "Legis posteriores abrogant priores" but though this holds in thesi, yet it does not hold in hypothesi, if the last act be not contradictory or contrary to the former — but if it be only so far differing or disagreeing, that by any other construction they may both stand together, it is otherwise, and so is Dyer

see on note —

A later Statute in the affirmative shall not toll a former act, especially if the former be particular, and the last general. 6 Rep. 19. (b) Gregory's case —

as to the rule — "Legis posteriores abrogant priores" This is a true rule — but repeals by implication are things disfavoured by Law, never allowed of, but where the inconsistency and repugnancy are plain and unavoidable — In these repeals carry along with them a tacit reflection upon the Legislators that they should ignorantly and without knowing it, make one act repugnant to and inconsistent with another, and such repeals have been ever interpreted so as to repeal as little of the precedent law as possible 10 Mod. 118 —

6 Bac. Abr. Tit. Statute. p. 372. in fine & 373 —

But subsequent Statutes which add Cumulative penalties and institute new methods of proceeding, do not repeal former penalties, and methods of proceeding

ordained by preceding statutes without negative words. — no hath a later act of parliament ever been construed to — repeal a former act, unless there be a contrariety or repugnancy in them, or at least some notice taken in the former law of the preceding one, so as to indicate an intention in the Law makers to repeal it — Neither is a bare recital in a statute without a clause of repeal, sufficient to repeal the positive provisions of a former Statute. —

But the law does not favour a repeal by — implication, nor is it to be allowed, unless the repugnancy be quite plain, for as such repeal carries with it a reflection &c — (2u) Viner —

On the other hand see — Com. Dig. vol. 5. Tit. Parliament. (R. 9). p. 249. —

If if a Subsequent act be <u>contrary</u> to a former in <u>matter</u>, it shall be a repeal of the former, tho' the words be affirmative — as St. 1. & 2. Ph. & M. 10. that at all trials for treason &c shall be according to the Common Law — is a repeal of the St. 33. Hen. 8. ch. 23. — That any examined before the Kings Counsil who confesses Treason &c shall be tried in the County where the King pleases. R. 11. Co. 63. (a).

Gaoler — is an officer of the Court & subject to its orders —

Impey's Sheriff. p. 51 —

The Sheriff and Gaoler are each of them so far under the regulation of the Court of Kings Bench, that they will compel the Sheriff to assign prisoners &c — and the Gaolers to surrender up goods —

Gaolers are not only punishable by Attachment, as all other officers are by the Courts to which they more immediately belong, for any gross misbehaviour in their office or contempts of the Rules of such Courts; but they are also punishable by any other Courts for the disobeying writs of Habeas Corpus awarded by such Courts and not bringing up the Prisoner at the day prefixed by such writs — 3. Hawk. P.C. ~~57. c. 31 — ch. 22. s. 31.~~ 2d. comp. — 3 Bac. abr. p. 350. — 2 w. 2. ch. 22. su 31. p. 288 —

3 Bac. Abr. Tit. Gaol & Gaoler. (D) p. 349 —

A Gaoler is considered as an officer relating to the administration of Justice

Also it seems that the Court of Kings Bench which has a general superintendency, over all persons who are in any respect, Ministers of Justice, may award an Attachment agt. any gaoler using a prisoner barbarously or inhumanly
3 Hawk. Su. 32. p. 289.—

1 New Reps. 122. Parsons v. Salomon.—

Chambers J.— The act of parliament requires payment to the Debtor — but the Courts in construing the act, have considered payment to the Turnkey as payment to the Debtor.—

See also.—

Obadiah Aylwin
Austin vs Cuvillier

20 Novr. 1816 — By Judgt in Court of appeals, the Judgt of K. B. Montreal of 19 June 1816 was reversed and Judgt rendered for £272. 4. 9 wt interest from the 16 Febry. 1807 & Costs

13 Dec. 1816. Exon was sued out —

31 March 1817 — The Sheriff made his return, stating an opposition to the Seizure — This return was afterwards amended, ~~and~~ on 16 Oct. 1819. —
~~16th Oct. 1819~~

29 Oct. 1819. alias Exon —
9 Dec — Sheriff's return with opposition annexed

13 Janv. 1820 — Moyens filed —

1. Exon. not sued out within year & day after Judgt
2. The proceedings for contempt par corps have no relation to the Exon sued out on 13 Dec. 1816 — so as to extend the effect of it —
3. No order granted by the Court for suing out Exon of 29 Oct. 1819
4. That the Debt for wch Exon was sued out, has been paid —
5. That the Judgt has been transferred by Ob. Aylwin to a third person not before the Court, viz: to Th. Aylwin
6 & 7. That Plff has no interest in Judgt & not entitled to demand payt thereof —

The three first of them reasons were dismissed & the parties admitted as to two of the others —

On 6th April 1820 Appt. obt. leave to sue out a Comm. Rogr. to ex. Plff. or suit sentinels at Boston — ~~& also another Comm. to ex. Witl at Dubuque~~ —

The Plff refused to answer —

Barnard Lab
&
Mombrun
&
Beck. Intus

action ag^t Custom House Officer

Leglasse vs Champante
2. Str. 819 —

The pltff brot an action ag^t the Defd^t who was a Custom-House Officer, for seizing several hogsheads of French Wine upon pretence of their being lees, which upon an information in the Exchequer, had been determined against the Officer — And now upon debate it was held, that in these cases, the Officer seizes at his peril, and that a probable cause is no defence —

Sed. Vid. 12. Vin. 173. —

Howard
vs
Allen

Record in cause on Capias and out by Defd^t ag^t Pltff — evidence in favour cause for malicious prosecution —

Phillips Ev. 297
Bull. N. P. 230. 231 (a)
Peake Ev — 38 —

№695

Dixon
~
Finchley

action for passing Defendants boats through certain locks & Sluices constructed by Pltff at the rapid in the River St Lawrence in upr. Canada, whereby the navigation was improved, and the facility given for passing boats & batteaux at that rapid — The declaration contained also several money counts —

The Defendt pleaded non-assumpsit — and that the matters & things contained in the Pltffs. declaration were not sufficient to entitle him to maintain his action —

The facts in evidence were that about 20 years ago there were no locks & Sluices erected at this rapid & boats passed there with facility & without risk — that the Pltff having erected a mill at this rapid, did for the use & convenience thereof erected a certain dam qr. enclosed a part of the said rapid, so as to impede the navigation, but at the same time, he erected a Sluice & lock through which boats were conveyed with more expedition & safety than formerly — That there was pr. to Pltff for keeping up their locks & Sluices & for furnishing persons to aid in passing the boats a sum of 5/ per cask — The Defendt as was customary sent his bons with his boats, qr. were stated in this way — "Good to Mr Dixon "for passing one of my boats — and — Mr Dixon will please "allow one of my boats to pass" — Those bons are now produced in support of the demand —

From the nature of the issue in law between the parties it comes in question, how far the demand as stated by the Pltff in his declaration is a legal & sufficient demand, as nothing special is alledged by Defendt. to bar the action, his plea is rather in the nature of demurrer to the declaration —

The first count in the declaration states — That whereas on the first day of Augt. 1817, at Cornwall aforesaid in Upper Canada the said Pltff had at great expence, caused to be made, built and constructed at a place called Moulinette-rapid on the bank

L

of the River St Lawrence, certain works, sluices, locks & flood gates for facilitating the navigation of boats & batteaux on the said River at the said rapid, called Manlinette rapid, whereby the navigation of the said boats and batteaux was greatly improved, and the persons navigating the same, were enabled by passing through the said works, sluices, locks, and floodgates to ascend the said rapid with ease and comfort, and with much less risk, trouble, and less expence and loss of time than before the construction of the said works — That the said Defendt well aware of the ~~said~~ advantages resulting to him from the said works &c for the navigation of his boats & batteaux &c did request &c ———

It must be admitted in law, that if a person erects a nuisance whether in a navigable river or else where, however useful to the public, yet he can maintain no action at Individuals, for the benefit derived therefrom —

Has the Plff shown by his declaration here that the works sluices & floodgates be erected ~~were~~ nuisances, or can be so considered in law —

Wm Warwick
& Wm Ermatinger

Trespass & damages —

Exhibits filed by Pluff

No 1. Saisie Gazerie at Suit of Pluff. agt Marie Bouché alias Maria Lawrence, Spinster — for hour rent — to 9 — dated 10th Janv. 1818. —

No 2. Judgt at Suit of Pluff agt said Marie Boucher alias Marie Lawrence, fille majeure — dated 23d Janv. 1818 — to 9 — & 16/8 cost — orders that Defend. quit poss. immediately on 14th March 1818 — above Judgt sign? on Marie Boucher — by Adams, bailiff —

No 3 Execution on above Judgt — dated 28th Febs 1818 — Procès Verbal of saisie & list of effects seized annexed dated 14. March 1818 —

No 4. Writ of possession — dated 18 March 1878 — with bailiffs return thereon stating exon thereof — dated same day —

No 5. an action and Saisie — Revendication by Angelique Lafresniere agt. Pluff and austin Adams — writ dated 21 March 1818. — Sheriff's return annexed, dated 1 Apl. 1818 — By bailiffs P.V. annexed. this was executed 28 March

No 6. Judgt. of K. B of 3d Febs. 1819 — by default action of Angelique Lafresniere agt. Pluff & Adams — was dismissed — Copy served on Defendt — 24 Septr. 1819 —

No 7. Exon issued out by Pluff & Austin Adams for costs on Judgt, dated 3d March 1819. —
Sheriff's return of Nulla bona thereon. 26 May 1819.

No 8 — Vend. Exp. on Bailiffs return to Exon issued out on Judgt in Inferior Court of 23d Janv 1818 — This writ dated 9th June 1819. — Return. Goods could not be found

The facts of this case were that on 10th Janv. 1818, the Pltff sued one Marie Boucher, alias Maria Lawrence of Montreal, Spinster, for a debt of £9 – for house rent, for securing of which a Saisie Gagerie was sued out — And sundry moveable goods effects were thereby attached and seized by the bailiff Adams —

On 23d Janv. 1818 – Judgt was rendered in favor of the Pltff by default of the said Marie Boucher, alias Maria Lawrence for £9 – for house rent, &c. Costs, and it was ordered that she should immediately quit and abandon the house & deliver it up to Pltff, failing of which Pltff was authorized to put her out of poss. & throw her effects into the Street — works is &c in regard of the Saisie Gagerie.

On the 28th Febry 1818, the Pltff sued out execution on the s. Judgt – and on the 14th March following the bailiff Adams proceeded to put it in execution — On the same day the said Bailiff served a copy of the Judgt of 23d Janv 1818 on said Marie Boucher alias Maria Lawrence, inviting her to leave the house immediately — The bailiff seized the effects then in house as stated in his P. Verbal. —

On the 18th March 1818. the Pltff sued out a writ of poss. agt. sd Marie Boucher, alias Maria Lawrence, whereby she was turned out and the Pltff put in possession of the premises ~~& of~~ the effects under execution remained. — of this the bailiff made his return. —

On 21 March 1818, Angelique Lafrenier sued out an action of detinue agt Pltff & Adams, together with a Saisie Revendication, — and on 28th March – proceeded to put this writ in execution, by forcing & breaking open the doors of the house of Pltff was then in the poss. under the aforesaid writ of possession, – all the effects found in the house was attached under this writ, and delivered over to Pierre Lachapelle dit Bosqué and Olivier Faignant, as Gardiens —

to be

be by them kept and detained, until required to deliver up the same, either by the Court, by the Sheriff, or by the Serjeant Bailiff Joseph Labadie —

On this writ the Sheriff makes his return to the Court that by virtue of the said attachment he had seized in the possession of the Pltff. Wm Warwick & Austin Adams in the said writ named; as belonging to Angelique Lafresniere in the said writ also named all and every the goods chattels and effects mentioned and contained in a certain Schedule, (thereunto also annexed) which he held ready to abide the order of the Court — and that he had summoned the parties &c —

On 3d. Feby. 1819, the suit so instituted at Pltff & Adams was dismissed with Costs, for want of Security for costs —

On 3d. March 1819 — the Pltff sued out execution on this Judgt. for his costs - taxed at £17 — and on 26th. May following the Sheriff returned Nulla Bona. —

On 9th. June 1819 — the Pltff sued out a writ of Vend: exponas, for the sale of the effects which had been seized under the writ of Execution on the Judgt. of 23 Janry. 1818 — The Bailiff returned — That he had called on the Sheriff, who had dispossessed him thereof under the above writ of Saisie - Revendication, who had refused to give him any answer respecting the same & that the said goods could not be found — In consequence the present action is brought for damages £100

2nd. How far the Sheriff is liable under these proceedings?

It appears, that in fact, Marie Bourbon alias Maria Laurence is the same person, and known by the name of Angelique Lafresniere —

Pre Quesse & ux
Pre Quesse fils } action for payt of arrears of rente & pension
Val' viagere —

Declaron states, that by deed of Donation made & executed
befor Me Bean Notary pub. on 15 April 1816, they gave & granted
lot of land therein described, on the conditions therein mentioned
and among other things to pay them a certain rente & pension
viagere — and on condition that the Donee should not have
power to alienate or transfer the Estate so given without the
express power & authority of the Donors —

That by deed of sale bearing date 29 April 1819 the
Sr. Pre Quesse w the consent of the Pltff sold & alienated
the said lot of land to Jos. Chapdelaine & his wife on the
condition among other things of paying to the Sd Pltff the
aforesaid rente & pension viagere. —

That on the 29e Septe 1819 — certain arrears became
due to the Sd Pltff of the said rente & pension Viagere as
~~claimed~~ in Statement annexed to Declaration to the amount
of £36. 16. 8 —

That on 18 Octe 1819, by act passed befor Duplessis
and his confrere notaries, the said Jos. Chapdelaine,
& wife sold and alienated the said lot of land to one Jean
Baptte Gendron, on condition among other things of
paying to the said Pltff the aforesaid rente & pension
viagere to the Sd Pltff in such manner that they the Sd
Chapdelaine & wife should not be troubled in respect
thereof & particularly the aforesaid arrears so become due
on the 29e Septe 1819 — in consequence of which sale the
said Gendron became possessed of the Sd lot of land &
now holds & possesses the same —

That

That the said Chapdelaine wife have hitherto refused and neglected to pay to the said Plff. the aforesaid arrears of rente & pension become due & payable as aforesaid on 29 Sept 1849, and that the Plff. have received nothing from the said Jn Bte Gendron on account thereof — wherefore the Plff. ~~as entitled to~~ demand, that the said Chapdelaine wife be condemned to pay to them the aforesaid sum of £36. 16. 8 and a further sum of £3 — for a vache laitier making in all £39. 16. 8 with interest & Costs — And further that the said Jean Bte Gendron be jointly & severally condemned with the said Jos. Chapdelaine wife to the payt. of the aforesaid sum of money, and this by reason of his being the possessor of the aforesaid lot of land which is specially bound and mortgaged to the payment of the aforesaid lot of land (unless the said Jn Bte Gendron prefer to quit and abandon the said lot of land within 15 days) with interest & Costs as aforesaid — The Plff concluding that on default of the said Defendrs paying & satisfying to them within such delay as shall be fixed and appointed by the Court, the aforesaid deed of Donation so made by the said Plff. to Dr Dussé fils, and the deed of Exchange made between him & the D. Jos. Chapdelaine wife, and the deed of sale by the said Jos. Chapdelaine wife to the s. Gendron, may be declared to be rescinded, annulled and made void between the parties respectively, and the D. Plff. restored to the possession of the aforesaid lot of land to hold and enjoy the same, in the same manner as if the aforesaid deed of Donation had never been made & passed by them — with Costs —

Plea of Exceptn en droit — by Chapdelaine & Gendron —

That Pltffs cannot have & maintain their action aforesaid agst the sd Defendts in manner & form &c — because they say, that the said action is irregular & insufficient inasmuchas the Pltffs join two, different demands or rights of action, which by law cannot be joined, and which are incompatible and inconsistent — inasmuchas part of the Pltffs demands of the sd Chapdelaine & wife is a pn a personal right or action, & that of the said Gendron is an hypothecary action & not of him as possessor of the land in question — and further that the matters and things contained in the said declaration are not sufficient in law to authorize the sd Pltffs to demand or obtain that the aforesaid several acts of Donation, exchange & Sale mentioned in the said declaration be rescinded and annulled, or to compel the said Defendts to quit and abandon the poss. & enjoyment of the aforesaid lot of land, in manner & form as demanded by the sd Pltffs —

Answer to sd Exception joins issue thereon —

Deschamps
Cur' &c
vs
Turgeon

action for rent & pension reserve

Antoine Deschamps as Curator to Amable Deschamps an interdicted person, and Victoire Beaupré, wife of the said Amable Deschamps, authorized to prosecute the present action by the authority of one of the Judges of the Court — Stat by their declaration — That by deed of Donation bearing date 28th April 1804, Augustin Beaupré & Magdeleine Limoges his wife, did amongst other things give and grant to the said Defendant a certain lot of land therein described, as being of certain measure and extent except the front which they warranted to contain 36 feet, with the houses & buildings thereon erected, in consideration of a certain rente & pension to be paid by the said Defend.t to the said Donors during their life time, and further to pay to the said Victoire Beaupré during her life time a certain annuity of ten pounds ℔ annum, the said annuity to commence & be paid from & after the expiration of one year from the decease of the ~~said~~ Survivor of the said Donors That the Survivor of the said Donors died on the 21 Janv.y 1816, so that on the 22d day of Janv.y 1817, one year of the said annuity became due to the said Victoire, and another became due on 22d Janv.y 1818 — Then two annual pay.ts the Defend.t has satisfied, but the two payments since become due to wit on 22d Janv.y 1819 and 22d Janv.y 1820 — he refuses to pay, amounts to a sum of £20 — Thereupon —

Plea of Exception — That there is a deficiency on the front of the lot of land in question of 36 feet, which diminishes the value of it at least five hundred pounds Curr.y — That by the aforesaid deed of Donation the said Donors stipulated and agreed to give & did thereby & thereby give to the Sd Defend.t all their moveable

property

property of every description comprehending their tools of their trade, ~~[illegible]~~ they then held, or might acquire & possess ~~at the time of their decease~~, without exception or reserve, and without power to sell or dispose thereof — Yet that the said Augustin Beaupré, by act made & passed the 16th Octr. 1804 before Desfault, Notrs, made a gift of certain movable property & effects therein mentioned, to the value & amount of £72 Cy to the said Victoire the Pluff — and further about the end of the year 1804 the said Augte Beaupré made a gift of certain implements and tools of trade to one Jean Dijon to the value of at least £40 — and as the heirs and succession of the said late Augustin Beaupré are bound and liable to account to the said Defendt for all the goods chattels & effects so given by the sd Beaupré, & also to pay to the sd Defendt the value of the defficiency on the said lot of land — and as the said Victoire Beaupré is the sole and only heir of the said late Augustin — Beaupré & of the said Magdelen Lemoyne, the Defendt is entitled to set up his demand against the sd Victoire for the payt of the said several sums amounting to £612 Cy — & for effect he sets up his Incidental demand