A.

B.

C

D

F

H.

I J.

K.

Kerr. — & Hondlow. — 72
Knaff. — & Jones. — 108
Kung. — & Groux. — 123 128 133
King. — & Drouin — 130 155
Keyes. — & Lesperance. — 132 154.
Kimball — & Barnard — 151
King — & Drouin — 155
Kimbut — & Nawzy — 191 205

L.

Legris. — & Legris & E Cont. 3 4 37 42
Levee. — & Chenier. — 17 55 64
Lespailleur — & Jurgeon — 17
Longueuil — & Henry & al. — 21 44.
Lacombe. — & Buxton & Intw 32 61
Lanctot. — & Dugas & Lanctot 39 44 85 109
Luke. — & Spencer. — 41
Lacombe. — & Mabbut. — 62
Levac. — & Chenier. — 77
Laing. — & Watson. — 78
Longueuil. — & Trichette — 78
Lussier. — & Perrault. — 78
Lemai. — & Jossey. — 87 113
Lahaye. — & Spinard & al. 91
Lespailleur. — & Jurgeon & opp. — 97 113
Leonard. — & Reginbal — 98
Lussier & Co — & Allison & al. — 107. 112
Lavoie. — & De Longueuil 109
Lanclot. — & Dugas & opp. — 113
Lacroix. — & Manchester — 118 129 173
Lemire & Marsolet & Archambault 138 148 155
Lang. — & Stevenson — 163 169
Lawson. — & Hemeau & us 96. 168
Lussier & al — & Perrault & al 170 205
Laberge — & Newcomb & Co 178 202
Lefevre — & St. Marie. — 182
Leblanc. — & Beaudry. — 185 201
Lebeau — & Lebeau — 187 203
Leroux — & Lebeau — 191 204
Laperriere — & Larocque — 201
Lemoine — & Brisset — 202
Lacroix — & Charles — 207

M

N. O.

P.

Q. R.

V. U.

Valade. — Yule — 49 61
Varin. — Bleakley. — 70 73 77 87
Valiquet — Valiquet — 100 112 179 202
Varin. — Bleakley Can. 105 110 113

W.

Willard — Dewitt. — 11
Wright & al' — Alger — 50 54
Wilcox — Skinner — 58
Watson — Heath & Mills & ux. 60 116
Warwick & al'. — Babcock — 70 86.
Winters — Raymond — 84 112
Welch — Clarke — 108
Wingate — Dillon & al — 167
Wedgewood — Sharpe — 181
Whitney — Ingalls & opp^t — 198 208
Woodhouse — Stanley & L. S. 26. 205
Watson — Heath & ors/s — 199 203
Wirtele — Desiel & Perrault 207

X.	Y.

February Term. 1819.—

Monday 1st. Febry.—

Present
The Chief Justice.
Mr. Just. Reid &
Mr. Just. Pyke.—

No. 708.
Gendron
Pelletier

On Pltf's mo. for Judgt. on verdict wt. full Costs
Bourré for Defd. objects to the allowance of Costs.—

No. 702.
Wm. Scott
Wm. England

On Rule obtd. by Pltff on Sheriff why he should not be held to return the sum of £13. 8. 8 levied by him under the writ of execution sued out in this Cause—

The Sheriff stated, that the property in question was sold subject to the payment of a debt to the Pltff himself and it would be depriving him of his fees, if such Sale could be made without allowing him his fees on the whole amount of the Sale.—

Tuesday 2. Febv. 1819.—

No. 724.
McKay &c.
v
Fr. Germain

On Pltff's mo. for trial by Jury on 13th inst.
Sherwood for Defdt objected to want of notice of the motion inasmuchas the notice he rec'd contains no day on which he intended to move the trial, whereas the mo. now made is for a specific day.—

No. 471.
In re Crawford
v
James Kelly

On Defendants motion that process be quashed inasmuchas it is in the French language and not in the language of the Defendant—

Borton for Defdt. The Ordce of 1785 requires that writ of Summs be in the language of the Defendt— This Ordce has not been changed by the Stat. 41 Geo. 3d—

Bender for Pltff. The Defendt may be sued in either the French or English language without distinction, & the Ordce of 1785 has been abrogated by the Stat: of 41 Geo. 3d—

Wednesday 3d. Febv. 1819.

No. 471

Jno. Crawford vs James Kelly

The Court req. of Defendt to lay something before the Court to shew the fact of the language of Defendt either by affidavit or otherwise.

No. 724.

McCay vs St. Germain

The Court considered the notice of the motion given by Pltff to be sufficient, and directed Defdt to answer.

No. 115.

Jn. B. Legris & Jn. B. Legris & Econtra

On defendants mo. to be admitted to file an Incidental demand

Rollin for Pltff. The mo. irregular & too late, as an Incidental demand has been already made by the Defendt and an enquête had thereon.

Roi for Defdt. The Incidental demand arises in consequence of a discovery made by the defendt. of the existence of a mortgage on a lot of land sold by Pltff to Defdt and this since the enquête had in the Cause. that an Incidental demand may be formed in any stage of a Cause under the law.

Thursday 4th. Febv. 1819.

№ 115.

In Bc Legris.
In Bc Legris pls
& Contra —

The Court were of opinion that as the Defendt shewed nothing by affidavit or otherwise to ascertain the facts of the reputed, rejected motion —

Gurs. —
v
Rivers. —

As Defendant did not answer upon oath, that he did not understand the french language, a day was given to him to appear & answer to the Interrogs as proposed — The Court however intimated, that the Pltff would proceed at his risk, as in Case the Defendt should appear and answer upon oath that he did not understand the language of the Interrogatories, the Pltff could derive no benefit from it.

№ 280

Peter Grant
In. Mc Intosh
and
& Contra.

On motion on behalf of John Richardson & Thomas Thain, Special bail in the Cause, that an Exoneratur be entered on the Bail piece or record in consequence of the death of the principal.

Sewell for the Bail. the Bail can come in at any time & make a Surrender or be relieved otherwise — 6. T.R. p. 247. Wood. v Mitchell. — The Bail came forward in person & make this motion, and may employ Counsel to do so. —
Tid. Pr. 242. 3. & 4 — 6 T.R. 287. Cases when exon. was granted on death of the debtor. 2 Str. 1270. Richardson v. Selby — 1 Str. 443. Everett. v. Gery — 4 Esp. N.P. 228. —

Mr Stuart. The bail can do nothing at this moment to exonerate themselves further than they have been done by the act of God - the proper time to propose the objection is when sued by Pltff as the Bail - The Court at present can exercise no Incidental over the question, it is premature - an issue may be raised upon it and a trial had to settle those facts - but here the bail are no parties to this Cause and can raise no issue, and much less proceed to try an issue on a motion -

Sewell in ans^r - This is the Course in England - it is not necessary that the bail should wait till they are exposed to an action - as they would there be liable to the Costs -

---

No 344.

Wm McGillivray dal' } action for
Jos. Legard Parisien }

Stuart for Defd^t - action cannot be maintained as it is instituted by Pltff as agents of other persons namely the N. W. Co. -

Rolland for Pltff. The action is not instituted by Pltff as Agents, but in their own names & rights - 2 Com. on Cont. p. action lies ag^t an agent -

Over till to morrow -

No 394.

Wm Jones } action on deed of sale -
Ellison Fowler }

Stuart for Defd^t - There are incumbrances on the Estate sold, which the Pltff must clear off before he can obtain Judg^t - refers to case of Shuter v Thayer -

Boston

Boston for Pltff - There is sufficient in the hands of the Defendt to answer all demands for Lods & Vents which may be due on the premises -

---

№ 213.

John Charles
Richd. Bull
& Gordon et al
Guardians

On Rule agt the Gardiens why they should not Deliver up certain articles committed to their charge - or pay the value -

Boston for Pltff - The Gardiens ought to be held to pay the highest value for the articles seized -

Rollard for Guardiens - the Guardiens ought to pay no more than the true value of the articles - as to the two Cows, they are still in their hands & can be delivered up. & they ought to have the alternative to do, or to pay the value -

---

№ 863.

Benj. Phelps
John C. Bush

Action to recover amount of certain quantity of timber, adjudged to Pltff.

Boston for Defdt proof insufficient - no proof of the execution of the bond to the Sheriff, nor of the assignment -

Stuart for Pltff - there is no contest on these facts, as the only question between the parties was in regard of the value of the timber - and was so admitted -

Case to stand over

№ 271

Ermatinger
~
Perrault et al

On Rule to shew Cause, why the order of the Judges at the enquête, rejecting the testimony of Austin Cuvillier, should not be revised, and the said Austin Cuvillier ordered to be examined as a Witness

Rolland for Plff. Cuvillier altho' husband of Defts was her agent, therefore a good Wn 1 Esp. N. P. 143. — when wife was admitted a Wn ags husband in respect of nursing a child. But there is also another person Defendt in the Cause besides Mr Cuvillier — That Cuvillier cannot be examined on faits & articles. — As to the evidence of John Fleming who declared himself an interested Wn — The action is brot ags Defendts to account for certain goods sent to them for Sale the interest stated, that he is indorsee of a note made by him to the Defendts if he has interest it is ags him, — 2 Esp. N. P. p. 703. 4. 8 Mr F. has no interest as will be made appear — he only lent his name — and has Security in hand to answer any loss — It is also a fact that at the time of the bankruptcy of Arnoud Lewis, the note in question was not in existence.

Stuart for Defts It is a general principle of law that husband & wife cannot be witnesses ags each other — no room to deviate from this rule here — expediency or necessity of the Case no cause for it — As to testimony of Fleming — it is also inadmissible — he declares himself interested — no fact laid before the Court to enable it to say that the interest is not such as to affect his competency — Should the plea of set-off be over-ruled, the liability of the Wn is evident —

№ 417.

Maurice Etis
Jos: " Etis —

On a re-hearing —
Rolland. for Plff. The Defts should com. prove lands of Pre du Ivon
Stuart — The words of Contract must determine the point of departure

Friday 5th Febr. 1819.

№ 154

J. Pothier Ex.
Le Ch. V. Foucher val'
and
H. Henry Hex. Defts
par rep. d'instance

On action for carrying into execution the Testament of the late Pre Fortier—

On previous hearing touching the objections to the testimony of certain witnesses adduced on the part of Pltff—

Vézé for Defts Fortier was twice married — had issue by first mar. the Children who are now in the Cause — he remained in poss. of all the property of the first Comty — he remarried w.out any Inventory — made a holographe testament, disposing of his moveable property in certain manner & naming Executors — and also appoints them administrators of certain parts of his real property — that is in regard of Mad. Vézé & M. Foucher — and under certain restrictions names his Children his Legataires Universels to succeed in equal shares to his Estate — as to the Legacies in money they have been paid by the heirs —...

The first exception to the action is, that the Pltff had no right alone to bring this action, as there was another exor, who he did not state to have renounced — and 3d. That if he has any action, it can be only as administrator of a part of the Estate left by the Testator —

1. That the action was irregular, so long as there were two Executors — Henry never renounced but to the right of executorship, but never to the administration — not alledged by decln that Henry ever renounced to the administration — On 3d Exc. all the parties are not before the Court, Mde Mad. Mayrand is a legatee & an heir — not in the Cause — this was necessary. 1. Pig. 387 — by Pltff. exh. № 6. They are acknowledged to be heirs by Pltff, & called upon as such — Poth. Don. p. 366. That the Settled Inventory are the same thing — & when Inventory is

one

once made, there can be no Scellé – That the Court has declared that there can be no Scellé, & thereby virtually declare that there can be no Inventory in regard of moveables – That the Pltff as Exr is not seized without making an Inventory, and in this Case he never can be seized as that Inventory has been made by the heirs – That the depot of the will is insufficient & irregular – Fer. Qu. Com. 4 Vol. p. 2 Poth. 267. Don. Test. The saisie of the Exr is only after mak3 Test. & after obstructions removed – the saisie of the heir is different, it is the operation of law & attaches at the instant of the death of the Test.r –

That Pltff does not demand to be admitted to make proof of the will – but trusts to the depot made at office of Notary – Fer. This depot is null –

That the offers made by Defend.s to furnish monies to pay the legacies, destroys all right of Pltff's action – 2. Bourj. p. ~~376~~ 376 Sec. 3. – all the fonctions of Exr cease from moment the heirs make their offer – The 15.e head of Exc.s shews that there is no conclusion in the action but for the Inventory & Scelli – upon which the Court has adjudged there remains therefore nothing before the Court upon q.s to adjudge the Court can grant nothing beyond the Conclusions – Rep.se v.s Conclusions. –

The bequests in the will are void, in so far as the property of this test.r wife is included. Lacombe p. 3 Sec. 2. v.s Less – Poth. 343. 4.e Don. Test. legacy of a thing belonging to another nor of a greater part than the interest of the Testator in it –

As to the testimony. –

The action is for the acknowledg.t of will said to have been recognized by the heirs, – That Miss Foucher's mar. was notified 10 Nov.r 1817, notwithstanding which the Pltff proceeded to marry all his wit.s between that time & the day when Mr Henry as husband to Miss Foucher took up the instance in Feby 1818. – The testimony of Mr Guy is produced

to prove the will, altho' Pltff has alledged that the will was authentic — Mr Guy produces 4 exhibits on his testimony to wch the Defts also object — this dep. ought to be rejected, as it goes to prove facts not in contest, nor stated in the declaration — taken during interval when miss Foucher was not in the Cause — Mr Guy could not be admitted to prove what Pltff declared to be already authentic — Pgs. 398.9 The papers produced by Mr Guy ought also to be rejected — they ought to have been filed in the Cause as exhibits, & not left in the poss. of Mr Guy, who was neither the deponent, nor the proprietor of them — and it appears by answer No. 42 that these papers were in the power of Pltff. & had before been in his possession — That the facts to wch Mr Guy speaks generally respect his official character the knowledge of wch he could acquire only in that capacity, & therefore could not expose them — Ferr. Pract. Not. ch. 1. p. 9. — ch. 18. — 1. Pigeau. 278. 284. also decided in the case of Mr Doucet, notary, a witness for Pltff in the Cause. — see 19. 47. & 48. questions also questions from 57. to 62. & the 81st — The letter written by Mr Henry to Mr Guy. exh. No. 4 produced by him, ought not to have been received, as it was written to him in his official character — see 74. quest. — That Mr Guy has an indirect interest in the Cause. see 19. 20. 47. & from 57. to 62. quest. he was retained as notary to do all the business of the Succession — He is the intimate friend of the Pltff. 1 Born. 212. 213 — see 110. ans. — He is the only wn upon most of the facts he speaks to — In the 85. & 102 ans. in contradiction with what he says in regard of the exh. A & C. he produces — In 50. ans. not admissible to prove that Pltff acted as Executor —

This testimony was taken when Miss Foucher was not in the Cause. 1 Pg. 342. Rep. & Reprise — The dep. of Beaubien & Franchere were closed during this time — All this testimony is therefore null as far as regards Miss Foucher, as well as

Mrs

Mrs Maynard who was sworn before the Court. —

As to the faits & articles they have been already admitted by the Court & the answers thereto in regard of the Testament must be considered the same as the admissions made by them before the notary at the time of depot. — as to Mrs Fowler She declares that she does not know the handwriting of Mr Fowler —

The answers of Mr Pothier on faits & art. cannot be admitted agt any of the parties except Mr Barron at whose instance he was examined —

Cont. till to morrow to hear Pltff's counsel

Saturday 6th Febry. 1819.

No 746.

G. Willard
vs
Wm Dewitt

Def. mo. to quash Writ & process from variance between Writ & declaration, in the one Defd being stiled a trader & in the other a Gentleman

O'Sullivan for Pltff — The Defd ought to have pleaded this by plea of abatement & not to have proceeded by mo. accords to rules of prac. p. 42. —

Mr Lussier for Pltff refuses the rules of prac. cited as applicable to the point in question. —

No 294.

John Curry
vs
John Phillips

On the defendants mo. for Security for Costs — Mr Sullivan for Pltff — Defd arrested & has not surrendered himself in Court nor given bail to the action. — No attorney can appear for a Defd in such a

case

case –

Stuart for Defr – It was essential that the appr. or non-apprce of Defr. should have been ascertained before any proceeding can be had agt. him – but the permitting the Defendr. to enter an apprce is a presumption that the Defendr. was before the Court & entered a Com. apprce and if the Pltff's counsel asked for no more it is his fault –

Nº

Don Carlos Dodge
John Pickle.
& John Pickle oppt

On opposition afin d'annuller. –
because execution was sued out after the
year and day. –

Stuart for Opport. the first exon was sued out in the 14 days, which was withdrawn as premature – the present exon was sued out subsequent to the year & day from the time of rendering the Judgt – The proceedings had in Appeal cannot be taken notice of in this Court.

Boston for Pltff – argument to stand over to 16th –

Nº 154.

J. Pothier
Pothier
& Henry Sal

M Bedard for the Pltff in answer to the objections to the testimony adduced. –

The action here is clear and simple, to carry into effect the testament of the deceased – In this declr certain facts are alledged which the Pltff ought to be admitted to prove – such as the making of a holograph will by the Testator – the deposit of it made at the office of a Notary – This an authentic act – It is stated that the heirs acknowledged the will – This acknowledt. ought not

not to preclude the Pltff from making further proof of the will, as there is yet no judgment in favor of the Pltff as to the sufficiency of this extraordinary judgment — The original will is before the Court — & there ought to remain — notwithstanding the Case cited of the heirs Duchenaye at Quebec — that the proof of it may be ascertained — It was not necessary in the declaration to demand leave to make proof of the will, more than if it had been an action on a promy Note or other acte sous seing privé of a Defendant — It is objected that the Pltff did not use diligence to make an Inventory — to shew this diligence the papers marked A B C D objected to were produced by Mr Guy — these papers were not immediately connected with the Pltff's action & therefore not necessary to have been filed w: the pleadings, nor were they at the time in the poss. of Pltff. — The paper A. is a project of an Act proposed to have been entered into on certain conditions — it was drawn by Mr Guy & in his possession and is his property — The paper B. are the remarks of the heirs upon the Act A. this was no doubt the property of Pltff — but he gave it to Mr Guy to draw up the Act. C and consequently the Notary had a right to retain the paper — The paper D is a letter written by one of Defts to Mr Guy — & is his property, could be proved only by producing it through Mr Guy —

That Mr Guy was a competent Wr to prove the Signature of Mr Fortier, notwithstanding he was the person who rec: the acte du depot of the will —

The indirect interest alledged agt Mr Guy is no cause of objection to his evidence, and is besides without foundation —

It is contended that Mr Guy has so far contradicted himself as not to be credited, refers to his answers to the 39 & 40th questions. —

It is objected that Mr Guy stands alone as to the facts stated in his deposition — this is not the case, as the facts are supported by

by other witnesses and by other evidence. — particularly as to the acts produced by him. —

As to the allegation that Miss Foucher was no party to the Cause while part of the testimony was taken, particularly the depositions of Mr Beaubien & Mr Franchere. — all the deposition of Mr Franchere was taken on 30th Augt — when Miss Foucher was in the Cause — it is true that this depos^{n} was not closed until the Defts had an oppt of cross-exam^{g} him — That the notification of the marriage of Miss Foucher. was made to the Plffs attorney, but ought to have been made to the Plff himself — refers to Pigeau — as to the changement d'etat of the party. — But at all events the Plff was well founded in proceeding as the other Defendants —

As to the answers of Plff to the fait & articles they are right in law & fact — see answer of Mr Henry on fait & art. it was he who deliv^{d} the last will of Mr F. to Plff — see also the acts de depot —

On the merits.

The declar^{n} states the nature of demand — the appointment of Plff as Ex^{r} of last will & Testament of Mr Foucher, the disp^{n} thereof and the refusal of Defend^{rs} to allow him to execute the will. and concludes, that the will be executed & the Plff put in possession of the property left by the Testator for this effect —

It is objected. 1st That Plff is not entitled alone to the administration of the property left by Mr F. altho' Mr Henry the attorney renounced there — in this case the remaining Ex^{r} is alone seized — this principle of law admitted — but fact denied of Mr Henry's renun^{n} of his right of administrator —

2. Not necessary that Plff should have alledged that Henry renounced to the administ^{n} as by his renun. to the executorship he renounced to the Adm^{n} also —

3. That Mad. Maynard is not in the Cause — this quest. before the court on the exceps — but Exr is bound to call such heirs only as

are resident in the Jurisdiction of the Court – Maynard resides in the Jurisdiction of Three Rivers, and Pluff could not make him a party – Maynard has besides recognized the will by act of acceptance of the heirs before Mr Guy –

4. That as Mr F. was in poss. of property belong. to his children as heirs of their mother, the Pluff cannot claim this property q^e did not belong to the testator – but by an Inventory made by Mr F. in 1784 – This property having remained in the poss. of Mr F. till his death – the rights of those Children became limited to the value of the moveables in that Inventory – the identity of those moveables cannot now be ascertained – the moveables of Mr F. whatever they were must go to the Executor – That by the Stat. 14 Geo 3. as the absolute power is given to every person to dispose of his property as he pleases, the maxim of le mort saisit le vif has been considerably weakened and it must now be considered that the disposition of man ought to prevail over the disposition of the law – therefore the Saisine of the Exor ought to prevail over the saisine of the Heirs – Court has so held in Case of Caron & Rochon. where the party was entitled to the fruits & revenues not only from the day of the demande de la delivrance, but from the day of decease of the Testator –

5. That the title of Pluff as Exor must be maintained until the full and entire accomplishment of the will – & the payt. of certain legacies by the heirs cannot preclude Pluff – where Exor is charged w^th pay^t of debts, the offer on part of the heirs to pay the debts & furnish money for this purpose, is not ouff^t – nor can this prevent the Exor from making the Inventory –

Argument cont^d to Wednesday the 10^th inst.

Monday 8th Febr. 1819.—

No. 417
Etu
et
Etu — } Judgt. from. Survey of the arbitrator & directs that in giving to the dfend. the quantity of land which the Plff sold to Perrault — the point of departure should be from the trait quarré of the lands of Pte. du Tour, as being the only determined and fixed boundary from which the land sold could be measured and as to the end of the Plff's land this was a point undetermined and to be ascertained only ~~from~~ after the Defend. had got was sold to him —

Hill
vs
Perrault } Judgt. confirming the report — the Court were of opinion that the affidavits given in by Defend. stating the opinion of Individuals as different from that of the arbitrators as insufficient to affect the award — and the charge made of the Arbrs. that they were backward in asking questions of Defrs. Witnesses, and that they pd. little attention to what his Wn. said — the Court thot. this allegation insufficient as it did not appear what facts the Witnesses of Defend. were produced to swear to, as they might have been immaterial the Court therefore gave Judt. in favor of the Report

Burton
vs
Coverley } Interlocutor for giving communication of the proceedings to the Esquire. —

Jacques
&
Jacques
vs
Trumblay
opt. } Interlocr. directing the opposant to call into the Suit the Children of one Gendron, in whose rights the opposant claims, the Court being of opinion that the opposant, could not

not claim to be subrogated in the rights of those children without their being before the Court as parties.—

Sheaver vs Cameron } Judgt. for Pltff.—

Taschereau vs Allard } Action dismissed.—

Beaudouin vs Courtemanche } Action dismissed.— proof not suffte.

Levac vs Chenier } Interlocutory for proof

Curry vs Phillips } Judgt. on motion.—

Dorions vs Labrie. — Et Contra } Interlocy ordering Pltff to appear & be heard on oath touching the number of visits & quantity of medicines furnished.—

Lepailleur vs Surgeon } Judgt for Pltff

Sanguinet & Provost — Interlocy Judgt. for exhibition of Title of Defts purchase, — the Court considering the claim of Pltff for Seigneurial rights accrued upon prior deeds, not founded. as it appeared that the Pltff had ensaisiné the deed of the person from whom the Defendt. purchased. —

Molson & McNabb — Judgt. for Pltff

Savary & Meunier — Judgt. on motion in arrest of Judgt. —

Griffin & Durand — Action dismissed. —

Hunter & Munn — Judgt for Pltff — The Ch. Just. differed in opinion from the Court — holding, that the borrowg of the money could not be considered as a Commercial act, in this Case and therefore the proof insufficient — further that the letters of Defendt. stated by Wr to be in his poss. ought to have been produced by Pltff to support his demand. —

McCay & St. Germain — On Defendt mo. founded on affidavit to discharge rule for trial — the affidavit stating that Defendt. was advised and verily believe that one Dumont was a material Witness

for

for him & that he was absent at Quebec & could not attend this Term —

Rolland for Pltff — objects to the affidavit as insufficient contending that Defendt ought to have stated the facts which he means to prove by the witness inasmuchas the Pltff may admit them — refers to the rules of practice —

2. Tid. 698.

Moffat
v
H. S. Armour

On defendrs mo. for delay to plead, on affidavit that he was absent from his home when the process was served and is still absent —

Gale for Pltff objected to any delay being given beyond the Term, and that there was no sufficient ground to grant any further —

Griffin
v
Wildgoose

Similar motion — and objection. —

Tuesday 9th Febv. 1819.

M.Kay.
v
St. Germain

The Court held that the affidavit made by the Defendt in this Cause to put off the trial, must be made conformable to the requisites of the rule of prr. on the subject of enquetes — and as this affidavit did not contain these necessary requisites. the Court discharged the rule for putting off the trial. —

Moffat — vs — H.B. Armour } Delay given to the defendant to plead to the 15th inst.

Griffin — vs — Wildgoose } Same Judgt.

Ermatinger — vs — Perrault & al } The Court were of opinion that Fleming was a competent witness, notwithstanding the interest alledged by him — but rejecting the testimony of Cunitin the husband.

No 708.

Gendron — vs — Peltier & al } Judgt. on Verdict — costs as in Cause under £30.

No 856.

Morel — vs — Quintin } On action en complainte & reintegrande
On Defendr. mo. for delay to call in his Garant —

L.M. Vizer for Defendr — this not an action for any force or violence committed by the Defendr. but for taking poss. of a vacant lot of ground, and it will be a question whether the Pltff. was in poss. or the person from whom Defdr. purchased and whom he is now desirous as putting in Suit as his Garant

Bedard for Pltff — it is unprecedented to allow the calling in a Garant in in action of complainte & reintegrande, where the right of property can never come in question —

Wednesday 10th Febr 1819.

Galernau v Crotteau et al — Judgt dismissing the action.— J. Reid dissenting.—

No. 280.

Pet. Grant v Mc Intosh & E Contra — The Court granted the motion.—

Dillon & Glackmeyer — On defendants mo. for an alimentary allowance to Defendt a debtor in Gaol—

Grant for Pltff — it appears that Defendt is poss. of certain debts effects much beyond the sum of £10 — his having made an assignment to Certain persons for the benefit of his Creditors does not dispossess him of those effects —

M. Vigé for Defendt — the defendt has done all he can to satisfy his creditors by the assignment — & this divests him of the possession

Delongueuil & Henry et al — On defendants mo. to reject a pleading filed by the Pltff entitled a demurrer, in answer to the Defendants plea — inasmuchas it contains no specific grounds of demurrer, or exception such as by law and the practice of this Court is required — all pleas of exception

exception must specify the grounds - 1 Pigeau. 148. -
Stuart for Pltff - The rules of practice do not apply to pleadings of Pltff filed in reply - upon to can decided of Griffin Exrs. v. Langan. 14 Febr. 1816. -

R. Frost
vs
Babcock

On action of assumpsit on promissy note -
Trial by Sp. Jury. -

The Jury being called, only eleven Jurors appeared, when the Pltff moved that Sheriff return a tales to complete the Jury. -

Sherwood for the defendt - objected to the mo - as no tales can be returned by the Sh. on a Sp. Jury - that in this County Jurors are taken from a book returned by the Sheriff, and none others can legally serve - that Jurors so returned must be chosen and struck by the parties, here a tales may be a person improper to serve as a Juror, may be interested, biassed, or such a man as the Defendt would have struck from the list, had his name appeared there -

The Court granted the motion -

James Henderson a witness for the Pltff, sworn, says, that he is not interested in the cause - That about the 13th Oct. 1817, one Pluckner brot a promissory note to him signed by the Defendant, by which note she promised

to

to pay to him the Wit- or to his order for value rec^d- on the first May follow^g the sum of one hun^d. pounds- this note was witnessed by M^r Plucknett - that he ken^s the handwrit^g of Defend^t- which was subscribed to the note (the defend^ts counsel admitted the handwrit^g) - That the W^s indorsed the note to the plaintiffs, it was a full indors^t- but without date, and, as nearly as he can recollect, in these words -"Pay to Miss^rs ~~Porter and~~ Frost and Porter or order for value rec^d and signed by W^s - That the note was deliv^d. to M^r Frost in presence of M^r. Andw Porteous. That the note was given by the Defend^t for value g^d the W^s gave to said Plucknett. a

x^3-

Is positive that the note was payable to order - that it sometimes happens that the words, "order" & "value" are omitted in draw^g a note.- Cannot say positively that the Indorsment on the note, contained the words to order, or for value received - understood from M^r Frost, that he had inadvertantly destroyed the note by biting & chewing it. a

And^w. Porteous - In Oct^r 1817. I saw a prom^y note subs^d by Def^t- payable to M^r Jas. Henderson or order for value rec^d- on 1^st May follow^g - M^r H^n gave it to W^s to apply to M^r Frost to get money for it - it was witnessed by M^r Plucknet.- M^r Frost s^d he would take the note - some time after the W^s heard that the note had been lost or destroyed, and the W^s spoke of it to the defend^t- who said she would pay the debt, but that she had always considered herself as liable merely as the security of M^r Plucknet, and that his property sh^d be first discussed, but that if M^r Sherwood her counsel, advised

her

her to pay the note, she would do it — She afterwards added that Mr Plucknett had deceived her about the note. as he never meant to be any more than his security; as he had promised to take up the note. —

Thomas I Plucknett — is related to the Defendt by marriage In Octr 1817 he witd a note made and signed by Defendt to Wm Jamis Henderson for £100. — payble in May follows — Does not recollect whether it was payable to order, thinks it was not — it was delivd by Wm to Mr Jas. Henderson who gave value to Wm for it. —

x

The note was not intended to be negotiable, but was given merely as a security for the Wm — That he has reason to think the note was not made payable to order, from a Statement of it sent in to Mrs Babuly by the Pltffs dated 1 May 1818 — demanding the amount of it —

Here the Pltffs closed their evidence — The Defendt called No witnesses —

Sherwood for the Defendt moved for a non-suit — 1st Because there was no proof of the loss of the note — and 2d Because the Indorsemt was not a full Indorst which could transfer the note to Pltffs, as Defendt was not stated to be a merchr or trader, whose note could be negotiated by a blank indorsement. — And the Court being with the Defendt upon both these points, a non-suit was accordingly directed and taken —

13 Bayley on Bills 169
2 Camp. Rep. 212

In this Case the Court admitted the Protest of a Notary (in qr was contd a demand of payt of the money and also an offer of security in consequence of the loss of the note) to be read to the Jury, as an authentic document without calling up the Notary to prove it. —

Pothier
vs
Foucher
& al —

Argument of Case cont^d

M^r Bedard for Plff. — If the conclusions of Plff are legal and apposite, they must be granted —
It is in evidence that the formalities necessary to establish the proof of the holograph will have been observed — it was deposed at the office of the Notary & acknowledged by the heirs — Poth. Don. Test. p. 300 — refers to exh. N^o 2. — in this act Maynard was represented by his att^y — the acknowledgment of the heirs is sufficient in this Case — They assume only an objection to the validity of the dispositions of the Testator which cannot be considered as affects the external form of the will — in 5^e moyen of Answer, one of Defend^rs shews the extent of this admission —

The only question then is whether the Testator has made any illegal disposition of his property — there are certain particular legacies & directions made by the will, but they are legal — the Testator had a right to will away his property as he chose — By the St. 14 Geo. sets up testimentary dispositions in contradistinction to that established by law, — it sets aside the maxim of Le mort saisit le vif — contrary to this disposition — It is a question whether the Testator could with the administration of real Estate to his Executor — but if he could give him the property — he certainly could give the possession — It is also a question whether he could dispose of what his children had a right in — the Testator had a right to attach such condition as he chose to which he so bequeathed — refers to Poth. Don Test.^t and the heir must either take the legacy or renounce thereto — 1. Argou. p. 326. Jaumes. Rep^re de Jur.

The Pltff concludes that the will have its execution, and in conformity to the dispositions thereof that such of the heirs as shall contest the same be excluded from any benefit in the same and this the Pltff demands particularly in regard of Mr Stoney who treats the dispositions of the Testator as immoral, & therefore he is unworthy to benefit thereby —

That Defend^r ought to be bound to restore and deliver up such of the effects of the Testator as may be in their hands & possession

2. Lange Prac. Fr. 419. form of a Instf. in execution of the will — Dennet. v^o Ex^tor Test^r N^o 29. when heir was condemned to make restitution — art. 97. Cout. Com^n de Fr. N^o 6. your unique —

It is contended that the offers of the heirs to pay debts & legacies has prevented the Saisie of the Ex^tor — but of the disp^n of the will are to be executed these offers are insufficient, as it is decided that the legacies shall be p^d by the Ex^tor as well as the debts — The 297^e art. Cout. says, the Exor shall be seized during the year & day — but this poss. commences only from the period when he was put in poss. by heir & from time trouble ceases — the Ex^tor does not lose his right of Ex^n on this art —

The heirs were not entitled to make the Inventory — that belongs to the Executor — Rolles de Droit P. de Lorraine — 276 N. Den. Ex. Test. § 2. p. 212

Thursday 11th Febv. 1819.

No. 856.

Morel vs. Quintin } Defendants mo. for calling in Garant rejected.

Cadieux & Colburne & Contra } Judgt.

Crawford & Kelley. } Defendt mo. rejected, from insufficiency in the Statement - it not being stated what the language of the Defendant was, which cannot be presumed -

Jones vs. Geer - } On plaintiff's mo. to be permitted to amend, the declaration by altering the place of residence from St. Armand to Farnham.

Sewell for Defdt there has been a plea of abatement filed. - mo. to amend is now too late - the practice in England cannot be adopted here - the practice in this Country under the Prov. Ordinance of 1785 -

Charles Bangs and Charles Thayer vs. } On plaintiffs motion for hearing on merits - The bail, Defendts in the second Cause, moved to be permitted to plead to the original Cause - and moved also that the original action should be dismissed. -

Sewell for Defendt. states that this mo. on part of the bail still subsists and must be determined before any other mo. can be made. —

Boston for Pltff the Defendts desisted from their motion — but it cannot be supported, as the bail have not become parties to the original action & can be allowed ~~to~~ make no motion therein. a —

Pothier
Toullier
Dal

arg. contd by Mr Bedard for Pltff

It appears by the will that some extraordinary dispositions are contained in it, with regard to the administration of his property — but this was in the nature of a substitution or fidei-commis, and it was not necessary that he should make use of these words, his intentions were sufficient if so found by the Court — See Pothr. Sub. Sec. 2. art. 1 & 2. — here the prohibition to alienate is equivalent to a fidei-commis in regard of the Seigniory of Isle Bizzard & Fief Closse. Sub. Sec. 3. art. 1. p. 508. — Laroche Vo Substitution. p. 2. Sec. 1. — Domat Test. Sec. 6. No 11.

Rolland for Baronwife — two of Defendts claims a right to have the will executed, and Judt in favor of the Pltff — The disallowing the Scelle is no reason why an Inventory ought not to be made — the heirs having possessed themselves of the property of the deceased & made an Inventory without his participation cannot bind him — The Testator had a right to direct in what manner his property should be disposed of — The heir is seized, but it is a Saisie Gerile the Saisie of the Exer is preferable to that of the heir — Dom Test. ch. 5. Sec. art. 2 p. 363. — The Exer has the action in factum to obtain

pos

poss. of the property for the purposes of the will — this is the action before the Court — The offers on the part of the heirs cannot can preclude the Exer from making an Inventory — N. Denis. Vo Ex. Test. Sec. 2. No 3. p. 212.

The Saisine of the Exer. Denis. p. 215. Vo Test. Exrs may be prolonged & extended by the power & will of the Testator — In this Country the power of a Testator is unlimited under the St. 14 Geo. 1774 — cites case in appeal M. Gillivray val. v Robitaille Delisle. v Bouthillier & Roi — in this Court. — Hon Pluff is a fidei-Commissaire — until the execution of the will — words are not necessary, the intention of the Testator is sufficient to create this substitution — when the will has been acknowledged there is no necessity for proof of it being made — Poth. Don. Test. p. 300. — As to the administration, the Test. had a right to give it to the Exer — the object — that all the property was not his, but a Test. may give what is not his own with certain conditions Poth. Don. Test. Ch. 4. art. 1. Sec. 2. p. 343. but particularly any thing held in Common, or what belonged to the heir of the Testator — Laumb. Vo Legs. p. 3. Sec. 2. art. 4. a

That Partage Test. is favorable — Dic. Fer. Vo Partage has Test — 4 Gr. Cout. p. 307. — 1 Argou. 48. — Bouijon — Domat Rep. de Jur. peines Test. If the heirs do not consent to execute the will they must renounce to the legacy, and be deprived of any benefit under the will according to the terms of it. — the Exer is warranted to demand the exon of this part of the will that it may have the effect the Test. meant — The contest here raised by the heirs is suff. to exclude them — 2. Bouj. p. 343. Poth. Substit. p. 499. Laumbe Vo Testam. Sec. 4. Dist. 3. — d Rep. — The maxim of Le mort saisit le vif does not here apply — this not pays Coutumier — Rep. Vo Succession 548. Gr. Cout. art. 317. Giov 1. Sec. 2. Som. 21 — where the Institution of heritier Test. has effect this Saisine takes place. The Saisine Test. has been adopted in this Court. Caron

v.

v. Rochon. — Rep^re v^o Delivrance de Legs — the Leg. unw. needs not demand delivrance from the heir at law —

The persons here who have acknowledg^d the will must be considered as Heritiers Test^rs Rep^re v^o Heritier — v^o Succession — Lacombe v^o Ferrier — they have acknowledged the will and the existence of the dispositions therein cont^d — that Test. must therefore be executed even if the Ex^r had renounced to it — The Plff here has never given up his right to be ex^r, nor ceased to exercise his right as such — he is only the Executor — the renunciation of the Legacy goes to all the objects of the will & he cannot any longer claim it — That Defend^s Baron & his wife were deceived and injured by the transaction of the heirs — it being made only with the view of avoiding a law Suit — a

Riger in answer on the merits — The law is positive to say that a husband cannot dispose of the property of his wife, or her rights in the Community — Had the Ex^r here been in poss. the heirs could not without his consent have forced themselves into that poss^n but here the Exor never had any poss. either real or Civil — the heirs had both — the Judg^t of the Court rejects the Scellé proves this — There is no conclusion in the declin for making proof of the will — nor can Court under the conclusions authorize Plff to enter into the poss. of the property left by Mr Fortier — The right of the Exor where he is not in poss. is to demand that poss — but the law alone does not vest him in that poss — where it is held by the heirs —

2. Furgole on Test. 51 — the Copr^s cannot will but his share in the joint property — Potts. Don. Test^s the legacys of Mr Fortier were void as to one half, and being such the heir of that property had a right to enter into the enjoyment of it. — That the Law presumes that a Testator never bequeaths more than what belonged to him —

That the Inventory made by the Heirs must be considered legal & sufficient, particularly as it has not been impeached by the Plff. —

That

That the Scellé & Inventory are in law the same.

The heirs were not bound to wait for Plff nor call him in making the Inventory — the Plff did not proceed to make it within the time he ought — they alone were interested in making it: & the heirs were in this Case bound to make the Inventory

That the execution of the will cannot be adjudged, in regard of property not belonging to the Testator, nor can it be executed in regard of Mad. Maynard who is no party in the Cause — That conclusions of Dem^r cannot be granted even if Defend^r consented. —

The Defend^r Baron complains that he was deceived by the transaction entered into with the other heirs — the fact however is that Baron was well acquainted with all the transactions —

On mo. to reject Depositions —

M^r Guy is an incompetent W^s to disavow any fact communicated to him as a Notary, or to prove any thing in regard of acts passed by him — M^r Guy has the same instant as an advocate conducting a Cause in regard of the business of the Succession. —

That as there was ~~no~~ due notice of the ~~reprise~~ mariage d'instance of M^r Fowler, the depos. of Franchere & Beaubien must be set aside — That proceedings at all the hrs between the time of the notice, and the reprise d'instance must be held as irregular —

M^r Bedard in reply. The Saisine of the Ex^r is de droit — the making the Inventory can be effected only after he has obtained possession réelle of the Estate — The Plff's conclusions for exécution of the Testament are regular and the proper course, see Lange — as to the Judgt. to be rendered in this Case.

That the Test. is sufficiently proved by the acknowldt of the heirs —

It is evident that Mr Fortier meant to unite the two Succ. of his wife, as well as his own, & must be considered by the Court — by which he meant that if the heirs meant to claim under his will they must take the property as he gave it — if they resisted this, they would no doubt be entitled to take their own but could claim nothing in what the Testator bequeathed

Friday 12th Febry.

Grant & Devert — action for goods sold
Noth. said. —

McGregor & Belanger — On mo. to compel Defts. Answ. conclusions of Plea
Roi — action on a negotiable note, leave it to the Court

Lacombe & Boxton & Boxton Intervs — On Intervention & claim of Boxton —
Roi for Interv. & party — all the effects of the Interv. Party have been seized under an Order at Suit of Plff
proof of the property is made out — Fraud has been alledged as the transaction between the Defts & Interv. party but of this there is no proof — admit there was no displacement of the moveables, but this not necessary as the parties lived together

Ross for Pltff — The transaction is fraudulent — evident from the proof and from the admission made by Intd Party.

No 451.

Ellice
v
Deganaud

On Defendr mo. to be permitted to take off two defaults entred agt him & enter appe under circumstances.

Stuart for Defendt — offers to pay Costs & give reasonable plea

No 1837

Bennet
v
Collier

action for goods sold &c by Pltff a Cabinet maker

Borlon for Pltff — there have been payts on acct not credited — the charges also are too high 10/ p day being an over charge — Pltff can be entitled only to a sum below the comps. of this Court. — and Costs ought to go accordg

Grant for Pltff — balce is above the sum of £11 — is entitled to a sum of £13.

No 344.

Mc Gillivray
and
v
Parisien

action for monies paid by Pltff. to Defendt

Rolland — The Contract made by Pltff. wt Defendt for servies to be performed by him in the N. W. Co

Potts ob. 447. Evans's Potts. obl. No 55. — 1 Comyns on Cont. pp. 247. 248 — cites Case of Gray. v. Scott — note made by Defendt — as attz to a man in England, action was supported & Judgt confirmed in appeal —

2 Esp. Rep. 493. 4 affirmed 4 amber Cowper 805.

Stuart

Metcalf
v
Bruin
12 T. Rep. 400.

Stuart for Defend. The nature of the Contract, was for the benefit of a third person, and the Plff. were mere agents or attornies, the persons for whom the Contract was made have the beneficial interest and can alone maintain the action — The authorities cited do not apply, here the Plff. are the avowed agents of the N. W. Co. — had they not been so, the authority wd. apply. —

Rolland in reply. There is no proof that the contract was ever made by the Plff as agents of the N. W Co — the testimony produced shews only that the monies pd. to the Defdt were charged to the N. W. Co — this cannot affect the Defdt no has he any thing to do with it —

Force & Holden } On award returned under a Rule of Reference —

Ross. for Defend. shewed cause agt. the confirmation of the report, as it was not made & returned into Court within the time limited by the Rule.

Scoble for Plff — The award is stated to have been made within the time, altho' not brot. into Court — This is not fatal —

Rule of Ref. ret. 1 June 1818
Award filed — 2 do — do —

No. 705 Jacobs v Fresniere } Action for 120 bushels of wheat, being an arrear of a Rente fonciere. —
Stuart for Defend.

№ 242

Pickle. ~ Hunter.

On Pltff's mo. to reject a plea of excep. or demurrer filed by the Defendt as not containing any special grounds of exception —

Boston for Defendt — the special grounds of exception are contained in the plea filed by the Defendt — it is a general denegation of the Pltff right as stated in his declaration —

Grant for Pltff — the plea is irregular & not conformable to the rules of practice —

On excep. to the Incidental demands

Grant for Pltff — the Incidental demand here set up by the Defendt — it contains, in same count, inconsistent demands — such as assumpsit, trespass and detinue — 2. not stated in 1st Count of Incid. demand in what manner the damage complained of arose — 1 Chitty. 199 —

№ 805

Bruneau ~ Manuel

Action for goods sold —

Stuart for Defdt — The mode of payt of the goods was that in consideration of the Pltff taking a reduced rent for a house leased by Pltff to Defdt — that the house was destroyed by fire — ~~& that for the Defendt exonerated from any further act~~ the action, yet the monies paid must still be applied to the discharge of the payt of the goods — the regular course for Pltff, would have been to bring an action to recover back from Defendt the monies for which he had not had enjoyment of the house by reason of the distruction of the house by fire —

Vigé for Pltff. There is no proof of the agreement in regard of the house – it was a mere proposition which was never accepted – he never paid the sum of £40, which was the condition upon wh it could be founded, & also to pass a base of premises. –

Stuart for Defendt. – It is a mere question of fact whether an agreement has taken place – this proved by the letters filed – see Defts exh. № 3 shews Manuel's statement to shew how the £40 – were pd –

№ 771

Parthenais
vs
Dubreuil

action for having negligently ferried Pltff's horse across river, so that he was drowned –

Stuart for Pltff. contends, that the facts proved shew a want of negligence in the Defendt servants – particularly in using too small a scow – and in not unhackling the horse from the carriage –

Rolland – the loss of the horse happened by the fault of the Pltff himself, in holding the reins of the horse after he got out of the Scow.

Stuart in in reply – denies facts as stated by Defts –

№ 113.

Legris pl.
&
Legris pro

Action on a promissory Note —

Roi for Defd — admits demand in chief has been proved — and contends that the Incidental demand is also made out — by Pltffs answers on faits & articles & other evidence —

Rollin for Pltff. contends that Incidental demand is not made out, except for one bushel of wheat — the sum of four hundred & sixty two livres has been pd. on act —

№ 236

Charron
&
Lapierre
&
Turgeon
opp

On opposition afin de conserver —

Roi for Oppt — The oppt is in the rights of the heirs of one Lapierre, to whom succession the land in question belonged — & as such has right to demand the money — That there is a writ in respect of which an action hath been brot. and as this action is still pending, the oppts claims will be established if the suc. should the action succeed —

Lacroix for Pltff. denies all the facts stated in the Opposition —

№ 644.

Turgeon
v
Vervais

action petitoire —

Roi for Defd — there is no proof of the identity of the lot demanded & that possessed by Defd — no proof in favor of demand —

Lacroix for Pltff — The Defend has admitted the fact —

Nº 490

Cairns & Collier

action for goods &c—

Bolton for Defdt only question is in regard of a sum of £19. for wt Defdt gave a draft to Pltff — wt was accepted. £ on wt no diligence has been done by him—

Rollaud for Pltff— There is no proof of this draft— the defendt ought to have pleaded fact specially so as to have enabled the Pltff to shew the diligence on it—

Poser vs Flynn—

action en reddition de Compte—

Sherwood for Defendt— The action is irregular, it states a ground of action in trover, and concludes to an account— the Defendt is not a comptable— he never had any administration committed to him — Rep^n vs Red. de compte — The defendt nevertheless pleads to merits, that he had a right to detain the goods he holds as a gage for a just debt— The Defendt answer to the 8th Interrogs shews the fact — That the authority of the Pltff as Curator cannot extend beyond the district where he was appointed, namely of Quebec.—

Boston for Pltff— The action is regular — is the only one the Pltff could have, — the defendt was an agent & administrator of the absentee & as such became accountable the Defendt is charged also in having come to poss. of property after his master run away—

French
vs
Fidget

on Pltff mo. for a day for an enquête.—
Stuart for Defdt no suffte diligence—
mo. granted—

Saturday 13th Febry. 1819.—

Larchot
vs
Dugas
et
Larchot
oppt

On defendants mo. to reject the moyens d'oppn filed by the Opposant inasmuches no copy of those moyens has been served on the Defendt—

Rolland for Oppt— the prac. of Co is contrary— the party wishing to contest an oppos. must notify the Oppt to fyle those moyens— here no such notice was given by Defendt— nor is it usual to serve copy of moyens on defendant— that besides where no notice is taken of any oppositn for 10 days after it is made, it is considered as admitted—

Reg. B. 77.

Sherwood for Defdt— every proceeding in a Cause must have a copy served on the adverse party— here the proceeding is between the Original parties, and therefore Defendt is entitled to a copy of it—

Wm. Hale
vs
Ia Regs Tobacco

On McRoss: motion for Dismt of Condemnation
refusd on Consent in June last—

Duchenaye
Foisy

On Pltff's mo. to reject pleadings of Defendt as not conts any sp. ground of exception — and 2dly because the matter pleaded of delay to plead ought to be a pleading by exceptn. dilatoire —

Stuart for Defendt. There are grounds of exception stated in the plea — and 2dly the pleading as to delay, it is a plea to the merits of the action. —

O'Sullivan — The reasons shewn, are no reasons whatever being a mere echo of the general exception — The 2d head of exception must be considered as dilatory — ought to have been made in 24 hours after return. —

Jones
Geer —

On defendt mo. to quash process, inasmuch as the service was made at a different place from where the party is stated to live —

Rolland for Pltff — this matter has been already pleaded by exceptn. dilatoire of since that amendment — this mo. is now made — it is too late — notice of amendment was given on 11th & on 12th this mo. was made — The amend of decln does not repeal service of writ —

Scoville for Defendt. the mo. is in time. in 24 hours after the notice of amendment of decln. —

St: McKay
v
Hyt. Lt. St. Germain

action for defamatory words
Trial by sp. Jury. —

On the cross-examination of Jos. Robin dit Lapointe

the defendant proposed to prove the truth of the fact charged as Plaintiff, namely, that he extorted monies in the shape of fees from the public – contending that by law he was entitled to prove the truth of the fact – The Court rejected the question, as contrary to law – referred to the Judgment already given on the Defendants plea to this effect. –

The words in the declaration were proved, but all the Witn: agreed to say, that the Plff in their opinion had not been injured in his character, as they entertained the same good opinion of him after the speaking of the words as before –

Luke. –
vs
Spencer } action on a promissory note –
Defd. submits the Case –

No 913
Duquette
vs
Duquette } On action of account
Defd. in person appd & consents

McGillivrays val & Fraw. Prevost & Contra.

On demurrer pa Suspensive rights —
Rolland pa Pltff states that the Pltff's demand is made out —

Ror pa Deft. states that part of the Incidental demand has been made out —

Monday 15th Febry. 1819. —

Legris. & Legris. & contra.

Judgt — on evidence —

Millar & Dewitt

The Defendrs mo rejected — as it applied as well to the declaration as the Writ, which is irregular under the rule of Prac. referred to, p. 43. — as a decln cannot be quashed or set aside but upon pleadings —

Bennett & Collier

Judgt evidce —

Duchenaye & Foisy —

The exception first pleaded by Defendt set aside as the grounds stated, were mere the general allegation of insufficiency previously set forth by Deft — and not the special grounds reqd by the Rule of Prac. — as to the 2d plea — the Court considered it as a plea to the action, dismissed Pltffs mo. in regard thereof —

Poser
v.
Flynn

The facts which appeared from the Defendants answers on faits & articles, shewed, that Defendt was the Clerk of Mr Delamarre at the time he absconded from the Province. That Defendt had a claim agt Mr Delamarre, as well for wages as his Clerk as for monies advanced and paid on his acct in order to satisfy which Mr D. delivd to Defendt his books of acct to keep, and also a quantity of goods, which Defendt sold a draft on Mr Molson & agt Defendt recd the amount — some of the books the Defdt delivd up to the Pltff wt a draft of Defendt had recd drawn by Mr D — on England for £300 — but the other books he refused to deliver up alledging he had recd them from Mr D Pltff to keep till he Defendt should be paid the amot of his acct of which a balance still appd to be due after crediting the proceeds of the goods sold & also the amount of the draft recd from Molson. —

The Court considered that enough appeared to hold the Defendant to be a "Comptable", as the Defendt could not apply the property he thus recd to his own use, but was accountable to the Creditors & to the Pltff, for what he the Defdt had so recd saving his just rights agt the Estate of Mr D —

see Court. Neg. Gut. Nº 90. —

Force. —
+
Holden

Action on award — The Rule of ref. was set. on 1st June 1818 — the award was filed on the 2d June — It was stated to have been made on the 26th May preceding and was signed by the arbitrators —

The Court held, that the award was sufficient, if the fact could be made out as stated, namely the making & signing — as

it

it was a paper sous seing privé, not stated to have been given in to the Court by the arbitrators in person — they therefore admitted Pltff to prove those facts. —

Sanclot & Duggas — Sanclot opt

The Court held — that as the moy. D'op. had been filed by the oppt without any notice from the Dfts that defendt was not entitled to a copy thereof as such copy was given only to the party intimating his intention to contest the opposition by calling on the Oppte to fyle his moyens — but the rule of Prac. in regard of parties not giving such notice was, that they should themselves attend to the proceedings in the Cause and plead to any moyens d'opp. filed — The defendrs mo. was therefore rejected —

Pickle — Hunter and Contra

The Court granted the pltffs mo. to reject the Exceps. per. filed by Defendt as being only an Exceps generals — but dismissed plaintiffs plea of exception to the Incidental demand set up by Defendt being of opinion, that where several demands all tend to the same conclusion, may be determined by the same Judgt and execution, they could be joined in the same action. —

Longueuil & Hennyval

The Court were of opinion, that the general exception or demurrer filed by the Pltff to the Defendts plea did not come within the rule as to general exceptions to a demand or action — & rejected the motion —

Dodge
~
Pickle
&
Pickle
oppt

The Court considered the rule of practice to apply only when the Pltff could have sued out his execution, but not when his right to do so was suspended by the appeal raised by the Defendt. That the suing out the execution within the year and day after this impediment was removed seemed to be complying with the Rule. They therefore dismiss the Opposition. —

Cairns
Collier

Action of assumpsit for goods sold &c —
Plea — Non-assumpt —

The Defendt was examined on faits & articles and in answer to one of the Interrogatories stated thus — "I admitted that I was so indebted (in the sum demanded) to the said Pltff. for the causes, matters and things mentioned and charged in the said extract of Pltff No 1. — but I gave to the Plaintiff a draft of £17 — on E Ireland, which was accepted by him — I supposed it to have been duly paid, till two months afterwards or thereabouts, when I received a protest from the Pltff of the said note". —

The Court were of opinion that the Defendt could not avail himself of the fact of having given the Pltff the draft in question, without having pleaded the matter specially in this Case, under the Rules of Prac — but at all events the fact even if allowable amounted to nothing, as in this case the acceptance of the draft could not be considered as a payment of Pltff's demand, nor did there appear any laches which could make Pltff liable for the amount. —

No 344
Mc Gillivray
& al
vs
Jos: Leger & Parisien

Judgt. —

M.cKay. — St. Germain

Mr Sherwood of counsel for the Defendant moved that the Ch. J. who charged the Jury in this Case, should read his notes upon which that charge was founded, preparatory to the mo. which the defendt intended to make for a new Trial. — and upon its being observed that this became unnecessary where the trial was had in the presence of the Court, as such reading or communication of the Judges notes was given only when a trial was had at Nisi Prius, for the information of the other Judges —

Sherwood insisted however upon his motion, as being a course of proceeding practised in all Countries when the trial by Jury was had, and that this Court could follow no other course, as the Prov. Ordce was silent on the subject of new Trials —

Tuesday. 16th. Febry. —

Witness-day

Wednesday 17th Febry. 1819. —

M.cKay. — St. Germain

The Court rejected the defendant's motion. — as inapplicable, and without precedent even in England — there the first step is to obtain a Rule to shew Cause for the new trial, and then the Judge who tried the Cause at Nisi Prius, reports the Case. —

See 3 Bull. N. P. —

Wm Hall
vs
Chests Tea

On Information for being illegally imported.
Ross. states Inform. to be founded on. 7 Geo. 1. ch. 21. and Geo. 3. ch.

Ex Parte
Jo. Birlinguet
dal' ——

On Petition of Louis Birlinguet dal' to set aside the appointment of one Cadieux as Curator to the vacant Suc. —

Mr Beaubien for Cadieux — the conclusion in the petition being to stay the proceedings in the Cause set down for hearing to day, but this cannot be granted because he has had no notice of it. —

N°499.
Smith.
vs
Torrance

Action for work & labor as a mason —
Rolland for Dfd^r — The Contract here was — made between Defend^t — and one Bell, and it is stated that Bell transferred his right to the Pltff — The work in question was to build a brick wall round his Garden — The Contract w^t Bell is filed — but Pltff has attempted to prove by verbal testimony an agreem^t between him & Defend^t to g^r Defend^t — has objected — because by this means the Defend^t would be liable to two actions, one at the Suit of Bell, besides the present action at Suit of Pltff — who can be considered only as the Servant of Bell. —

Bourré — for Pltff. The Contract w^t Bell not for the same work, as that done by Pltff —

No. 751

Cadieux, Curr
v.
Comfroy
&
Grothé'val Gar.t
&
Grothé'. Intervs

Action to recover money in the hands of Defend.r on sale of lands, q.s belonged to the Comm.y between Jos. Bilinguet & Marg.te Deschamps the Pltff claiming the moiety of Jos. Bilinguet whom he represents as his Curator —

Beaubien for Pltff. The Pltff is entitled to recover this money on behalf of the absentee, — it has been alledged that Jos. Bilinguet is dead, still the Pltff will be entitled to recover in preference to any other person in the Cause — but there is no proof of the death. — That price of real property of minors, when they die minors is considered as realty — That Pltff is Curator Jos. Bilinguet pere, who is the father of the said Jos. Bilinguet fils, & as such the Pltff as representing the father would be entitled to this money, as heritier immobilier of his son —

art. 94. Coût. Paris. 2. Som. 3.14 Poth. Prop. p. 92. 93.

Quesnel for Defend.r Comfroy, states, that she has paid the money to the Intervening party as the heirs of the deceased — if the death of J. B. fils be ascertained the Pltff's right as Curator is gone — at all events is entitled to her conclusions ag.t the Garants. —

Bouthon for the Garants and Intervening parties. The authority of the Pltff as Curator was surreptitiously obtained, without the kn. of the heirs, and they are therefore well founded in demands that such authority of Curator should be set aside — The law presumes the death of a voyageur from the day of his departure 1. Bourj.e 799. — 1 Lebrun. Suc. p. 2. 3. 4 — Nouv. Denizt — v.o Absent — The Suc. of the deceased in respect of this property, would be immobiliere, and the Interv.s parties

in

in such case entitled to it — and if his death is presumed to have taken place when he left the Country, he was a minor, and as such his brother & Sister are entitled to the Estate in question. —
The heirs of the deceased are entitled to an envoy c en poss.: after three years absence. Poth. Prop. Nº 366. — 1 Lebrun Suc. p. 151. —

Nº 832
Peddie & al
& M.Gregor } Notice &c on part of Defdt

Nº 936.
Hart
& Tellier } action on 2 promy Notes
Nizet for Defdt — the proof of the notes does not correspond with the declaration — name of Defendant is different. —
note. Hillière — in Decn Hillaire. —

Nº 152
Curtis
& Peck } On award —
Rolland for Plff, asks hom. of award & Judgt
Grant for Defendt — offers a different award made by arbitrators in the Cause & moves to be permitted to file it — this was opposed by Plff, as irregular. —

Nº 726
Valade
& Pile
& Conba } On Report of arbitrs — Plff asks for hom. —
Grant for Defdt — Quest. as to Costs — demand for £500 — only £40. allowed to Plff — before action Defdt offered to leave matter to arbitrators —

No 881

Glassford & McArthur

action on Promy note –
On hears on Exceps[n] –

Grant for Defend[t] – action is brot on a note but states no consideration – decl[n] is insufficient – in action of assumpt – consideration must be stated in debt not necessary –

Borton for Plff – there is sufficient in decl[n] to maintain the action –

—

No 1061.

Wightstal' v Alger

On Defend[t] mo. to quash process from want of service of Copy of decl[n]

Rolland for Defend[t] the Copy of the decl[n] was served at a Tavern after Defend[t] had left town – this not conformable to Rules of practice –

Grant for Plff[s] The Defts has come in & given special bail to the action – service at Tavern was the

—

~~McGibbon~~

No 200

Johnson & Stearns

action for Seignoriral rights –
Hears on Exceps[n]

Sewell for Defend[t] Decl[n] insuff[t] – not stated that Defend[t] is in poss: under any title – not said that Dep[t] was in poss. for the eleven years for q[t] the Cens & rents are

are demanded – not said how or by whom cens & rentes were created or became due – refer to case of Longueuil. v. Allaire. –

Boston for Pltff – In action of this kind the Estate is bound for the Cens & rentes, and the possessor is liable for all the arrears, without conclusions agt. him as in a hypothecary action – –

—

№ 87A

Berthelet
vs
Pluckenett

Action on deed of Sale –

Boston for Defdr – Pltff agreed to give delay to Defdr for payt. to 1 Novr. on payt £25. & interest – The Defdr did pay the £25 & interest & was entitled to the delay – action was instituted in Sept. before expiration of delay –

Bourré for Pltff. It was also a condition in giving the delay, that the defendr. should give securitz to Pltff for the remainz payts as well as pay the sum of £25. & int. which Defdr did not give, & therefore Pltff's action was open –

—

№ 636

Stearn
vs
Sanson

action for Co gal. rum.

Vizé for Defdr – states that price agreed on was £10. ₰ gall. and has proved that this was the price agreed on. –

Ross for Pltff. There is no evidence to shew that the conversation of Pltff touchg price of rum applied to that sold to the defendr – The value of the rum at the time of delivery is the criterion we go to judge –

№323.

Charles. v Bangs. } On plff's mo. to reject from the record the mo. made by Defts on 6th Oct. last —

& Plff moves for Judt. on both actions

Charles v Bangs } —

Jal —

№916

Dom. Rex v Stebbens. } On Certiorari —

On rule obtd by Defendt to Shew Cause why the Conviction in this Cause should not be quashed —

Rolland for Pros: The Defendt had no licence to ferry, and was therefore liable to pay fine — The Defts licence expired on 1 May 1818 — The Defendt has alledged that he held a licence from the Crown & has produced a licence from Sir John C. Sherbrooke late Gov — but this licence has been made similar to all other licences, subject to the Regulations of Police, & requires a renewal of it every year — all licences are now granted by the Crown under certificate from the Magistrates —

Grant for Defendt — There are no regulations in existence authorising the magistrates to regulate Ferries or grant licences — they can only establish the rates of fare of ferries — The ordre of 1777 gives no further authority to Mags. than this — The Defendts licence from the Crown is not an ordinary licence as now usually granted — it is for a certain limited time, that is when a bridge shall be erected over the ferry in question, & not sooner — That the Magistrates cannot be authorised

to

to renew in the Quarter Sessions what they cannot then grant – the other licences are granted only for a year in other Cases, and must be renewed every year. in

Rolland in answer – the magistrates have authority under the law to make Regulations for ferries, & it has been so held by this Court – The licence granted to Defdt is not different or better than any Common licence granted by the Crown –

—

N°326

Sauvé – & Valois –

Action en declin d'hypotheque. in

L. M. Vezé for Defdt The Pltff have no right of action agt Defdt Trustler acqs a right for 500 bushels of wheat by one D'aout, who sold to Defendt – The transport from D'aout to Trustler – The Judgt obtained 20 Febr. 1813. was for the last quantity due on the transport vost. in 1812. agt. Jnpbt Sauvé the Pltff – it ought to be so interpreted agt the Creditor – The other Judgt on 20 Febr 1815. for 100 bushels of wheat was for what had become due in 1813 – whereas there could be no such debt in existence on the transport made by D'aout to Trustler – But it further appears by a Judgt of Distrit: of 20 Octr 1814 in a Cause wherein Sauvé was Pltff agt Chs. D'Aout, Supr that this Judgt of Distt satisfies Judgt rend. 20 Febr 1813. –

Bender for Pltff The action of the Defendt before he sold to the defdt acknowledged by a specific undertaking that he owed the quantity of wheat in question, and if the defendt meant to avail himself of any pretended errors, he ought to shew that this quantity of wheat has been paid. –

Thursday 18th Febry. 1819.

Wright &al
vs
Alger. —

The Court, considering that the Ordce of 1785 did not require service of copy of claim with the Capias admitted Plff to serve copy on Defds. Attys in Court, on giving delay to plead & paying costs of motion —

No 300. —

Coupal
vs
Gagnon

action for a quantity of hay purchased by Plff for Defdt —

Rolland — for Defdt. the Contract was between Defdt and Bonnasse — & no proof of any authority for Plff to purchase hay in question —

Stuart for Plff — It appears that Defdt rect. the money for the hay which the Plff furnished, and is liable on the money counts. —

No 927

Castonguié
vs
Stansfeld

action for house rent & damages done to an Orchard adjoining the house. —

Pelletier for Plff — Plff has adduced evidence to shew poss. had by Defdt. of the house in question & the value of rent; but the lease between the parties, being Verbal, Plff exd Defdt. on facts & art. — & by his ans. to 2e Interr. Defdt admits the lease — To the 3e Interr. the Defdt. wishes to avoid the lease, by saying that the house was not tenantable & that Deft had given Plff 3 months notice of his intention to leave it & give it up to Plff — This answer ought not to be taken in favor of Defdt. to exonerate him from the payt. of the rent — Poth. Ob. No 826. 1. Pigeau. p. 244. where there is a semi-proove agt. Defdt — his answers shall be taken as his —.

Rolland. The first quarter of rent now demanded is due for some bundles of hay which he rect. — Plff claims

that

that his privilege pr therein not yet due - this the Court cannot do, as the question respects this suit is not yet before the Court - the legal right of the party may be reserved to him, but no more —

—

№ 351

Levac. - & Chenier } On action of Debt on Obligation —

Nigé for defend^{t} The defend^{t} made a sufficient tender of the sum demanded & ought to be discharged from Costs. —

—

№ 578.

Gagnon & Bourassa and E Contier. } Action for breach of Covenant —

Rolland pr Pliff - The pliff made a Contract w^{h} Gov^{t} to furnish hay pr the Dragoon Regt and made a Contract w^{h} Defend^{t} to furnish a certain quantity of hay on acct of pliff — the Defend^{t} failed in his Contract which occasioned a great damage to the Pliff. —

Stuart pr Defend^{t} The Contract between the parties is illegal, as Defd^{t} had the burden imposed on him without the benefit of the price which Pliff derived from it with Govern^{t} — The State of accounts between them seems to require that they should be left to arbitration the Court is authorised to do so in this Case, being an association between the parties in regard of the hay in question. —

Rolland in reply - The Contract between the parties is perfectly legal - The consideration is stipulated - Poth. Obl. № 57. —

№ 723

Reeves
Berthelet ad[t]

action to recover wages as a Clerk and book-Keeper —

Grant for Pltff - submits case on the evidence as to the quantum of wages demanded — there is also a balance for money lent —

№ 228.

Pope.
Luke.

action of defamation. —

Rolland for Pltff. Defend[t] has pleaded compensation which cannot be admitted in this case, as he alledges that on another occasion the Pltff had libelled the Defend[t] this is inadmissible, as the injury was not done at the same time —

Grant for the Defend[t] The compensation is rightly pleaded, and applicable to the case —

№ 324.

Gagnon.
&
Bourassa
&
Pouparts
oppts.

On merits of opposition —

Stuart for Oppts. the depositions are not yet closed, as the Wit[s] remained to be cross-exam[d] — the depositions are not yet closed, and until this is done the Case is not ready for hearing. —

Rolland for Pltff - The Oppts has not brot forw[d] his Wit[s] on the day appointed, and is thereby foreclosed he cannot now have another day. — there is no evidence before the Court —

№ 81.

Mr. Gill & Burton & King Intervs & Richardson et al. —

On Report of Surveyors —

Beaubien for Plff, prays that the boundary line of the rear of the Seigniory of Noyan be confirmed as established & drawn by the said Surveyors — The front line of Sr. Seigniory is correctly drawn upon the River Chambly including & allowing for all the windings in that River — the rear line of Noyan forms the disputes between it and the Township of Stanbridge — Contends that the line D. E. cannot be considered as the rear line of Noyan, as it would give a greater superficial quantity of land to that Seigniory than cont. in the grant. — The line drawn by Mr Watson is also objectionable on the same account. —

Rolland for Defend. In all grants by the Crown a liberal construction is always allowed Domat. Tr. des Loix. ch. 12. Som. 13. — That the rhomb de Vent of the River Chambly must form the front line of the Seigniory — and not by following the turnings & windings of that river — 2. Arrêts d'Edit p. 189. to shew that every River should be considered as having a certain Rhomb de Vent — the rhomb de Vent of the Riv. chambly is established to be north & South — according to this line the front line of Defds Seigy should be established Cug. Tr. p. 48. — at all events this rhomb de Vent if not allowed on the whole extent of the River, ought to be allowed in regard of the front of the Seigniory of Noyan — There is another principle pr Defd. submits that he be allowed the superficial measure of his deed of Concession — Cites case of a bay in front of

the

the Seigniory of Laprairie, where an allowance was made in the rear to make up the deficiency —

Beaubien in reply — 1. The first prétention of Defdt — is inadmissible, as the Rhomb de vent of the River in regard of the particular Seigt. ought always to be followed —

Mr Ross for the Crown — considers that the Surveyors have well considered the question, they have established the front line of Noyan upon a line drawn according to the general bearing of the River Rechelieu — and the line A & B shd be the front line of the Seigniory of Noyan —

№ 969
Benoit. } action for Rente Viagere. —
& } Duesnel for Plff asks Judgt according to Declr
Marcille } excepts 13/. 9d. he acknowledges having rect

Wilcox } action agt Defendt as carrier for not having
& } delivd a certain quantity of Pork delivd to him
Skinner } to carry to Montreal —

Rolland for Defendt — The defendt — delivd the number of hogs he recd from Plff — there is nothing alleged agt the honesty of Defendt — nor is the deficiency in question made up — the Wr Gelston did not weigh the pork himself but the deficiency must have arisen from the effect of the weather —

Grant for Plff contends that the deficiency complained of has been made out —

№ 324

Ellice val. McKenzie & Dunn Oppt

On Opposition afin de conserver. —

Ross for Oppt — By a deed made by Oppt with the other partners in the Batiscan Iron Works, by wh they undertook to pay him so much money as value of his share with interest, upon wh the Oppn is now made upon the Estate of Mr Forbisher one of those Partners —

Rolland for Pltff & Defendr contends that the Appost has made no proof whatever of his claim there is nothing before the Court to shew the nature or extent of the property of the Iron Work Co nor is it proved that the other Partners enjoyed the property — The Defendr has also pleaded a Set-off to the demand, as having paid the share of Mr Dunn in the purchase money of the Seigniory of Champlain —

Ross for Oppt the Statement in the pleadings filed is somewhat different from the Statement now made by Defendr — The parties admitted the agreement between now filed to contain as well the right to the lease there mentioned as all the rights now claimed by Oppt —

№ 752.

Gordon & Ermatinger dal & The Kirby Intervs

On the account filed by the Defendrs as Trustees to Bankt Estate —

Stuart for Pltff. contests the right of the Defendrs to charge 5 p 6c on the Estate for their trouble altho' agreed to by several Creditors — but Pltff not bound by this Agreement —

Rolland for Defendrs The defendrs are accountable only under a particular transaction, namely as Trustees, according to wh only they are liable to account, and if

the

the pltff meant to set aside this clause of that transaction he should have brot a special action. —

Stuart in reply — The action is not as Defendrs as Trustees under any deed, but as persons holding the property of the Bankrupts — Pltff has nothing to do with any deed or particular trust committed to them by other persons — this deed is not binding on those who were no parties to that deed — the duties of Defendrs here must be considered as gratuitous. — Submits that a provisional dividend should be granted to Pltff to put him on the same footing with the other Creditors and calling in the other Creditors to dispute this point of charge of Costs for the agency —

Ross for Intervg party — contents to provisl. proptn to Pltff —

№ 373.

Watson Heath. Mills et al Opps

On claim & oppos.n afin d'annuller —

Rolland for Oppt — contends that the seizure here was irregular having been made in the hands of a third person — The law in regard of the seizure of a Vessel has not been observed, a vessel being by law considered as Immoveable property — refers to Héricourt. —

Grant for Pltff — The poss. of Oppt here was the poss. of the Defendr and the Vessel in his hands liable to be seized —

Friday 19th Febry. 1819

Scott
v
England

The plaintiff's motion was granted

No 400.
Johnson
v
Stearns

The Court dismissed the Defendts Exception

No 881
Glassford
v
McArthur

Action dismissed —
cases referred to — Selby v. Short — last Term
Holmes & Cheeseman
Woolrich & Sanguinet
Bangs & Bethelet

No 726
Valade
&
Yule
and
& Contra

Judgt on the award — Costs divided

No 778.
Lacombe
&
Buxton
&
Buxton Intis

Judgt dismissing Intervn wt Costs, on the principle that the deed between the father & Son was fraudulent — Some articles not included in the deed and proved to have been considered as the property of the Intvg party, were ordered to be delvd up to him —

Smith
v
Torrance

Judgt for Plff — There was no proof of the existence of any contract wt Bell for the work &c was done by Plff —

Stearns & Sanson — Judgt. for Pltff

Ex Parte — The Grey Nuns — On Petition praying that the Court would grant its Judgment for carrying into effect the Lettres de Terrier obtained by the Petitioners from the Governor. — cites. 2. Pigeau. 517. —

Lacombe & Mabbut — On award of arbitrators —

Ross for Pltff. demands hom. of the award and costs as under £20 — altho' sum awarded be only £6 — and this by reason of the nature of the claim set up by Defendt —

Bosson for Defend. contends that the Costs only of the Inferis Court ought to be granted, and the extra Costs of defending the Cause in this Court paid by Pltff

Dumas & Hoet & Seminary Opp. — On motion on the part of the Opposts. that the amount of their claim be paid to them, as the same had not been contested —

The mo. was objected to —

Molson & Martineau — On question of Solidité on Lease made to Defendt —

M

Mr Beaubien cites. Poth. Soc. № 55. 6. 7.

Scott
vs
England
and
Sarrault
Opp.

On Pltf's mo. to dismiss Opposition from want of moyens —
Bedard for Oppt. The mo. is irregular as oppn stands admitted quoad Pltf — the Oppn having been filed 20th Oct. last and objection or contest raised thereon till the 2d inst. when Pltf served notice on Oppt to fyle his moyens — this was too late, as the ten days allowed for contesting the opposition had elapsed before giving such notice —
Bolton for Pltf — The ten days here alluded to must be considered as Ten days in Term only —

Saturday 20th Febry. 1819.

№ 1004.
Henshaw
vs
Gackmeyer

Action dismissed — default Case —
Action by Pltf as Indorsee agt Defendt — as Indorser of a Promy note — Protest not made within time required by law

№ 827.
Stuart & Co
vs
Lafricain

Action by Indorsee agt the Drawer of a Note Protest made on day note fell due without allowing days of grace — Held that protest was premature as days of grace are allowed — therefore no Int. was allowed on the Protest — only from day of Service of process — Default Cas —

№958.

Derome dt. Decarreau & Bergeron

№874

Berthelet & Pluckenet — Judgt. for Pltff

№738

Jones & Turnbull & Doige — Action by Pltff as bearer of note drawn by Defendr payable to Jos: Williams or bearer the note was not indorsed by Williams to the Pltff but he proved a valuable consideration having been given by him for the note — Held that this note was not within the Pro. Stat. & was transferable without indorsement —

Levac & Chenier — ~~Judgt for Pltff with Costs~~

Dumas & Holt & Seminary opt. — The opposants mo. dismissed — such mo. for payt. of money on Opposns being granted only by the consent of the parties —

Scott & England & Sarrault — Held that the Rule of practice in regard of the ten days applied as well in Vacation as in Term time — Pltffs mo. therefore dismissed —

April Term 1819.—

Thursday 1st April 1819.—

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

Bender
v.
Foucher

On Pltff's mo. for enquete.—

Defendt. objected that having pleaded prescription to the Pltff's demand, being an Apothecary's bill, the whole must be left to the serment decisoire of the Defendt and no other evidence can be received—

Beaubien for Pltff. The evidence ought to be admitted as well from the manner the Defendt has pleaded, as by his having refused to answer to certain interrogatories which has been proposed to him— The Defendt does not allege payt— nor does he deny the services rendered.—

Friday 2. April 1819.—

Dom. Rex. &c
v.
Jas Alexander

On Defendts mo. to be admitted to bail, being charged with having forged a letter under which he obtained goods from one John Porteous

Mr. Ross on behalf of the Crown objected to the motion, as the charge made against the Defendt is a capital felony.—

Mr Grant for Pr the charge is not a capital felony refers to case of Mary Mitchel, Foster's Cr. L. refers also to cases in Leach's Crown Law.— the party requesting the goods having no direct interest or right in the goods the producing the letter to obtain the goods was no capital felony, and the Pr was forgd it—

7. Geo. 2. Ch. 22

The Court were of opinion, that the Case was not a felony, but only a misdemeanor, and admitted Pr to bail himself in £200 - and two Securities in £100 each—

No 820.

Wm Hodgson
vs
Abner Bagg

On trial by Sps. Jury— action of assumpt on Promissory note of Defendt as Drawer payable to Pltff for £411. 12 2

James Wildgoose, sworn says, that he has seen the Defendt write & libel promissory note now produced he believes to be his handwriting— proves also the Depts handwg to certain mem. contd in Exhib. No 1. filed by Pltff w his replication— was present at a conversation between parties on Settlemt of them and the Defdt complained of over-charges in the Invoice, & Pltff wd not agree to —

Offers Protest on the Note in evidence.— .—

Mr Osullivan for Defendt— moves to non-suit the Pltff inasmuch as the note has been indorsed by Pltff. and the Protest made by one Robert Griffin, who was the person to whom the note appears to have been indorsed, appears

to

to have made the protest - and demand of pay^{t} - of the note as the payee, and therefore while that ~~the~~ indorsement - remains the property in the note is in law vested in the said Robert Griffin, and the plff cannot therefore maintain the action -

The Court over-ruled the objection, as the mere making of the protest by one Robert Griffin cannot carry with it the presumption in fact or in law that he was the legal proprietor of the note -

The Defend^{t} then stated as defence, that the account of the plff which was settled between the parties, contained over-charges which ought not to be allowed, and such over-charges ought to be deducted from the present demand

James Wildgoose again called, as W^{t} for Defend^{t} proves plff's signature to Defend^{ts} exhib. N^{o} 1 - Thinks that the memd^{m} signed by Defend^{t} had reference to the bal^{ce} of said Exhib. N^{o} 1 - This evidence objected to by Plff -

O'Sullivan for Defend^{t}, question here whether the consideration of a promissory note can be gone into - 1 Bailey. 224 - 1 Fonblanque 344 - 1 Term Rep^{s}. Trueman & Hurst. p. 42. -

The Court limited the defence to objects of error or fraud not over-charge, &c - had been settled between the parties -

The W^{t} That part of the invoice now shewn, exh. N^{o} 12 is partly in hand writing of Plff - the two first lines of it - the amo^{t} of this Invoice is agreeable to Ledger in poss^{n} of W^{t} £ 1746.16.6 Ster^{g} - The Plff is a Quaker - had considerable transactions with the Merchts in town -

James A. Dwight - had transactions wth Plff in this Country - left an agent in the Country, one Anderson - imported goods from Plff in 1813. 14. & 15 -

John Wragg, was Clk to late M^{r} Platt in 1815 - who imported

imported goods from Pluff that year - Sheet Iron -

James Dwight - Mr. Alderson passed for the agent of Pluff he settled w^t this agent - he allowed a deduction upon the whole amount of the Invoice - there was an action instituted by Pluff ag^t W^m and this agent proposed to W^m to take the suit out of Court, and he would allow a deduction on the goods sent him - that it had come to light that the Pluff had overcharged some of his goods in this Country as well as in the United States, and he would make a deduction of 25 ℔ Cent on some articles which was done -

Benj^a Throop - the imported prints, pocket books & other articles from Pluff in 1815 - the W^m refused to pay Pluff paid him - after Pluff left the Country, Alderson agreed to deduct 25 ℔ Cent on the amount & settled w^t him accordingly

Jacob Dewitt - imported goods from Pluff in 1815 - charged him from 20 to 30 ℔ cent higher than he purchased them from other merch^ts in neighbourhood of Pluff -

John Wragg - sheet-Iron, tin, nails, sickles were imported by Mr Platt, and charged at lower rate than those stated in the Invoice and exhibited - Mr Platt had sometimes goods from Pluff, but entered into agreement w^t Pluff that he should charge him no more than other houses, & in consequence deductions were made on several articles -

The Court directed the Jury, that the circumstances proved by Defend^s did not show any want of consid^n - and as to the insufficiency of the consideration the parties had by their own settlement of the acc^t sufficiently determined thereon, as the overcharges complained of were then in agitation between them -

Verdict for Pluff -

See cases - Chitty on Bills p. 88 -
Tye v Gwynn 2 Camp. 346.

№ 352

De Martigny & Brissette

On ~~question~~ rule to shew Cause why Experts should not be named —

Consented to —

№ 1076.

Bouc. & Robitaille

On Defendr mo. to put in Suit his garant & to have delay for this purpose —

Rolland for Defendr — there was no promise of warranty made to Plff, & he therefore is not entitled to a delay for delay in bringing him in as a party —

Saturday 3. April. 1819.

Mulchison Lester & Co

On defendrs mo. to suspend proceedings until the Costs of two former actions between the parties be paid according to the taxed bills now produced. —

Mr Sullivan for Plff. this mo. ought not to be granted the party may have his recourse for the payt. of his Costs as he may be advised, but he ought not to be permitted to stay the proceedings in this Cause, as he has made no demand nor exhibited any taxed bills of the Costs to the Plff. —

Rousseau dit Bonhillier vs Bonhillier dal

On Plff's mo. that matters in Contest be referred to arbitrators — the Cause being proper to be sent to arbitrators —

L. M. Viger for Defendr contends that the Case is not of a nature to be submitted to arbitrators, & that the Court has not the power to send the parties before another tribunal

Mr

Mr Duvernet for Pltff contends that Cause is of a nature to be sent to arbitrators & that it is the duty of the Court to send them there – cites. Potts. Proc. Civ. ch. 3. Sec. 4. p. 77. – 1 Pigeau. p. 246. No. 2. –

No 422.

Warwick et al
vs
Babuty. –

Action for work & labor. –

Sherwood for Defdt – refers to depn. No 2 the order was countermanded – The order was renewed for certain iron plates to be made for Mr. Monk but not for Defendt – The Pltffs mistook the order, instead of making these plates they made the works originally ordered by the Defendt but which was not wanted & the Defendt not liable to pay for them –

No 83A

Varin
vs
Bleakley
Curr. –

Action of account –

On hearing on exceps.

Beauvais for Defendt – objects that all the parties are not before the Court, as one Perigord appears to have an interest as a partner – the Pltff alleges that he is vested w. the rights of this Perigord, but this does not appear The action is irregular – it is in effect an action of account but it concludes to pay. of a specific sum – there are also different counts for goods sold &c – which cannot be joined with an action of account –

Poth. Soc. Ne 163.

Rolland for Pltff – The actio pro socio – is not necessarily an action of account – the intents of the parties may be various and various right may be established thereon – the Pltffs was entitled to a certain share in partnership, but not necessary that this should be demanded by an action of account –

That –

That actions of different kinds tending to the same conclusion may be joined together - refers to case of McKenzie & Co v Lacroix, where a demand for Seigneurial rights were joined wt - a demand for goods sold & delivered. +

Deschambault & Paternaude - } On question of admissibility of Verbal testimony -

Rolland for Pltff. action for recovery of money on deed of sale - to this Defend - has filed a receipt stated to be for six cent piastres, whereas Pltff contends that it is an error and was given only for six cent francs, - or so intended, and that he ought to be admitted to prove this error by Verbal testimony - the receipt is contradictory, because it is stated be on acct of the interest whereas such interest was not due and could not be demanded, it cannot be applied to the deduction of the Capital which is now demanded - Sup. 315 - in case of dol & fraude the verbal testimony is admitted, even in cases of suspicion - The facts to be proved agt this receipt are that when Defend returned home, he asced having pd only 600 livres & that there was a mistake in the receipt - the acct he gave at different times of having borrowed the money from diffo persons -

Mr McVigé for Defend - the proof on the part of the Defend is complete, and no verbal testimony ought to be admitted to destroy it, as it is an act under the hand of the Pltff It is no objn to the receipt that it is stated to be on acct of the interest - but when more is paid than is due for the interest the balce may be applied to deduction of the Capital. Poth. Obl. Nº 533. 12º - The Debtor may exonerate himself from the debt he owes at any time, - The Pltff can throw

535

no

no suspicion on the receipt in question – he has exam^d. the Defend^t. on faits & articles, and he has answered fully to all the circumstances & no suspicion can arise on it –

№ 111.

Ker. a
vs
Hardlow

action for work and labor –

Boston for Pltff, the only contest between the parties respects a small sum of £6 – which Defe contends ought to be credited to him – this the Pltff does not admit –

Beaubien for Defend^t – admits the work & labor. & acknᵒ a balance of £20. 19 – & without this admission the Pltff cannot make out his demand – this sum has been tendered and deposited, and the Pltff must pay costs from the time of deposit –

Boston for Pltff – the only Wᵗ who speaks to the payᵗ of this sum wᵈ constitutes the difference between the parties is a man who red some of the parties & the admission of the Defend^t. on the point must be taken entire –

Monday 5th April 1819.

Millard
St. Cruzeans

On Pltff's mo. for hearg instanter on exceptns pro. à la forme pleaded by Defdt

Pettier for Defdt. There are several counts in the declaration all for the same sums, and the conclusn is only for one of the sums — refers to case of Hammond & Wilson. Cit. last —...

Varin
&
Bleakley
Cur

On Pltff's mo. to ex. Defdt on faits & articles —

Beaubien for Defendt. The faits & articles cannot be had, as Defendt is sued as Curator and cannot answer to things not of his own personal knn. cite Potts. Obl. No 821 —

The Court granted the motion, wnsdering that Defendt was bound to answer to such facts as were within his knowledge —

No 202
Hart
&
Ob. Winters
&
Colton & Winters
&
H. Winters
Opps

On Opposn mo. for Judgt on Opposn

Mr Sewell for Oppts. states that the Cattle seized upon wn the Oppn was made have been given up, & now asks Judgt for the Costs —

Mr Beaubien for Pltff. states that the Cattle were seized in the possn of the Defdt — & he ought to pay the costs & not the Pltff. —

Sewell for Oppt. The Pltff has admitted the opposn & must necessarily pay the Costs —

No 122
Thc A. Turner
Jno Bowker

Action of assumpsit on Prom: note
Trial by Sp. Jury.

Joshua Healey - to parties, has seen Defend^t write & that the name subscribed to the note now shewn is of the proper hand writing of Defd^t - and the name Thc Means indorsed thereon, is of the handwriting of Thc Means -

Does not know in whose hand writing the words over the name of Means are -

Grant for the Defend^t - moved for non-suit, in as much as Pltff has not made out his Case - the note is not dated, and the day when note was made or was issued not ascertained - the instrument states in the declr that proved is different, it being stated to be a note for 600 dollars equal to £250 -, there is nothing of this in the note that it is equal to £250 - wh ought to have been laid by way of averment & not by statement as part of the note - cites case Chitty on Bills, 365 - Dr on pleas - 303. - 30A -

The Court considered that the existence & issuing of the note was sufficiently made out by the Indorsement by Means to the Pltff - and the statement of the 600 dollrs being equal to £250 - must be considered as averment of the Pltff, and not an essential part of the note - The motion rejected -

The Defend^t called the Witness Joshua Healey, who further stated, that the promissy note in question he rec^d from Means in the fall 1816 to remain from Bowker & at hom^e. with him till the fall 1818 - at the time when it rem^d. in the hands of Mr - there was no indorsement to the Pltff, when Means took back the note he said he was going to give it to the Pltff - The signature to the exhib. No. 1 filed by Defd^t on the back of the draft drawn by Bowker in favr of Means for 600 dollars, is in the hand writing

writing of Means - but W- has no knowe that the 600 were to be paid on acct of the said Note. - - -

Verdict pr Pltff

№ 835.

Perrault
& Desperance

Action on promy Note -

Grant pr Defde The action cannot be supported under blank indorsemt - the Defend- not being a trader, but a Tavernkeeper - The Pltff also ought to have shewn that payee was a trader - this has not been done -

Beaubien pr Pltff - It is in proof that the Defend. is a Trader - he buys & sells as a Tavernkeeper

№ 1007

Molson
Phillips
& Pomeroy
Hitchcock

Hearing on the Intervention, claiming the effects seized by the Pltff in the possr of the Defendt -

Henshaw pr Interv. party - the property seized appears to belong to Hitchcock, who was a Sub-tenant of Defendt - and at the time of the seizure there was no rent due by him to Dfdt -

Sewell pr sam - Hitchcock was called in as a Garnishee and declared that he had nothing in his hands belonging to the Defendt - but as his effects

162

effects were seized, he made this Intervention to save them as he owed no rent to Defd^r^ — agus to 162^d^ — art. of the Custom — accords to ofr his property must be delivered up upon the rent he owes —

Beauvais for Pltff — It matters not whether the seizure in this case were made by arrêt or gagerie — The Intervening party is not a sub-tenant, but has put his effects into the house of the Defend^r^ — and such effects are liable to the payt^s^ of the rent — that goods & merchandises are equally liable to the privilege of the landlord as household furniture — Poth. Bail. 240 to 244.

№817

Thayer. — Marshall tal & Hartley Gar^t^ —

On plea raised by the Garant —

Henshaw for Gar^t^ — the Pltff ought to have discussed the property of the Garant who is the principal debtor, before bringing the present action hypothecaire of the Defend^r^ — The property of the Gar^t^ has been seized, but not sold & now remains in that situation —

Rolland for Pltff — The Plea is irregular, it being pleaded as a plea in bar, whereas it ought to be merely an exep. dilatoire — but the Debtor himself is not entitled to raise this plea — 1. Pig^eau^ 189. — But the Garant here gives no description of the property to be discussed, nor offers money to pay the expence —

Varin
v.
Bleakley
Cur.

On Defdt mo. for a Com. Roz. to ex. witt at Drummonds Island —
To Stand over

Tuesday 6th April 1819.

Levac & Bapome
v.
Chenier. —

Judgt wt Costs agt. Defendt

Sauvé ux
v.
Valois. —

Judgt for part of demand - dismissing Demand
founded on Judgt of 20 Feby. 1815. —

Dom. Rex
v.
Stibbens

Interlocy order, directg that Justices shall certify the orders & regulations under which they adjudged the license held by Defendt to forfeit —

Bender
v.
Foucher.

Pltff's motion granted - the Court considering that the Pltff was entitled to evidence on the part of the new undertaking, notwithstanding the answer of the Defendt - on faits & articles. —

Jones
v.
Fowler

Judgt for Pltff. on giving Security. —

Pope.
Luke —

The Court reserved to determine upon the question of compensation until the hearing of the merits. —

Sainz. v. Watson — The defend^{r} motion granted, to stay proceedings until costs of a former suit in cause paid. —

Hutchison v. Lesterval — same order — S.C. —

Wednesday 7th April 1819.

Lussier v. Perrault. — On defend^{rs} mo. for delay till next Term in order to obtain the testimony of one John Cuvillier an absent witness. —

Stuart for Pltff, the enquête ought not to be delayed

Thursday 8th April 1819.

Lussier v. Perrault — Order for Com. Rog^{re}

Philps. v. ~~Philps~~ Fisher. — On Pltffs motion for a Com. Rog. to ex. Wit^{s} as being resident above 30 miles from Town —

De Longueuil v. Frichette. — Action as Defend^{r} for having erected a Wind-mill within the barony of Longueuil a grinding wheat,

Sewell for Pltff - action of complainte - Every Seignior has by law the right of banality within the limits of his Seigniory - The Pltff is in poss. of this right & was so for 20 years before the erection of the Mill in question - she has sufficient water Mills & no person but herself has ever enjoyed the banalité in the Supt - refers to Edict of 1 July 1675. and 1686 - the right is given to the Seigrs to erect banal Mills - in their default the tenants may do so, but this must be under due permission & after the default of the Seignior has been legally established in a Court of Justice - refers to authorities 2 Vol. Ed. p. 46. extracts from various Judgts on the subject - Guyot 576 - S. Poth. 174. Bouchel. Vo banmalité - Jur. Gr. Comre &c -

Bedard for Defendt. The action en complainte cannot lie, but for a real right, and unless the bannalité be a real right, this action is wrong - this right of ban is an extraordinary right, and opinions on this head are different - Cugnet is of opinion that it is a real right, but in giving this opinion he cites the laws upon wch he founds it - & he is not supported in it - the better opinion is that there is no such right in the Country the art. 71. of the Custom is express on this subject & the 72d. art - speaks as to the wind mills - This right therefore can exist only by express agreemt - the Ordre of 1675 - refers only to such Seigniors who had made such contracts with their tenants - it cannot be - interpreted otherwise - The Ordre of the King of France of 1686, must be interpreted in the same manner, as applying only to such Seigniors who by convention wt their tenants were entitled to this right - this Ordre gives a right in certain cases to the tenants to the prejudice

of

of the Seignior, but no such express right is any where to be found in favor of the Seigneurs — The poss.n of the Pltff cannot create a title to the bannality, as appears by the Commentator on the art 71 — of the Custom — If the Pltff has no such right she cannot prevent her tenants from Inst. Cout.
building mills on her Seigniory — 1 Lorsel. liv. 2. tit. 2 art. 13. p. 280. — The Pltff has filed a deed of Concession in q.l this right is stipulated, but she has not identified the lot of land when the defend.t built his mill to be part of this Concession. — see 2 Vol. Edit. p. 298 ord.e of M.r Dupuis of 1728, where the obligation was considered as resting on the deeds of Concession of the Tenants — see also p. 212. arret 12 Nov. 1742. where the conditions of the Tenants being bound to go to the banal mill was considered as stipulated in the deeds of Concession — There are certain Customs in France where this right is established by ~~the~~ express articles, ~~of the~~ cited customs of Anjou &

Sewell in reply — The defend.t by his plea does not deny the right of bannality of the Pltff, but contends that the Pltffs mills are not sufficient for the wants of the Seig.r — But the right of bannality is vested in the Seigneurs in this Country by law — refers to ord.e of 1675 — as express — The Pltff has also shewn by agreem.t as stipulated in the original deed of Concession that the Defend.t land is liable to this charge of banality — cites — 1 Gp. Com. p. 1038. N.o 13 — where Ferriere lays it down that the Seig.r can prevent the tenant from builds mills — Rep.se V.o Bannalité p 119. arret 1555 — complainte lies for all droits Seigneuriaux.

Bedard — The ord.e of 1675 could not abrogate the law of the Country, the Consul Sup.r has no such authority — they only meant to interpret it only —

No 474

Tacheréau
dit
Pion. a

action by Plff. for demolition of a wind mill, erected by the Defend. in the Seignory of Plff

Rolland for Plff. the right of ban. is the law of the Country under the Edits of ~~1670~~ & 1686, and expressly sets aside the 71st art. of the Custom, as it obliges all Seignors to build banal mills within their respective Seignories and contains two points first the establisht of banal mills, 2do prevent the Tenants to build such but only in default of the Seignors — The ordre of 1675. & 1686. precludes the necessity of express stipulation of the right of bannalité, by establishing the right — It is argued that all these arrets went upon the supposition of the existence of the express stipn of the right of bannalité — but there is nothing of this, nor does it appear even to have been a question — That the bann. conventions can be established in this Cause — that the Seigr who has no mill, or an insuffte mill can prevent Defend. from erects a mill. — 1 Gr. Cout. p. 1034. — Som. Dict. 12. & 15. which is very strong on this point. — Repre vo moulin sec. 1. p. 576. & 682 — corn mills may be bannal — Repre vo bannalité. p. 112 Nouv. Denizt. bannalité — this properly an action Reelle & the complaint will lie — but this may be considered somewhat different in regard of the right claimed by Plff —

L. M. Vigé for Defendt The Plffs found their ~~right~~ action upon the principle that the right of bannalité is of Common right — & Plff has filed nothing to shew any stipulation on the part of the defend. in this respect the exception pleaded by the Defend. meets this principle and contests it —

By

By the Cust. of Paris. art. 71. this right is excluded unless when expressly stipulated, being considered as a burden upon the Tenant — but it is contended that the law in this Country has been altered by the arrêt of 1686 — but to have altered an existing law express words were requisite and not mere implication — this arrêt must therefore be interpreted in such manner as to be conformable to the then existing law of the Country, namely art 71. of the Custom of Paris — This arrêt of 1686 was not enregistered in the Country till near 20 years afterwds because the Govr of the day had an intent not to do so, and it was only at the instance of an individual that this arrêt was enregistered — had this arrêt been advantageous to the Seigniors of the day they would not have delayed the publication of it so long — The Ordre of the Provce of 1675, never had in contemplation to establish any general right of bannalité in the Colony and the Censitaires only who by their deeds of Concession are bound, ought to be held to grind at the bannal mills
286 The question judged by the Conseil in 1728, was that the tenants who were so liable by their deeds of Concession should be held to grind at the bannal Mill — and the Dupuis in his Judt — would not have taken notice of the fact of liability in the deeds of concession, had the law of the Country established the right — there is no pointed decision upon the question before the Court — the Judts rendered being generally founded upon different principles — Mr Cugnet forms his opinion upon the two arrêts of 1675 & 1686, but his opinion is that of a Seigr & amounts to no legal interpretation of the law —

That present as an action complaints, ~~it~~ is not founded as the pretended trouble has been continued for more than

a

a year & day before the institution of the action, vizt since Augt 1817. - when Defendr mill was in operation — If the action is to be considered as an action petitoire, it must be supported by titles, as affecting the reality — none have been filed in support of the action — The motion made by the Defendr is that certain papers and titles produced and filed by the Pltff at the Enquête should be rejected, as coming in improperly, and not according to the Rules of Practice art. 14. — That papers even if allowed to be filed do not establish the right of Pltff — among them is a deed of Concession to one Pre Joubert - but it is not proved that the land possessed by the Defendr is in part or in whole the land which was granted to Sr Pre Joubert — This action therefore as an action petitoire has nothing to support it — As to the insufficiency of the plaintiffs mill, it is proved beyond a doubt, and in this respect the defendr was justified in erecting his mill

Bedard of counsel for Defr — by arrêt of 1686. it appears to have been made in consequence of a complaint of certain habitans to the King of France — this arrêt was not published in Canada until 7 Jany 1 Febs. 1707 and in taking this fact into consideration it appears little doubt but it was the same habitans in June 1707 who renewed their complaint in this respect as the Seigr had not complied with the arrêt of 1686, that the right was granted to those habitans to build mills see 2.d Vol. Edits & Arrêts. p. 250. -

Rolland in reply — Contends that the edit of 1686 establishes a general principle of right in the Country — The remedy thereby given was to compel the Seigniors to build banal mills, because until that time there existed no law to effect this, nor could the Censitaires build a banal mills, even upon the refusal

refusal of the Seignior to do so — The Arret of 1686 was an absolute abrogation of the Custom of Paris in this respect — The right of bannalité cannot be supported under express stipulations in the original grants, as such cannot be found nor traced up to the actual tenant — If it is not of droit Commun, it cannot be maintained, — But the right of Seignior is sufft. to maintain this action, the same as he would in regard of the ungranted Lands in his Seigniory — As the papers produced at the enquête are only in proof of the Pltff's possession of the Seigniory and the rights attached thereto and the said papers had no relation to the declaration in any other point —

—

No 954
Winters. —
Raymond

Action en Vove de fait

Sewell for Pltff. demand founded for pulling down a building erected by Pltff. & selling it under an exon of moveable estate of Pltff — cites 6 Com. 393 — Defdt. was a trespasser ab initio, having acted beyond his authority — 1. Gr. Com. p. 1346 — every thing Immovable that cannot be transported without damage — Id. 1351 — 1355 — Rep. de Jur. Vo Immeubles —

Boston for Defendt — There is no proof that Defdt ever committed the trespass in question — never pulled down the building in question — If it was a realty the Pltff ought to have made his opposition — not attached to the realty in anyway — cannot be considered as an Immovable — see art. 90. Cout. & 10 — Fer. Gr. Com. 1 Bourg. p. 132

Sanclot
vs
Dugat
&
Sanclot Oppt
&
Dugat Oppt

Hearing on the oppositions -

Rolland for Pltff. The Defendt Dugat has made an oppos[n] for £4 - being the amount of Costs adjudged to Defendt agt Pltff -

Sherwood for Oppt complains that there is an error in docketing the plea to the oppos[n] that there is also an essential paper wanting here, namely the execution agt the goods & chattels of the Defendt. That the execution agt the lands & Tenements here is a nullity, because the goods & chattels must first be sold - Exón of goods sued out in May returnable in June - but it was returned in Vacation before June which was not in conformity to the rules of practice, and to allow the return of a writ in Vacation, it must be made returnable in Vacation, and the return cannot be made before the day of the return - qt was done here & an Exón agt the Lands and Tenements thereupon immediately sued out - which was irregular -

The oppos[n] of Dugat is on a Judgt for Costs notwithstanding this Pltff sued out two Exóns on the Judgt he obtd without making any allowance for the Costs - Defendt thereupon sued out his Exón for his Costs agt Pltff on 8 July -, this adjudged to Pltff last Octr. - The Defendt Judgt not having been satisfied he is entitled to be collocated for same -

As to the oppos[n] of Pltff - is nature of a new Suit and all the exhibits ought to have been filed in support of it - Pltff has taken the exhibits in the original cause & files it in support of his oppn - without leave of the Court which was irregular -

Friday 9th April 1819.

Being Good-friday, there was no Court

Saturday 10th April 1819.

Martigny vs Brisset } Interlocutory order of reference to arbitrators.

Robertson. Hoyt. Dillon val. Gar } Judgt that goods in the hands of the Garnishees be delivered up to be sold in satisfaction of the Plaintiffs debt & Costs on the plaintiff paying the sum of money to the Garnishees, for the security of which the said goods were lodged in the hands of the said Garnishees.

Warwick Babuty } Action dismissed

~~Gagnon Bourassa Pouparb~~ } ~~Order for completing the depositions in the Cause on first [illegible] day of vacation at Chyenne & Costs of Oppo~~ See 16th April.

Phillips Fisher } Pltffs motion rejected — being discretionary in the Court.

Thayer
vs
Marshall
&
Hartley
Garn

Exception pleaded by the Garn — dismissed with Costs —

Deschambault
&
Patenaude

Plff's motion granted —

Varin
vs
Bleakley et al

Defend's exception dismissed —
Plff's mo. for faits & art. granted —

No 1444

Ls. Lemai dit
Lalonde
vs
Jas. Fossey

Action for damages occasioned by the negligence of the Defend's servant in driving the horses & carriage of Defend's —

Poth. Obl. 121.
Dunt. Vo Délit
No 3 —
2 Bourg. p 504. 5.
No 1 &

Grant for Defend's — there is no evidence that the servant of Defend's was driving the horses at the time of the accident — the horses took fright & run off from the door of a house where they were tied —

No 724

Eliz: Hall
vs
Sam. Baker.

On Defend's mo. to quash writ of Capias issued out in this Cause —

Grant for Defend's — The affidavit not sufficient not said to whom the goods were sold & delivered

or

Jacques & Jacques & Tremblay & Gendron — mis en Cause.

The question here, was whether the minor children of Gendron were sufficiently represented by their father without being appointed Tutor to those Children —

Bedard for O/p/p[ts] contended that the minors were sufficiently represented by their parents —

Stuart for mis en Cause — The father is not the legal Tutor to litigate the interests of the minor, under the Customary laws of France —

Guillon & Duplessis & Moss. vol

action for house rent. —

Beaubien for Pltff — action for rent due by the Subtenants Northrop & Stanley —

Grant for Defdt — There is no plea filed — Pltff has no right-of-action agt Defdt — there is no privity of Contract between Pltff & Defendt as they are not in possession — this alone would make them liable —

Beaubien — The Pltff is entitled to demand from the Sub-tenant, whatever Subtenant owed to the principal tenant —

Monday 12th April 1819. —

Witness-day.

Tuesday 13th April. 1819

Witness-day. —

Wednesday 14th. April 1819.

The Ch. Justice did not attend from indisposition.

Pickle vs Hunter

On Pltff. mo. for hearing on demand in chief.
Boston for Defend. objects that the Incidental demand is connected with the demand in chief.

Lahaye & Spinard vs T.S.

On mo. for Ind. ag. the Tiers Saisi. he not having given in his declaration.

No. 527.

J. Roi. vs Bouthillier

Action for goods sold & delv.
Roi for Pltff. refers to testimony adduced — no proof of an absolute sale, — the Defend. expands on facts & articles, & on comparing them wt. answers of the W. there appears sufficient to support the demand.
Supplementary & alt. depn. to be opened to Pltff.
L. M. Viger for Defend. — contends that the action is not rightly instituted, as Defend. is not the person who contracted the debt. The mother of the defend. who returned the 2. time to Pltff. shop was the person who made the purchase of the cloths in question — she even gave a note for the cloths. & this note is still in poss. of Pltff. —
Roi in reply. the Defend. rec. the cloths from his mother, who must be presumed to be the agent of the Defend. from this circumstance & the other evidence in the Cause —

№ 398.

Debartche
Moreau

action for Lods & Ventes —

Rolland for Pluff — similar Case to that of Pluff agt. Roquier — One Plamondon sold several lots of land to Defendt. who was to take possession immediately — the same day the defendt. sold a part of these lots to one Ledoux — 2 Decr. 1816 — In March 1817 Ledoux made a retrocession to Moreau, and Moreau to Plamondon — By the first act of retrocession as well as by a clause in the Sale by Moreau to Ledoux, the Defendt. was charged to pay all the Lods & Ventes on these transactions — It is contended that there was no tradition to give rise to Lods & Ventes — but the deed of Sale alone is sufficient — the purchaser is vested with all the means of obtaining this tradition, & it is not for him to allege such default agt. the Seigneur, as it is for the purchaser to obtain this tradition — There was delay given for payt. of the purchase money qch. is tantamount to real payt. as to third persons — and completes the execution of the Contract — this is also a presumption of tradition if there is no existing cause proved to prevent it — the Defendt. does not shew this existing cause, on the Contrary he sells the same day and undertakes to pay Lods & Ventes, and also the interest on part of the price as equivalent to the capt. he had 3 Desp. 85 — № 20. Voluntary retrocession carries Lods & Vents 1. Bourj. № 102. des Censives. tit. 6. de — de

here there appears no inability in the retrocedant to pay the purchase money, the declaration of the party to this effect cannot avail agt. the Seigneur — at all events the Lods on the first purchase must be due — Bourj. ibid. № 103. 104 — raise the doubt only where the original Sale was not perfected — 2. Gr. Cout. art 78. som. 3. Su. 39. 4 — Double droit dues — The Sale here was so perfect, that the purchaser might have created mortgages on it Bourj. tit. 4. acq. des Imm. № 27 —

to

to shew there must be double droits – as upon a new purchase, to qd this retrocession is assimilated –

Duf: liv. 2. ch. 2. Sec. 1. p. 98. cites case where terme is given for payt – and where retrocession without sentence Prudhom. p. 352. 3. – where purchaser enters without sentence – double droits – 3 Guyot. p. 480 – & seq. nº 20. admits double droits according to the distinctions taken 1 Journ. Pal. p. 209. 210 – Prud. ch. 68 – Rep. vo Lods Ventes. Sec. 28. dist. 4. Poth. Vente. Nº 322. 3. & 4. – term tantamount to payt – De Pensey. p. 168 – Des Droits Vo Lods & Ventes – 1. Laplanche. p. 827. – refers to case determined in Appeal Debastchez v. Duvert –

L. M. Vigé for Defend – as to Case of Roquier, it was never judged – as to Case of Pluff & Duvert not applicable it was a demand for Lods & Ventes in consequence of a tradition reelle, and after possession of a year under the sale. here the Contracts of Sale were never followed by tradition and therefore they were never complete – Here the action is for lods & Ventes & to support it there was a necessity to allege tradition – but no proof has been made of it, altho' the negative was strongly alledged by Defend. The perfection of a Contract depends on the tradition reelle – Defend. admits that had this been proved the Pluff. action was right. –

Prudhom. ch. 17. p. 181 + lays it down that prise de possession is necessary to create lods & Ventes – the title alone does not create lods & Ventes – The authority from Prudhom. cited by Pluff refers to case only where the first Contract has been perfected. – refers to case of Taschereau c. Allard – same question came under the consideration of the Court – Rep. vo Lods & Ventes – Sec. art. 3. – also art. 28. refers to case of Voluntary resiliation, when if made effectually, no lods & Ventes are due – see different opinions on this subject of the different authors – when

the

the choses sont entieres, no lods & ventes are due — and even if the payt. of the consideration money had been made, yet if there has been no mutation, no new Censitaire — there is no right due to the Seignior. — The stipulation in the Sale from Plamondon to Moreau that he left the fermier in the possession for a certain space of time, this is not equal to tradition to Defendr — The acknowledgt. of Moreau to pay lods & ventes to Pluff was made upon the supposition that they were due to Pluff — The payt. by Defendt. of a years interest to Plamondon cannot give any right to Pluff, without there had been a tradition — It was not necessary for Defendt. to have alledged that Plamondon refused to deliver possession to Defendr, as until there was a mutation effected there became nothing due to Pluff — until then the choses are entieres. —

Rolland in reply — Pothr. is not to be relied on as to what constitues the perfection of a Contract — Poth. Vente 318 to 325 — & particularly 323 — lays down what constitutes tradition and Rept. Vo Lods & Ventes. Ch. 28. Sect. 4. p. 719. Guyot. 479. vol. 3. — distinguishes between relief & Lods & Vents lays it down that the Contract alone creates Lods & Ventes & possession really is not necessary — but here there is more than a possession feinte — the stipulation that fermier shd. retain poss. is equivalent to actual poss — Here the resiliation was made, when the choses were not entieres — the conditions of the resil: were not the same as those on wh. the property was sold — viz. payt. of interest of 3000# — this was enough it was a new consideration — the consent of Defendt. to pay Lods — was also a consideration between the parties different from the original contract, a new obligation — p. 714. Rept. Vo Lods & Ventes — Defendr. agrees also to discharge all the mortgages created on the property — which was a further consideration — & evidence also of the tradition in the person of

Defr

Defend- to create mortgages - The Defend. allows no imperfection in the deed of Sale - or that tradition had been refused to him - he even agrees to pay the Costs on the Suit instituted at him by Plamondon -

No 670
Corbin
&
Cadotte
&
Piquette
Grant

Action hypothecaire -

Rolland for Pltff - action at Defend - as possessor of a property mortgaged for part of a debt paid by Pltff - The Defend - pleads prescription - but it is improperly pleaded, as he has not set out by what title or under what right he possesses, and without this the Pltff is deprived of the means of contesting the validity of the title under which he possesses - cite Rep^re V^o Interruption . p. 490. - to shew that had a little been shewn by Defend - the ~~Suit instituted~~ action instituted at Defend^t - for similar demand is proof of mauvaise foi in Defend^t -

Ross for Defend^t - The action is brot at Defend^t as widow of Lacombe who purchased from Gagnon Pltff files the deed of purchase, and Defend^t is entitled to avail himself of all the evidence adduced by the Pltff, and without this deed the Pltff could not support his action - The Pltff complains of the Plea - but he has not demurred to it, but admits its validity and contests it by a new fact, of interruption - he states a Suit has been brought at Defend^t - but the discontinuance of this Suit is the same as if it had never been brought refers to Cr. Com. art. 113 - Cpon 5^e no 9. & No 10. - where there is a discontinuance is made even after Contests, it does not interrupt the prescription - Poth. Prescip^n. No 53. 54 & 153.

The

The does not seem to be the same land for qr the former action was brot as the present - no identity apparent - and no evidence has been adduced to prove this identity -

L. N. Vigé for the Garant - joins in same plea - he cites date of the title under qr Defend. possesses the property - this was not necessary where that title is set out by the Pltff himself in his declaration - Contends that there has been no interruption of the prescription - refers to the authorities cited, particularly from Pothier. - As to the Merits of Case the costs incurred by the various discussions stated in the declaration ought not to be allowed. -

Rolland for Pltff. The Defend must establish a sufficient title, under prescription, and produce it - the Garant has stated the date of Defends title, but this not sufficient without producing it - As to statement in Pltff's declaration, it was not necessary to state under what title the Defend possesses, nor is Pltff obliged to produce any title to support his action - The Defend has referred to case of peremption of a Suit as not effecting an interrup but action of Pltff was not in this situation - he dis'd without part of Costs and with consent of the parties. - there is no authority to be found in the books as to interrup in case of an action by hypothecaire - and dis'ce of an action with Consent of parties cannot be considered as abandoning the right of action - There is no variance in the description of the land, it is particularly mentioned the land of an arpent & demi - the conclusion is for three acres, but this cannot vitiate, qui demande plus - demande moins. -

---

No 604
Allison
&
Bourbillière

action for goods sold -
Vigé for Defd - there is an admission for the Pltff - demand for greater part, that is, except 4 articles -

As to 1st box of glass, the proof of the delivery of it has not been made out — Defendt admits to have rec. 20 to 25 bushels of Salt — no more proved — The puncheon of rum was reduced by the clerk mixing six gallons of water in it without the participation of Defendt — and therfore Defendt was entitled to a diminution in price. — As to the Couchette & paillasse, it was a transaction between Pltff and defendts wife, that these articles should be stated in the account at a lower price than they were sold for in order to conceal it from Defendt. — There is no right to interest, which Pltff has demanded — In Dec. last the Defendt agred wt. Pltff if he would give him delay he wd pay him interest — but Pltff did not give delay but sued Deft. in January after — There is a Small acct produced by Deft agt Pltff, qr he has admitted & qr must be deducted from the present demand. —

Boston for Pltff — as to the glass — considers evidence of delivery sufficient — The quantity of 39 bushels of Salt is proved As to bed-stead, it was the wife who carries on the business Deft and bound by her agreement — The Rum was reduced to same proof as what he usually sold to Defendt — and this was understood between the parties — The proof of the intent is also made out. —

—

№ 666.

Lepaillieu
v.
Turgeon
&
Turgeon
opp.t

On opposition afin d'annuller. —

Roi for Oppost — There were different objects of Contest between the parties, all of which as well as the action on qr the present Deft was given, were included in a compromis to be settled by Arbitrators — dated 29 Janv. 1819.

The

This suit was then a matter of Contest between the parties, and necessarily included in the Compromis -

Rolland for Pltff - has demurred to the Oppos^{n} - and denies the conclusion taken by it - the Compromis states specifically all the objects submitted, and the present suit is not included - cits Kyd on awards. p. 140. 141. - the intention of the parties must be considered even of a general submission - the only question submitted was to regulate the claims of the Pltff as the Succession of her husband, - the present Indt. was for a personal debt due by Defd^{r} -

Roi in reply - the interpretation of a Compromis particularly between relations in matters of Contest between them ought to be favourably interpreted -

Thursday 15th April 1819. -

No 636.

Mittleberger & Allen - } Default Case - service of process by nailing it to the door of a house. - held not sufficient - as process must be left with a grown person -

No 234.

Leonard & Reginbal } Default Case. - service by fixing process to stump of a tree - held insufficient. -

No 829

Day & Noro - } Indg^{t} for Pltff - action discont^{d} as to two of Defend^{rs} not being solidaire as them -

№ 189.

Glassford vr. M.r Arthur

On Pltffs mo. to reject exceptions filed by defend.t be rejected, as 2 guineas had not been deposited w.t same —

Grant for Defend.t contends that exception is peremptoire en droit, and not à la forme, —

№ 250

Foucher. & Pothier. & Henry tal.

Action for malicious prosecution and causing effects of the Succession of the late P. Foretier to be put under Scelle.

Bedard for Dfdt. There is no evidence to support the present action, no proof of any malicious intention in the suing out the Scelle in this case — It is a question here, whether this action can be maintain as the effects in question were by the will of the Testator vested in his Executors — The Stat. 14. Geo. having introduced the right of making wills, gives to the testator same right he had by the Roman Law over his property by will — and therefore the heir by blood can pretend no right contrary to the dispositions of the will. Rep.tn Vo Heritier. p. 447 — Domat. tit. 1. Sec. 1. art. 7. p. 420 There cannot be two Saisies at same time, the Saisie of the heir, and of the Executor — cites. Prevot de la Jannes p. 69. № 13 — There are articles of the Custom repealed by Stat. 14 Geo.. art 292. 298. and 318. — these are affected by this Stat. as by a Statut riel — Jannes p. 63. — That pltffs cannot pretend that they were seized of the Succession of the late Pr Foretier, as heirs at law, from the moment the will appeared. The Pltff deposited the will, & of him a copy is valid

292
298
318

se

1 Pigeau 54. – The Scellé was obtained here in order to prevent the Sale of the effects – this the Executor was entitled to – The establishment of a Garnison was the act of the Commissaire under the authority given to him, and it was his duty to do so. 2 Pig. 284. – That it was the duty of the Executor to demand the Scellé and every necessary act for the preservation of the property of the deceased. – He had more than probable cause for demanding this course and the Judges in vacation considered the matter of such doubt and importance to send the parties before this Court to be heard on the question before the Scellé was taken off

Vigé for Plff – contends that the right of Saisine of the heir is not affected by the St. 14. Geo. 3. – the question is not here applicable – the heirs were in fact as well as by law in poss. of the property, and the proceedings of the Plff was without foundation & illegal. – That the decision of the Court in regard of the Scelle must determine the right of action in this case – The Dfts knew that an Inventory had been made and that the effects of the Succession were not in danger, see protest made by Defendt filed – On motion to reject testimony in the Cause – submits it to the Court – as to refusal of Henry to answer on faits & articles, it was upon sufficient grounds –

No 181

Valiquet
&
Valiquet

action of Debt for term of payt. of

Vigé for Dfts – action is founded on an act of 11 Sept. 1816, but founded on a prior act of 1813 – The Defendt got from Plff a land burdened wt several charges

charges and incumbrances which ought to go in diminution of the demand - consents to the filing of the receipt produced by Pltff. -

Lacroix for Pltff - The answers of Defend- on faits & articles are in direct contradiction with the Judgt. of the Court, & can be of no avail - That Defdt. knew that the land given to him was charged in the manner he now complains - the meadow belonged to Lauzon, & Defdt made the transactions mitoyens wt this Lauzon. - That Court ought to name Experts to ascertain the nature & extent of the reserve of Coupe de bois -

Vigé - The Court ought to order all the charges upon the land to be estimated in order to do Justice to Defdt - That the Judgt in the Inferior Court cannot extend beyond the particular case -

---

No 209

Chevrefils & Baré - & Asselin et al Opposts

On opposition afin d'annuller

Vigé for Opposts the property of Oppost is made out by his titles as well as by the admission of the Pltff, and as Oppost was always in possession the Pltff ought to pay the Costs on the Opposn

Lacroix for Pltff submits case -

No 669

Turgeon & Desjardins

On action hypothecaire, & on two Oblgs Hearing ex parte -

Vigé for Defdt Pltff has not proved that Defdt is in possession - & 2ly The action hyps. & personelle cannot be joined. -

№ 940.

Vve Peltier
+
Lapierre
&
Dupras

On Pltff's mo. to fix the enquête for the 10th May next —

Vigé for Defend^t — The exceptions pleaded by Defend^t have not yet been adjudged upon — That there is nothing adjudged to Pltff upon the Verdict of the Jury until he has a Judt. of the Court upon that Verdict — Pltff ought to demand Judt. on the verdict before proceeding further —

Bedard for Pltff. The Defend^t exception was determined by the Court before the Jury by submitting the fact to the Jury — that the fact of filiation being ascertained by the verdict of the Jury, the Pltff is entitled to proceed to establish the nature & extent of the pension to be allowed to the Child —

№ 817.

Thayer
+
Marshall
&
Hartley

Action hypothecaire —
Case referred —

№ 617

Donegany
+
Levi —
&
Rousseau
mis en Cause

On question touching the reprise d'instance by the mise en Cause as wife of Defd^t —

McAuley.
+
Sleeper

Action of revendication for Staves —
Bolton for Defend^t — the pretensions of
Pltff

Pluff are founded on a Contract with one John White who undertook to deliver a certain quantity of Slaves to Pluff — The Contract was for 15,000 Slaves, it appears that 7000 had been delivered, so that there could remain only 8000 to deliver — Objects to testimony of Dougal — M^c^ dougall, as being the attorney of Pluff, & on whose affidavit the attachment was sued out — This is not a mercantile case — there is no barzain, Sale or Contract of a mercantile nature between the parties — Ord^r^ 1667. tit. 22. art. 14.— That said M^c^ dougall is besides an incredible witness & contradicted by other wits in a variety of instances —

1. Swears that Slaves sufficient to pay all the money advanced on Contract had not been furnished by Defend^ts^ the Contrary appears, as Defd^ts^ furnished 7000 Slaves to Pluff

2. Says that all the Slaves sized were made by two men Sparrow and the said White — This is contradicted by several wit^s^

3. That when the Slaves were delivered it was in the woods 14 a 16 miles, from the Bay of Quinty, — and that White have made the delivery — White contradicts this & M^c^ Dougall is not supported by any one of the Wits who were stated to have been present at that delivery

4. Says he never refused, nor the Pluff, ever refused to take delivery of the Slaves in the woods — This is also contradicted by White —

5 — Says that he marked Slaves by D & A — on exam^d^ Slaves, they are found to be marked w^th^ the initials of Defd^ts^ I. S. —

6 — Number of Slaves remaining due to Pluff stated to be 11,000 instead of 7000 —

7. Offered to purchase these very Slaves from the Defend^ts^ for 11,000 dollars —

8. Speaks to delivery of Slaves in Wood on 2d. May, now White afterwards made other Slaves & purchased also many from different persons, & these last were pursd by Defend. from white —

9 Objects to testimony of John Obrien, he says that he was authorised to go into the woods to deliver the Slaves on behalf of White to Pltff — says, that two persons were present - two first names - whereas McDonald states that different persons were present —

10. The delivery of 20,000 Slaves is far beyond the — Contract of Pltff - & cannot be presumed — says there were afterwards culled down to 7000 —

11. Not probable that Pltff would have allowed Defts to cart the Slaves out of woods to make up his rafts without stopps them on the Spot —

12. McDonald on assisting to make the seizure avowed to bailiff, that there were Slaves in poss. of Defts which did not belong to Pltff, but that bailiff must seize them all —

13. Obrien - threatened to serve McDonald to give evidence for Defend because Defend was unable to pay his wages - Refers to evidence of Thorpe. Deputy Sheriff to shew Slaves belonged to Defend —

Sewell for Pltff. contends that the evidence adduced by Defend of no avail — Pltffs action is made out —

Agents are good witnesses in law — Objects to testimony of John White and moves to reject ~~this~~ from his interest in the Cause — see Thorpe's testy —

Friday 16th April 1819.

Gagnon vs Bourassa & Poupart. opp.

The Court considered that diligence should be used to close the depositions of the Wits already heard and to close the enquete first Wednesday in Vacation.

Pickle vs Hunter & Contra

Mo. discharged, as it appeared that the Incidental demand was so connected that ~~that~~ ought to be heard with the demand in Chief.

No. 724.
Elvz. Hall. vs S. Baker

The Court considered that the affidavit was sufficient – the proceedings shewing a personal debt to be due personally from Defendt to Pltff and that it was not absolutely necessary that the word, "personally indebted," should be included in the affidavit.

M:Intosh vs Fletcher.

Same decision.

No. 834.
Varin vs Bleakley

To stand till to morrow by consent –

No. 838
Mc.Nider et al vs Delorme

action by Indorsees ag.t Maker of a promiss.y note – Boston for Pltff. Question here is whether the instrument upon which the action is brought be a promissory note, or not – although there be superfluous

superfluous words yet if it contains all the essential requisites of a Promissory note, it is sufficient — This cannot be considered as a notarial obligation — as no minute was made of it, nor is it said to be made en brevet, it is signed and made only in the presence of two men who happened to be notaries — cites Chitty on bills. p. 53. — no particular form requisite for making a note — p. 108. — must be liberally construed — p. 148 — Pltff entitled to fill up the indorsement on trial. — Lloyd. 61. — Cunningham's Laws of Exch. 124. —

L. M. Vigé for Defend. The instrument is made in the presence of two notaries — the Debtor & Creditor present, and the Creditor accepting the acknowledgment of the Debtor — The act is en brevet, but such acts are frequent before notaries. this only affects the security given to the Creditor — The Pltff has declared on it as an act, obligation, or promissory note —

Boston for Pltff. This is a commercial transaction and laws of England must be relied on in the interpretation of it — This not a notarial instrument, so understood, as the law requires such to be made in a particular form, which has not been observed here —

—

No. 923

Nichols & Sanford
Jos. S. Adams

action on a promissory note indorsed

Boston for Pltff. question here is whether the Pltffs are bound as auctioneers to account for the prices at which the articles sent them for Sale were limited — this the Pltffs contend they are not bound by. such limitation is illegal. and parties not bound by it — there is also a certain quantity of the goods unsold wh Pltffs are ready to return to Defend

Grant for Defend — The goods sent to the Pltffs were not

to

to be sold but at a certain limited price, and not at such price as could be had at public sale — the Pltff are accountable for the goods at those limits —

—

№502
Hodgson
~
Hagar
&
Bangs

№788.
Lussier et al
~
Allison et al

On action for damages for the non-delivery of Stoves sold by Defts to Pltff.

Stuart for Pltffs. The damages are made out by the evidence adduced & for which

Boston for Defendts — there is no proof of the Contract — there was no note in writing made, nor part delivery of any part of the article — Bull. N. P. 279. — There was nothing to bind the bargain — The Defendts however were willing to deliver the article, sold if money had been offered for them, but no money was ever offered, and the present action cannot be supported from want of such tender — see Bull. N. P. p. 50. Poth. Vente №63. 50. —

Stuart for Pltff — There was a suffit memorandum here of the bargain by the bill of parcels, which was snatched from Pltff and the tender of the money is an after thought, and was never claimed at the time of the Contract — The Clerk of Defendts must be considered as authorised to make Sales — This is not an action ex empto to obtain delivery of the article sold, and tender of money is not necessary — it is an action for damages for non-delivery — & these damages are sufficiently made out —

No 903.
Dufort
&
Dorleans

action for house Rent
Rolin for Pltff. £10 – to be deducted – balce £30

L. M. Vizé for Defdt There are twenty months house rent demanded, and during this period the Pltff renews the lease to Defendt without stating any rent to be due to him by Defdt the new lease is a presumption of payment of the rent on the former lease – On the faits & articles, the Pltff admits that he had said to several persons that the rent on the old lease had been paid – this is more than presumption as Defdt – This is sufficient to let in the Defendt. to swear the Defendt on oath – as to the payts made by him –

—

Knaffe
&
Jones

On rule to shew Cause why new Execution should not be granted – over for evidence. –

—

No 282
Welch
&
Clarke

action of debt on deed of sale –
Grant for Defendt. The Power of Attys produced by Pltff has not been proved –

Rolland for Pltff – There is now no question before the Court respects the power of Attys, the issue between the parties is touchg the payt. of the money demanded –

Saturday 17th. April. 1819.

Lanctot & Duzas & Duzas opp^t } Ordered that Judg^t. of Distribution be drawn allow^d

Turgeon & ~~Trudelle~~ Ratelle } Judg^t.

Turgeon & Vervais } Judg^t.

No. 745.

Lavoie & De Longueuil } On action to obtain from the Defend^t a grant of land in Defend^r Seigniory

Hear^d on Except^n declinatoire.

Stuart for Defend^t pleads to the Jurisdiction of the court, and contends that this Court has no authority to grant the Concession, it is vested in the Intendant and Governor of the Country - and as there are no such officers as Intendant & Governor who can exercise this right the power of executing this law does not exist - That this Court under the Prov. Stat. or Judicature act has not the authority vested in it of the Governor and Intendant -

Bedard for Pl^ff. This Court is vested with all the Civil authority which could have been exercised by any Civil Court or by the Intendant under the French Gov^t although the word Gov^t is not mentioned, yet is evident the intention of the Legislature was to vest this Court with all the Judicial authority which could have been exercised by him in the present instance - Domat. Tr. des Loix. ch. 12. art. 7. 8. 9. p. 24. Introductory Chap^r

It is enough that there has accrued to the plff a right to demand such a Concession, to authorize this Court to grant him relief by enforcing that right, even if there had been no authority confined on the Governor & Intendant —

1 Vol Edit. p 533

Stuart — The power here to be exercised is not a judicial power, but resumes to the Seigneur. Surgrain the right of granting what the Inferior Seignior should refuse to grant — a Court of Justice has no right to interfere — there is no question before them upon which Judicial authority is required — If the Inferior Seignior had cause of complaint of the Grant made by his Superior on the default of such Inferior, he might bring his complaint in that respect before this Court —

No 1062.

Hall & Davies & Contra

On action for goods sold and delivered

Rossiter for Defts — The Plff does not credit Defdt — with the value of a certain quantity of flax —

No 834.

Varin & Bleakley

On defendants mo. for a Com. Rogatoire to Drummonds Island —

Rolland for Plff contends that there is no sufficient ground for granting the motion — Plff has moved for the reference to arbitrators which will preclude necessity of such rule —

Beaubien for Defdt — the application for a reference is premature as there is no proof of any partnership between the parties, nor that all the parties are before the Court — refers to Cas of Munro & Parkers —

N° 110

Plucknett
vs
Knapp

Ac action for lime sold 150 barrels
Borton for Pltff admits that a credit of
£7. 10 should be made beyond sum
actually admitted

Grant for Dfdt — Pltff has not proved the
quantity of lime demanded — Dfendt has made
this proof by shewing actual quantity — the quality
of lime was bad, workmen say that it was not worth
above half value of good lime —

Dumas
vs
Holt
&
Seminary
oppt

On opposition for Seizure & Rights —
Beaubien for Pltff — The Oppts have filed
no moyens d'opposn nor any proof —

Monday 19th April 1819. —

Hall
vs
Davis
&
E contra

Judgt

Jacques
&
Jacques
&
Tremblay
&al

A day over given to the Oppost — to put the
nuis Gendron in Suit —

Valiquette & Valiquette } Interlocutory order reserving the charges on the land to be eliminated by Expert —

Allison ~ Bourbillon } Judgt

Allison ~ Allison et al } Judgt for £12 damages for refusing to deliver Stores —

Roi ~ Bourbillon } action dismissed —

Smith ~ Roi — & contra } Judgt

Corbin & Cadotte & Piquette } action dismissed

Raymond & Bellanger & Contra } Judgt. on principal demand — & order for Dépôt on Incidental demand to be heard on oath —

Winters & Raymond } Judgt for Plff

Glassford v. McArthur — Pltff's motion rejected

Donegany & Levie & Rousseau — Pltff to make proof of the demand of the Defendr

Lepailleur & Turgeon & Turgeon opt — Opposition dismissed —

Charron & Lapierre & Turgeon opt — Opposition dismissed

Lanclot & Dugas & Dugas opt — Opposition dismissed —

Guillon & Moss, dat — action dismissed

Varin & Bleakley — The two motions granted —

Lemai & Jossey — Judgt for £125 damages —

Partenais & Dubreuil } IX Judgt

Perraut & Lesperance } IX Dismissd

Tuesday 20th April 1819.

Badel vs Orleans } In consequence of the Plaintiffs answers to one of the Interrogatories proposed to him that he had acknowledged to Mr Bruce the Defendts Counsel to have said, that he had received nine months of the house rent demanded by him, the Court admitted the Defendt to his Serment Judiciaire on this fact, and on his swearing that he had paid this money to the Pltff, gave Judgt for Dfft, deducting the nine months —

Sanford &al vs Adams } The Court were of opinion, that the Pltffs were bound by the limits contained in the Invoice of the goods sent to them for sale, and as they had sold some of the articles under this restriction that they were accountable for the difference —

Mr Justice Pyke differed in opinion from the Court and held 1st That it was not in power of Defendt to put any limits on the goods, as they had agreed to send goods to Pltffs for sale, to save them harmless as their indorsers on

on his note without stipulating any thing about limitation of prize — 2°. That it did not appear that the Invoice in question containing such limit had ever been delivered to the Pltffs and 3dly If it had that they were not bound by it — referred to Case of Bayley v. Christie. Comyn. 395. —

Hunter vs Moreau

The Court held the Defendts plea insufficient 1st because the delay alledged was not clearly set out — and 2dly That it should have contained an offer of the security which Pltff had agreed to accept as without this the Court could not dismiss the action unless by the Defendts complying with the condition on which the delay was given —

1 Esp. 430 Chitty on Bills 113 — Voluntary offer to give delay not binding — when no part of original Contract &c.

The Ch. Justice differed in opinion, and held the tender made by the Defendt to Pltff before the action was brought was sufficient, and that it was not necessary to reiterate it in Court by the plea —

McNider et al vs Delorme

The Court were of opinion that the Instrument in question was a promissory note & negotiable by blank indorsement —

Mr Justice Pyke differed from the opinion of the Court and held — that this was an acte notarié — it was passed en brevet, a species of notarial acte known by law — it carried a mortgage — and therefore could not be considered as a negotiable instrument — That in

judging

judging of the intention of the parties, by recurring to the ministry of two notaries to execute this act, it was evident - something more was meant than the mere - acknowledgment of the debt -, or the making a promissory note - That the act here was in the notarial form, ~~here~~ in which the public officer speaks, and certifies the act done and acknowledged before him by the parties, - whereas a promissory note is an acte sous seing privé made in the name of the person making it - That such an act required a regular transport to transfer it to Pltff - which could not be done by a blank Indorsement —

Watson & Heath & Mills opp^e

The Court held the seizure in hands of Mills of the Schooner in question as irregular - that could such execution be made, it must always be at the risk of - being opposed by all the right the Opposant could set up to the thing seized - here there was an equitable claim shown by oppost - such as Court would confirm even had an action been brt to set it aside - The Curator had acted for the benefit of the estate with prudence & precaution in leaving the Schooner to the oppost - and the Court saw no ground upon wh the Pltff could set aside that transaction —

Mr Justice Pyke dissented from the opinion of the Court

Court - and held that the Creditor was entitled to seize and take in execution the property of the Debtor in whatever hands he found it - 2. Bouy. 557 — 1. Pig. 659. — That the Curator had not a right to sell or lease the property of the Estate to the prejudice of Creditors nor could he by any act of his cover that property from their claims —

June Term 1819.

Tuesday 1st June 1819.

Present.
The Chief Justice and
J. Reid & Pyke.

The Commission of attorney &c to Wm Walker was published in Court.

Lacroix & Manchester } On Pltff's mo. rule on arbitrators to shew cause why they should not return the statement of the evidence and depositions taken by them.

The Expert Seguin was called to answer but did not appear.

— over —

Hutchison & Lester et al } On Defendr's mo. to reject the deposition of a Wt taken irregularly on part of Pltff being contrary to rule of practice, having been taken before the Cause was returned into Court, Suit instituted by issuing out process on 19th Febr. ret. 1st April 1819, the Wt was examined on the 20th Febr. under notice.

Stuart for Pltff, contends that ex. is regular, has been so determined, cites case of Philips v. Conant, Oct. 1817 final Jud. 1 Sep. 1818.

Wednesday 2d June 1819.

Ellice et al
v
McKenzie et al
Con. —
&
Dunn Opp.

The Opposition of Dunn Oppt dismissed for want of proof.

No 149.

Bigelow
vs
Grouls.

On Pltf's mo. for process of attachment ag. the Defendr for a contempt by having forcibly taken out of the hands of the Sheriff certain quantity of timber seized by him under a writ of attachment sued out in this Cause —

The Defendr were in default, and upon an affidavit of the fact complained of, the Court granted the motion. —

No 352

DeMartigny
&
Brisset

Hearing on report of arbitrators

Rolland for Pltf - a difficulty has occurred between the arbitrators touching the time when the defendr poss. of the farm in question commenced which seems extraordinary as they have before them the lease under wh the Defendr holds & wh regulates the point. —

Lacroix for Defendr - the Pltff pretends a right to examine into acts of deterioration prior to the lease made to Defendr - as the Defr had possessed many years prior to that lease - but the lease must regulate the rights of the parties in this respect —

Roi
&
Main

Action to rescind a lease en Loi Ede —
Hearing on Exception —
Stuart for Defendr — There is another action pending in

in the Court of Appeals between the parties for the same object as the present, although upon another ground, namely for improper use of the premises — Pltff cannot have more than one action at same time for the same remedy — cites 1. Rg. 36. — The Pltff has improperly joined a demand for payt. of rent with his demand to rescind the Contract —

1 P. 36

Roi for Pltff — has a right to demand the rescission of the lease and also to pay arrears of rent due — cites 2 Pothier. these demands are perfectly consistent. — The present cause is not founded on same right as that now in appeal — Dr. droit. Vo Litispendence — 1. Pig. 39. 200. 201 — Repre Vo Litispendence —

2 Poth. Louage 329.

Stuart in answer — abandons his other exceptions except that of litispendence — The action now brot. & that now in appeal had to the same object — this is a cumulation of remedies more properly, than a question of litispendence which is prohibited by the law —

No. 32A.

Gagnon
Bourassa
Pompart

On mo. by oppost — to obtain a further day for continuance of the enquête, on ground that bailiffs refused to execute the attendr. of the Wes and also the Wes refusing to attend on the ground that they had already given their testimony —

Rolland for Pltff — the rule ought to be strictly followed up — no sufficient diligence — no sufficient time allowed for Wes to appear after Service of process — If bailiff has been negligent the oppost may have his recourse against him — Pltff has suffered much, & has been put to much expence —

Thursday 3d June 1819.

Debartchze
vs
Rodier } Pltff's mo. to discontinue granted

Hutchison
vs
Lester et al. } Defendrs mo. rejected.—
see case Philips & Conant. Oct. 1817.—

Gagnon
vs
Bourassa.
et
Poupart opp.d } The Oppos.t mo. granted, on his paying the expense of the Pltff's wit.s attends on the last enquête day.

Tetro
et
Tetro
et
Ouimet Gar.t } On demand in evocation by the Garant
Bedard for Pltff, contends that this evocation cannot draw after it the consideration of the principal demand, in as much as the demande en Garantie is an incident in the Cause, and although the Garant may be entitled to this evocation as to the right of garantie, but not as to the Pltff's right of action —

No 177
Harrois
vs
Martin } action hypothecaire.—
Grant for Pltff. contends that proof of Case is made out principally by answers of Defd.— —

Vigé for Defd.— The Pltff has not produced the acte de Cautelle under which the action is instituted—

That there is besides no sufficient evidence in the cause to support it –

Stuart of Counsel for Pltff – The plea of Defend^t – is in nature of a demurrer and does not put in question the truth of the facts stated by Pltff in his declaration. –

—

Bunker
vs
Steib
&
Seybold
par rep. d'inst^n

On hear^g on merits –

Stuart for Defend^t observed that some of the depositions of the Witnesses are not yet complete, and parties ought to have a day to parfait the evidence before hearing on the merits. –

Vigé for Pltff observes that it is the fault & neglect of the defend^t in not having closed his evidence, and in having abandoned the enquete. –

—

N^o 644.
Turgeon
vs
Vervais

On Report of Experts –

Lacroix for Pltff prays hom. of report

Roi for Defend^t – The report was not filed on 1^st June as required by rule of reference – It does not appear that the Experts were regularly sworn, or took the oath of office – Not sworn in the presence of the parties, nor after notice 1 Pig. 303 – Rep. v^o Expert. p. 223. in notis – Not stated in the report on what day the visit was made – Ought to have been made on the spot where the visit was made – Rep. v^o Rapport d'Experts –

Saturday 5th June 1819.

Fraser. vs. Smiles. & Deshautels sal.

Judgt — directs that pltff give security for one years rent before proceeding to sale of the furniture seized.

Harnois vs. Martin

Judgt — The Court considered the appointment of Pltff to be sufficiently recognised in the Judgt by obn. of the Ham Dt Chaussée,

Bunker vs. Hebb & Seybolt Cur

Order for completing the depositions of record on the 7th

Tetro vs. Tetro & Quimet Garant

The evocation admitted as to the question of garantie —

The King. vs. Jn Bte Groulx.

The Defendt being returned in Custody on an Attachment for a contempt in impeding the process of the Court — Mr Sherwood on behalf of Defdt moved that he should be admitted to bail to be forthcoming when required of the

this Court.—

Hand's Prac. p. 64.

Mr Stuart for Pr. contended that the Defendt must first answer upon Interrogatories, when he may be admitted to bail or not according to Circumstances.—

No 149

Bigelow
vs
Groux

6. 2 Vin. Ab. Disp. 240—
6 T. R. 118 — Nowlan — Id. 701 — Cropley Cat.

on defendt mo. that process of attachment be set aside inasmuchas no affidavit has been made by the Pltff, his attorney, clerk or Agent to authorise the process—

Stuart for Pltff — This is a Saisie revendication, and by the rules of practice, which is the only course to be followed in the Case, no such affidavit is required, as it may be made by any person having a knowledge of the fact—

Sherwood for Defendt — The person making the affidavit must have some character or interest to entitle him to make the affidavit — a person in the Street cannot be called up to make it — the fact must be sworn to by a person in some way connected with the Pltff

№ 625

Seybold vs Davis — Action of defamation — trial by Sp. Jury. — Verdict for Plff £5 — damages & Costs

№ 796

Gagnon — Petrimoulx & Richardson — Question touching right to obtain Lods & Ventes upon a retrocession of the land —

№ 37

Thayer — Hartley et al & Moore Oppt — On opposition of Martha Moore, wife of the defend^t — claiming certain articles seized

Rolland for Plff — demurs to demand, contends that by Oppt^s own shewn she is not entitled to any separate property in the goods seized claims the articles as coming from her husband under an Inventory, and acquired during marriage — She states that she is about to obtain a Separation from her said husband — but this is not yet effected —

Henshaw for Oppt — There was no Community between Oppt & her husband by Sp. ~~Contract~~ clause in Mar: Contract and an Inventory of the effects belonging to the Oppt was made at time — she acquired other articles, during her marriage, under his said Marriage Contract, that

as

are now seized, and these she is entitled to claim by her present opposition —

Rolland for Pltff — There is no separation contractuelle between the parties, and the Opp^{te} could acquire no property during the Coverture, as it vested in her husband

—

№ 979

Moore
Hartley

action of Separation —
motⁿ to dismiss Opp^{n} —

—

№ 189

Glassford
McArthur

action on promⁿ Note —

Grant for Defd. moves that deposition of Jean Sam^{l} Aymond be rejected from the record he being an interested W^{s} — and in this case the evidence remaining is not sufficient to maintain the action —

Boston for Pltff — There are several counts in the declaration, and upon settlement of accounts the Note in question was given —

—

№ 584

Henderson
Babuty

On Pltff's mo. to reject from the record a plea filed by the Defend. a pleading

touch^{g}

touching the validity of the writ & process - and 2d. an exception à la forme as to the incapacity of the Defendt to answer in a Court of Justice - and 3d. the insufficiency of the declaration - These are not all exceptions à la forme and cannot be joined -

Sherwood for Defdt - The Defendt alledges that she is a femme covert - and the Pltff ought to have shewn that Defendt was either a Single woman, or separated from her husband -

Poth. Proc. Civ. - 121. 1. 301 - It is an exceptn. à la forme - that the Pltff does not shew by his declaration whether the Note was endorsed or not -

538 - Monday 7th June 1819. -

Witness - Day. -

Blackledge vs Warburton } On Pltff's mo. for a reference to arbitrators Boston for Defendt - If the Court considers the Case proper to be left to arbitrators, and have power to refer it in this way, he will not object - but cannot consent to the application. -

Hudson Bay Co vs Faille. } The Pltff's move to give security for costs. in conformity to the order of the 2nd inst -

Rolland for Defendt objected thereto, and contended that the Security was too late, as it ought to have been given within 2 days after the order made, and now moved that the action be dismissed in conformity to the Rule of practice -

Stuart for Pltff, contends that they are within the time. -

until

until he has been foreclosed by a Judge of the Court a principle which has been settled by the Court in all cases of laches or default —

The Court were of opinion that the Rule ought not to be so strictly taken agt the plff as to dismiss the action in consequence of the lapse of the day on which the security ought to have been given, and considered them in time to perfect the security at this moment as the Defendt had not foreclosed him —

Tuesday 8th June 1819 —

Witness-day —

The King
vs
Groux —

On defendt mo. for discharge from Impt
1 Tid. 240 — 4 Burr. 2129 — Sheriff's return is conclusive — no affidavit can be recd without
1 Str. 642 — Is the only proof that can be received —
Com. Dig. tit. Rescous. let. D. — Sheriff must make a return — as upon it only can the Court proceed — The return of the Sheriff here is that he is in possession of the goods seized —

Stuart for Prosr The return of the Sheriff here could not be obtained as he had no knowledge of the fact — the Sheriff might return a rescous, but this not necessary, as the Prosr does not ask for a conviction for a rescous — but complains of a contempt done to the process of this Court — as to the variance between the return of the Sheriff and the affidavit of the Individual touching the taking the

timber

timber out of the poss. of the Sheriff — thinks that the Sheriff ought to be allowed to amend his return. —

Sherwood for Defend — The Sheriff cannot amend his return — and if done all proceedings to this moment should be set aside and the Pls liberated —

No 233

Lacroix. } Manchester }

Lacroix for the pltff filed the award of the arbitrators on the 15th April last, and obtained a rule on them or on one of them, Sequin, to shew Cause why he should not bring into Court the depositions of the Witnesses exam^d by the said arbitrators under the rule of reference made to them. — The arbitrator Sequin, on whom the rule had been served did not appear at the return of it on the first inst. nor comply with the demand. — The Plaintiff now moved for an attachment agst the said Sequin, as being in contempt —

M^r Stuart for the Arbitrator, stated, that the Court could not exact of the arbitrators to produce the evidence they had received, nor interfere in the proceedings had before them, unless some irregularity had been committed which was not alledged — That the Court could not draw any conclusion from that evidence different from the arbitrators or correct their Judg^t thereon — such evidence having been reduced into writing merely to — assist the memory of the arbitrators, but nothing further, it forms no part of their duty to state to the Court what evidence they had received, nor were they required so to do by the reference made to them —

Wednesday 9th June.—

Gagnon & Bourassa and Contra } Judgt

Coupal & Gagnon } action dismissed —

Cadieux & Confroy & Grotté Intervs } Interlocs

Savary & Meunier } Mo. dismissd — too general — the object of the enquete should have been stated, so as to shew that there remained an object upon which the enquete could be had notwithstanding the trial by the Jury. —

Reeves. & Berthelet. } Judgt

No 122
Bizelow & Dromin. } Rule discharged, on attachment on Civil process

No 149
Bizelow & Groux — } same Judgt —

The King v. Dromin }

№584.
Dufresne & Legault & Jos. Tarte oppt

On mo. of Tarte for act being granted of his disavowal of I Stuart, and to be allowed to proceed thereon

Davis dal & Wedgewood

action for goods sold — bal. £27.1.6.—
Boston for Dfdt — Dfdt has made out-pay. of sum in goods sold equal to sum demanded —
Pltff claims balce of £17. —

Burton & Kemp —

On report of Arbitrators
Mr Rolland for Pltff demands hom. of award.—
Mr Stuart for Dfdt states, that Witnesses were sworn before a magistrate, who had no authority to administer such oaths in this Cause — That the authority given by the rule of reference is not sufficient, the Court could give no such authority when the law does not give it. —
Rolland for Pltff — there is nothing to shew upon what evidence the report was founded —

—

№552
Gareau & Bowe

action to recover damages for trespass in carrying away cattle the property of pltff
Rollin for Pltff, moves to set aside the testimony of the two witnesses produced by the Defendant as touching a conversation which took place between the parties touching the objects in Contest

Sherwood for Dfdt — The pltff has not proved his property here the property was joint between the parties — and the Defendt had an equal right w. Pltff — There was in fact a partage by which the Cattle belonged solely to Dfdt — This is an action

of

Defendt as a prosecutor of an Indictmt agt Pluff for having stolen the Cattle - but it fails as no copy of the Indictment has been produced, nor is it shewn whether or how the criminal prosecution has been ended - It is besides of public moment that no prosecution for damages ought to be allowed in this Case, for the protection of public prosecutors on the Criminal Law, that they may not be deterred from bringg forward Crimt. prosns - refers to Case of Leggart v Colarby 4 East. Rep. 304. - Pluff here has produced nothing to shew whether the prosn does not yet subsist -

Vigé for Pluff - The arguments of counsel for Defendt touching the Criminal prosecution do not apply - as this is not an action for a malicious prosecution - The Defendt however seems to admit this prosecution by attempting to justify it

---

№ 304

Keyes
Lesperance } action on promy note agt Indorser -

Rolland for Defdt - no suffit protest nor notice to the Drawer before suing the Defdt of the demand of payt & refusal - a demand upon the daughter was insufficient - Service of a copy of the protest on Drawer no sufficient notice to the Defdt -

Sewell for Pluff, refers to the form of protest in Repr de Inn. vc Portil -

---

№ 54

Hudson's Bay Co
vr
Chretien } on mo. to quash process -

Defdt states, that no copy of declaration

here

has been filed or signified to Defend. according to rules of practice — and a due return thereof made by the officer serving the process of the Court — the leaving the copy by any other person cannot be noticed
2. The Plaintiffs have not filed any power of Att[y] to warrant bringing the present action — which ought therefore to be dismissed. —

Friday 11.th June.

Rea v. Solomons } Objection to W.t over-ruled —

Henderson v. Babuty. } Motion dismissed. — The plea goes to the sufficiency of the declaration, — must be answered. —

The Sheriff v. Groux } The Sheriff applied to be permitted to amend the return on the writ of attachment in the Cond Cause —

5. H. 6. 16 Sherwood for Defend.t — no amendment can be admitted of the return, it is contrary to St. 8 Hen. 6. ch. 16 — which gives power to Court to authorise a Sheriff or other Officer to be admitted to amend his return — When the process has been peaceably executed and returned to the Court the subsequent taking of the property is no contempt of this Court — the Gaoler or Sheriff should take course by warrant from a magistrate — but where there has been no interruption in the serving the process, there can be no contempt in doing any act subsequent thereto — The Sheriffs bailiff must also come before the Court and ask

ask leave to amend also, as without a new certificate to the Sheriff, he can have nothing to amend by —

The Court granted leave to amend —

—

Hudsons Bay Co
vs
Chretien —

on defendt mo. of the 9th instt —

Stuart for Pltffs — the rule of prac. applies only to natural persons, not to Corporations which appear and plead by their corporate character & are not supposed to be personally present, like a natural person — a Corporation can have no local residence — The rule of prac. cannot be explained when wt regard to a natural person as to the effect of dismissing the action — The Defendt appears to have been served with a copy of process, —

Rolland for Defendt — The rule of Prac. must apply to persons acting in every capacity whether Corporate or natural — no return of service of copy of Declaration on Defendt —

Ross of Counsel for Defdts — Every description of person not living within the Province must give Security and file a power of Attys — The Corporation here do not perhaps authorise the present action and the Defendt is interested to see that the H.B.Co warrant this action —

—

Deschambault
vs
Patenaude — } action to recover money on deed of sale —

Rolland for Pltff — question touches validity of payts made by Defts — particularly a receipt of 4 Nov 1817 filed by Defendt for £150 — or 600 dollars — this

receipt contains no proof of payt. of the principal, it being only for interest - and the imputation cannot be made differently - Obl. Nº 570. Lor 7. - on reference to the institute referred to by Pothier, it appears the authority refers to case where no interest is due - here interest was daily growing and the presumption therefor is that it was a payt. to extinguish this interest - Repre. Vo Imputation - p. 91. when the Debtor does not make the imputation the Creditor may do so by the receipt, which constitute the law between the parties - Obl. Nº 566 - No proof here that Defendt is an illiterate man - But the receipt is altogether erroneous, having been made for dollars instead of livres - the payt. of more money than was due by Defdr who is a poor man, is a circumstance of Defdr - there are also other presumptions of the Defdr which shew great suspicion of the receipt, and ought to induce Court to take the oath of the Pltff touching the payt. of the money mentd in this receipt -

L. N. Viger for Defdt. The Pltff brings his action for more than was due to him, even by his own acknowledgt - namely in regard of two years interest which were paid - his having forgot this raises a presumption of law in him as to the two dollars - But a Debtor may pay in advance even against will of the Creditor Domat - liv. 4. tit. 1. Sec 2. art. 5. - That as to interest due - this can only apply to such interest as was due & payable at the time of making the receipt, the balance over this must go in extinguishment of the principal according to Poth. Obl Nº 570. - There is no proof made out of any error in the receipt in question - The evidence is in favor of Defdt that he is an illiterate man and of good character and to be credited on oath - The evidence of Rolland, jun. ought not to have been admitted - it was in the office of Pltff's attys & in confidence - action ought to be dismissed except for £17. 10.

Nº 349

Jacques et Jacques et Tremblay pltf - et Gendron mis en cause -

over till to morrow

Dawson
McLean

On award

Sewell for Plff. objects to that part of award by wh arbitrators orde Plff to pay Defts costs – no grounds for it –

Stuart for Defts. The Court never ex into grounds of the determn of Arbitrs when there has been no Error, the Plff admitting that Arbitrs have right to give Costs. the award must be confirmed –

McKay
Hart.

Action to recover money deposited w. Defendt –

Sherwood for Plff moves for Judgt. on evidence adduced – Defendt. makes no plea – Plff claims damages from illegal conduct of Defendt –

Rousseau
Bouthillier

On Report of arbitrators –

Duesnel for Plffs. demands homologation

L. N. Vizé for Defts. The plffs have discontd a part of their demand the remains objects were agreed to arbitrs objects as to the nature of the offer stated in the award and moves that Plffs be called upon to state upon oath what were the Offers made by the Defendt – That Plffs ought to be held to pay Costs on the part of the demand they discontd & the other Costs divided –

Saturday 12th June 1819.—

Hudson Bay Co
vs
Chretien. —

The Court admitted the Pltff to make proof of the filing the Copy of the deeds at the office within the time req. by the rule of practice, & reserving to adjudge upon 2d part of the motion until this proof be made —

Jacques. —
vs
Jacques. —
&
Tremblay Oppt.
&
Minors Gendron
mis en Cause

On opposition of Fr. Tremblay afin de conserver —

Mr Bedard for Oppt cites Denizart. Vo Creanciers No 3. —

Rolland for Pltff. The oppt by ~~taking~~ discharge Duplessis, he has lost his right under any subrogation upon the property of Marie Gervais — 2 Bourj. p. 541. hypoth. is an accessary only of a principal Obligation — where was no principal obligation on the part of Gervais in favor of Tremblay — Obl. No 600 — the delegation is substitution of a new debtor and a discharge of the old debt — That there must be an express stipulation & reserve of right of parties by this delegation to enable oppt to exercise the rights here claimed — That the silence of the Minors Gendron cannot give any greater right than oppt had before, — That Marie Gervais ought also to be in Suit as well as Duplessis — as this Constitut may have been discharged — That there ought to be a discussion of the property upon wh the Rente constituée is specially affected, as it is sufficient to satisfy the demand. —

Remission Ch. 2 No 9

Bedard for Pltff. 2 Argou. 450. Novation is an entire change

change of Security – but there is no such change –
That a demande en subrogation is not necessary the Creditor
can exercise the rights of his debtor in every instance even
agt. his consent –

Lemire & Marsolet vs Archambault

Action for a malicious prosecution. x –
Trial by Sp. Jury. –
Verdict for Defendt.

Monday 14th. June 1819. –
Tuesday 15th. June. –
Witness-days. –

Wednesday 16th. June. –

Caldwell vs Moreau

Action by Indorsee agt. drawer of Note –
Beaubien for Plff moves for Judgt. – agt. Defdt. – &
states, that note does not specify for value
received, nor is any proved, but that by law he is
still entitled to recover from Defendt. – cites 2 Bouj. –
416. – Chitty on Bills. –

Biss
Jewell } Quest. whether rule to plead extend to Garants, in regard of 15 days to plead on process returned after first Day of Term —

—

5V

Malette
&
Lormand } Action en complainte & reintegrande
Hears on exception —

Pelletier for Pltff. has excepted to second plea of Defdt. by qt. he states that parties had agreed to a survey of — had been made & in consequence of qt. Defdt. took poss. of land in dispute — Contends that this is an insufficient plea. no suffit. justification

Bostock for Defendt — contends that this plea is sufficient.

Pelletier in answr cites Rejoir vo Reintegrande. — Dunnes. p. 34. Defdt. does not allege that it was with the Consent of Pltff that the poss. was taken —

—

No. 32A

Gagnon
&
Bourassa
&
Poupart —
Oppt

Or opposition afin d'annuller. — —

Stuart for Oppt states that the evidence adduced shews the property in question to have been in the poss. of the Oppt — & was her property. Defdt. merely agent.

Rolland for Pltff. contends that oppos.n is ill-founded and no evidence to support it. — The Sheriff's return shews the poss. of Defendt — Pretended assignment from Defdt. to Oppt collusive and insufficient —

Stuart in reply — The Oppt. was the ostensible possessor & real proprietor — and Defendt right to the property is nowise apparent

The King
v.
Goudy

The Sheriff having amended his return by which he states the rescue complained of — Defts. mo. discd

No 242.

Pickle &
Hunter
&
Contra

Action on an award

Boston for Defts. — pleads that award was irregular this waived — but contends that it is not conclusive — the only point referred was to ascertain the value and quantity of work done — arbrs had no right to award money to Pltff — award therefore void — The Incidental demand is for value of wood carried by Pltff & for trespass committed by him — The arbrs have awarded Costs. Law of arbtn p. —

Stuart for Defendt. The submission goes only to work actually done — the taking of Defendrs property was not warranted, nor contemplated by the submission or the award — That arbitrators have been irregularly examined as Witss for Pltff — ought to be rejected —

Grant for Pltff. The Defendr ought to have pleaded specially the insufficiency of the award — not done — but all is regular — the submission comprehends all the objects of the Incidental demand — as all differences were submitted to them Dic. Droit. Vo Arbitrage — all circumstances & dependes — Jousse — Just. Crv. — Arbitrators have a right to award Costs — Repse Vo Arbitrage — That Defdt absconded — all the boards & timber in the yard had been bought by Pltff — and it was carried over to the house of Pltff by the defendrs agent — it was there worked up by the Defdt agent — the wood must be considered to be as much in the poss. of Defdt — in the new builds of Pltff as in the work shop of Defdt — That had a trespass really been committed, there appears not to have been any damage sustd by Defdt — as all the wood had been paid for by Pltff, and the circumstance of Defdt absconding req. Pltff looking after it.

The

The Defend^{r} continued to work at Pltff^{s} house after the pretended trespass; and it was only on Pltff's refusing to advance money to him that the contest arose between them respect^{g} the Incid^{t} demand is formed — That Defend^{r} counted the boards w^{h} arbitrators & gave in the account of the wood — Arbitrators can explain their award — Rep^{re} v^{o} Arbitrage. p 546. —

Strart in reply — it was a tortious act of Pltff to carry away the timber — even if Defd^{r} had absconded — it was injurious to Creditors and unlawful — There was no authority in any agent of Defd^{r} to carry timber to Pltff's house —

N^{o} 291.

Moreau & Focasse & Payet Gar^{t}

Action petitoire —

Rolland for Pltff — action founded on a deed of concession from the Seign^{r} to P^{re} Payet & his son — also a P. Verbal of apprentage & division between father & son —

Bedard for Defd^{r}. The Defend^{r} purchased the land from the Children of the late P^{re} Payet in 1803 — The purchase of rights of the other Children of P^{re} Payet in 1817, in this land is only conditional — The father of Pltff in the Cause never had any right in the land under the title produced by them — the copy of the act shews that the minute is not executed in due course — this act may be binding on the parties, but not on third persons — The act of concession is made to one person only, v^{z} P^{re} Payet, père — and P^{re} Payet persists to say that he never acquired the land for his son, but for himself alone — That Defend^{r} invokes prescription in favor of his title, having enjoyed it w^{h} title since 1803 — and has during that time made improvements on it to extent of £8,000. — at all event Pltff cannot have land without reimbursing this sum. —

Peltier for Garants, refers to arguments used by Defds Counsel. —

Rolland for Pltff. The Court must consider the deed of Concession as having effet in favor of Pre Payet pere, & also to his son Pre Payet fils. this was an irregularity, but the intention of the parties must be considered, & it is evident by the P. Verbal of bornage, that the acquisition was for the Son as well as for the father. The imperfection in the minute cannot vitiate the claim of Pltff. it is the deed of Concession of the land under qt the parties have held and still do hold the land. it is the Defendants own title. there can be no prescription set up here. as by the title produced by Defendt it refers to same title or deed of Concession. qt must destroy his good faith. —

No 784

Beek. —
4 Puncheons
14 Casks Whiskey.
Staples, claimt

claim for 1 puncheon & 2 barrels of the Whiskey seized. —
Scovil for claimt. states, that evidence shews that the wiskey claimed was made within the Province. That the seizing officer is here admitted as a Wr. but he is incompetent, as he has a share in the proceeds of condemn. —
Ross for Lybbt. the objects to testimony goes only to the credibility of the Wr but there are other Witss who confirm the testimony of the Officer. evidence not sufft to maintain claim. other whiskey might have been put in the barrels. —

No 809

Chamberland
Charles. 4

action for goods sold
Rolland for Pltff, says, is entitled to Judt for £19 —
on Defendts answers to faits & articles —
refers to case of Cairns v. Collyer —
Grant for Defde pleads payt. this answers must be taken as stated. —

584

Henderson
vs
Babuty

On exception to Defend^rs plea. a

Rolland for Plff – the plea of Defd^r touches the validity of process, q^t ought to have come in form of a motion – 1 Pig. 148 – this not an excep. à la forme – it is an exc^p on the defaut de qualité in the exploit, q^t is not an excep. à la forme, but that kind of irregularity in the process q^t Defd^r ought to have availed himself by motion – The Defend^t does not alledge any incapacity in her to answer, but alledges only her coverture as the reason why she ought to have been stiled a married woman – The latter part of the plea, is a plea to the merits, – and destroys the first part of allegation of inability to answer, as she does answer –

Sherwood for Defend^t – The want of qualité is an exception à la forme – vide Rep^re v^o qualité – Dic. Droit. eo. tubo. Denizt. eo. V. The Plff has also pleaded to merits of Defend^rs plea. a

—

№ 33.

Hutchison
vs
Lesterval

Action for goods sold. –

Rolland for Defend^t pleads 1^st general issue. – and under this contends that the deposition of W^m to support demand is a nullity, as there was no instance pending upon Court at the time – 2^d the goods were purchased by Defend^r as agents for one Henry Wilcox – this appears by the evidence of Coleman & the papers produced – this is also proved by Plff's taking Wilcox's note indorsed by Defd^r 3^d That the action has been extinguished by a receipt given by Plff for goods in question and by a novation of the debt in taking the indorsed note of the Defendants for the amount refers to exhib. filed – Ev. Pothier. № 546 – Obl. on novation The action ought to have been brot on the new Contract, that is the indorsed note – to that the Defend^t might shew a want of –

diligence

diligence, q[t]- w[d] make Pltff- answerable for their laches - refers to case 5. T. Reps. 513. - refers to 10 Mod. 37. - cites also 3 Bos. Pul. 582. Dutton v. Solomonson -

Stuart for Pltff in reply - The second plea is substantially included in the first of non-assumpsit - refers to evidence of Coleman to shew that sale was made to Defd[ts] - as to the 3. plea of novation - is without foundation, as the notes given have turned out to be mere waste paper, instead of being good negotiable notes - the words added by Defend[ts] of payable as good bills of Exchange at par - made notes void, as every note must be payable in money, without q[t] the notes were not negotiable & not conformable to the intention of giving them - there was therefore no new debt given in lieu of the old so as to create novation. -

Thursday 17th. June. -

Hudsons Bay Co
Faille & al - } The Defend[ts] mo dismissed - the Court held the affidavit of service of the declaration by the Attorneys Clerk, to be sufficient and on the 2[d] point the Court held that the Defend[t] was not entitled to have the action dismissed upon motion - but that the Cause should progress to judg[t] - and as the proceedings are suspended, until the filing of the power the action must be dismissed after two terms for want of proceeding -

Birss
Jewell
Curtis } The Court were of opinion that the Garnt was entitled to 15 days to plead in consequence of having been called in after the first day of Term. -

McGillivray et al'
v
McKenzie. }

The Court were of opinion that as there was no issue, the Case could not be set down for hearing, but in that Case Defend. might move to dismiss the Pltff's action. —

The King —
v
Groux. — }

On Defendt's mo. that Interrogatories filed be rejected from the record inasmuch as they have not been signed by the Attorney or Solicitor Genl or any other Officer on the part of the Crown — & filed without leave of the Court — The offence here is of a Criminal nature, & the party may be indicted for it — Com. Dig. tit. Rescous — That no one can prosecute a Criminal action but the Crown Officers — That no leave was granted for filing Interrogatories which was necessary. —

Stuart for Pltff. The law and practice in England is to allow private prosecutors to prosecute crimal cases in which such individuals have an interest — and individuals ought to be allowed to proceed particularly in the present Case, where no Crown Officer interferes to prosecute or suspend the proceedings — That when the Defendant was sworn to answer Interrogatories which was a permission to file such Interrogatories

No 259

Milotte. — }
St. Onge et al: }

Action for goods sold. —
Pelletier for Defdt — contends that there is no proof of demand & whole amount proved does not amount to sum credited. —

No 242.

Pickle
v
Hutton

action of account
Grant for Pltff prays Instr. that Defts account
Defts agree to render the act. demanded

Henshaw
v
Dwight
2
Dwight opps.

On opposition afin d'annuller
Stuart for opps. the parties settled all diffs
by arbitry whose award regulated the sum, &
by which award Oppt had a right to return
certain articles purchased, & also to have delay for 2 years
for payt. of balr on giving good indorsed notes — this
arrangement was made about time Instrt was
rendered & Defts and present oppos. made to set-
aside an exon wrongfully sued out by him — That
the oppost. tendered the goods & claimed a proportl
deduction of the demand, but difficulty has arisen
touching the charges, as a part of wh the Pltff claims
interest —

Rolland for Pltff — This is not resolving the
old contract between the parties, but an agreemt
to accept goods in payt of a debt — at the rate the
goods were charged Defendr but not the interest
accrued on those goods during the time the goods were
in the Defendr possession — The object was to facilitate
payt to Defts of a debt, by giving goods to Pltff in
satisfaction at cost & charges — at all events the note
offered did not cover the balance wh was due to Pltff

Stuart for oppt — The rights of parties must be considered
as they stood at the time of the Oppos — & if oppt has offered
what he owed, the Exon must be set aside — The effect of the
agreemt was that Pltff was to take back the goods sold, to Defts

and

and discharge the Defendt of so much -

№823

Brignon & Lapierre v Kinsclem

On report of arbitrators. -

Peltier for Defendt demands hom. of report

Bedard - for Pltff - submits case -

№324.

Ray. - v Solomons & Contra

Action for recovery of damages by having wrongfully dismissed from Defdts service -

Rolland for Pltff contends that his case is made out from the evidence adduced & prays Judt for £37. 18. 0 - the wages he wd be entitled to -

Boston for Defendts. The Defendts by the agreemt were authorised to discharge Pltff after expiration of one month if they were dissatisfied with him. - There were besides sufficient Causes for discharging him - absented himself for 3 days without leave - before he left Defdts service there was a Statement of acct made & there was only a sum of £1.6. due to him - The Pltff was the person who wished to get rid of the agreement & acted in a way to shew that intention - Defendts have set up an Incid. demand as Pltff refused to return to do his duty when required

---

Scybold v Davis

On mo for Judgt on verdict w full Costs -

Mr Rossiter for Defendt - objects to the grant of full costs - that Costs ought to be granted as in the Inferior Court -

№ 1030

Lemire
vs
Archambault

On Pltff mv. for a new trial. a
Sherwood for Pltff. 1st Improper evidence
has been allowed to go to the Jury. as
it was permitted to shew the nature of the
quiet of the Pltff - this cannot be admitted by the law of
this Country - this was justification which has always
been prohibited - & refused to Defdt - in case of St Germain
& McKay. - Kinds of Calomnie - Dic. Dr. - Vo
Calomnie - here there was no soupcon reasonable -
when Defdt sued out the warrant, he had no suff.
ground of suspicion - this cause of suspicion arose
afterwards when the warrant was executed - That
the injure of treating Pltff, as a thief, openly calling
him so, is a separate head of charge wch could admit of
no justification - The Court held that the granting
of the warrant by the Justice was a justification for the
Defdt -

Rolland for Defdt - The French law must govern
this case - yet so much of Eng. law must be admitted as
wo justify the Defdt - in using the Criminal law as wo
have justified him in England - In this both laws agree
same principle holds in both that a reasonable and
probable cause will justify the Defdt -

Millaval. -
vs
O'Donnelly
&
Indians of
St Regis Opp.t

On opp: afin de conserver -
Bedard for Opp.ts - The Opp.ts Chiefs of
the Village of St Regis as Sequois of
that village claim proceeds of Sale of
a lot of Land belonging to them sold
by the Sheriff in this cause - The Opp.ts

given

prove that they are in poss. of the Seigniory and hold it as Seigniors — The rights of these Indians are recognized by the proclamation of 1763 — cites ordre of 1777. art. 3.

Rolland for Plff — There is nothing here to shew that there exists any such community as the Indians of the village of St Regis — there ought to have been called a meeting and an appointment of a Syndic — cites Rep. Vo Communauté d' Habitans? — That there is no evidence before the Court to shew who the Oppts are or under what authority they claim. — That here the King only can claim the rights set up by Oppts — That this village is divided into two parts, one of which is attached to the american Govt and the other to the British Govt and it is here the chiefs attached to the american Govt who make the Oppt — That there is no proof that the lot of land in question is within the Seigniory of St Regis, or to shew what that Seigniory consists of —

Bedard for Oppts That the proceedings ought to be communicated to the officers of the Crown that they may claim the money should they consider the right to be in the Crown — That the chiefs are the agents or attorneys of the nation in general, they are named by the voice of the nation & manage the affairs thereof

Ellice et al.
vs
Digarard

Action petitoire. —

Rolland for Plff. claims a certain lot in the poss. of Deft in the Township of Godmanchester — The evidence shews that the establisht of Defendt is upon lot No 2 — Defendt admits that he had procured a Sheriff's Sale of the lot he was upon as No 2. — The Defendt claims improvements

Stuart for Defdt - pleads that he is in poss. of the lots claimd but the description is imperfect and Court cannot ascertain the true situation of them - That the lot of land in which the Defend. is proved to be in possession of is a different lot from that described in the declaration - and Defdt has shewn that land pd in poss. is near the 3e or 4e lot in the first range, and makes no part of that claimd. - That Defend. has held this lots under a title, and has made considerable improvements on it - and therefore he ought to be reimbursed in these improvements before he be obliged to yield up the poss.n -

Rolland for Pltff - the description of the lots in question is sufficient - Defend. not a possessr in good faith not entitled to be reimbursed for the improvements made by him -

---

No 405

Perrault & Fraser.

Action on two promissory notes -

Grant for Defend. pleads payt and also that she has lost her right as Defend in consequence of having given delay to the maker of the notes - refers to receipts No. 3 & No 8. cits Chitty on bills. 299 - cits also Bailey on bills. 152 Chitty 303 -

Beaubien for Pltff - denies fact of credit having been given - it was an unauthorised agent who rec'd the money & gave delay - The authorities cited are not the law of the Country

Perrault
v
Fraser

action on Sundry notes –
Grant for Defd – has proved payt to a large amount and also his plea of Compensation has made an Incidental demand for goods sent to be sold at auction at limited prices &c – was not done –

Beaubien for Pltff – the Pltffs are not the persons to whom the goods were delivd to be sold – That such an agreement is invalid –

No. 780

Kimball
v
Barnard

action of Separation –
Sewell cites. Poth. Comté No. 572

Perrault
Dutille
&
E Contra.

action on 2 promy notes –
Bourré for Defd – pleads non assumpsit – and also an Incidental demand – Pltffs not proved to be the persons to whom the notes were made – that the receipts filed must apply to this note & not to subsequent transactions –

Friday 18th June 1819.—

Blackledge vs Warwick. } Plff's mo. dismissed — for costs —

Goodsell vs Park } Rule of reference granted. —

Mallet vs Lormand } Parties admitted to proof — on the matters pleaded by Defendt — considered. Them as tends to shew a possession in the Defendt —

Davistab vs Wedgewood } Judgt for Plff. £3. 6 — costs as in the Inferior Court, and the extra costs in defend suit to be pd to Defendt. —

Chamberland vs Charles. } Action dismissed — the Defendt answers agst to discharge action —

Savary vs Meunier & Dupratt mis the Cause } On plffs motion for enquete upon certain points stated in the declaration —

Negd for Defdt — mo. is irregular, inasmuch as there is still a question of law to be determined and which has been reserved by the Court — That the verdict of the Jury has determined the Cause in regard of Plff — the Plffs has no right to proceed further — the paternity of the Child is ascertained by the verdict of the Jury — wt this the Plff has nothing to do — She may bring her action for a quantum meruit for the maintenance of the Child, but that question is not before the Court in this action —

ale

all the Pltff can obtain is a Judgt on the verdict of the Jury declaring the Defendt the father of the Child—

Bidard for Pltff — as the Court has determined that the fact touching the allowance to the child was not before the Jury and forms part of the pltffs demand, it must necessarily be determined by the Court, and to do this, evidence must be previously heard. —

Jones
Buchanan } Action en revendication. —

Sewell for Defdt — The timber was taken in 1812 by the Kings Enemies & remd. to them till 1813. by gt detention the title of Pltff was lost — refers to Case of Dreau v Fraser & King Intervs — Besides there is no evidence to identify the timber — two Wn necessary to prove the identity — no damages have been proved. —

Stuart for Pltff. It is not pleaded that the timber had been seized by the Kings enemies — but captain alone not suffe to change the property — and the party seized must be shewn to have been the public military force of the Country acting under public authority — as the Capture of property by individuals is not warranted and cannot alter the property The timber was taken in this way by a banditti & sold, but this could not preclude the right of Pltff to follow the property. —

Grasset. —
vs
Mc Donald } On defendr mo. that he be discharged from arrest & confinement in this Cause from want of suffe evidence to detain him. under affidavit made by Pltff — Defendr neither — not a Comt Case.

Stuart for pltff. There can be no objection to relationship in case of this kind — and one Wn is sufficient — it throws the burden of the proof on Defendt —

Saturday 19th June 1819.

Keyes vs Lesperance — Judgt for Pltff — protest considered suffe

Gagnon vs Bourassa & Poupart-opt — Order that oppost be heard on oath touching her claim & opposn

Rousseau & Bouthillier — Report of Arbitrators hom'd —

Dawson & Mc Lean — Judgt on award. Pltff to pay Costs as awarded. —

Burton vs Kemp — Report of Arbitrators hom'd —
Reference by consent that Wn be sworn before a magistrate — both parties present & had Wn sworn in this way — Besides arbitrs had a view of premises & might have determd without Wn

Roi vs Main — Action dismissed.

Grasset vs Mcdonell — Motion of Defendt discharged —

Lemire & Archambault } Mo. for new trial discharged

The Skinner & Drouin & Grou } The Defendt mo. to set-aside Interrogs discharged - The Court without giving any opinion on the general principle in regard of Criminal prosecutions, considered that in this Case the Counsel for the Plff on the Civil action was warranted to carry on the proceedings of the Defendt on the attachment, as the Plff might derive benefit from such proceedings. —

Sherwood for Defendt stated that he had objections to make to the Interrogatories, but that there was no person legally authorised to receive them, as there was no Crown office where they could be filed, nor any Master to receive them or to report upon the answers to be given to the Interrogatories — Court directed his objections to be filed w[ith] Prothy of this Court —

—

McLean & Vincent } Service of process at last domicile in the presence of two neighbours, according to the form of ajournement req[uire]d by Code Civil, was held suffit — Mr Justice Pyke dissent. —

—

Garneau & Bowie — } Judgt for Plff. not necessary to have stated any thing touchg Court Procs — action must be without Defendt ought to have shewn the existence of proceedings before Court Court —

Henderson vs Babuty } On the first part of Defts exceptn. the Court consid the addition of Defd sufficient - and the mere stating that Defendt had another addition by which she ought to have been called was immaterial - and the Court considered the statement in the exceptn that the Defendt was a married woman, more as ~~proving~~ shewing the other addition of Defendt than as pleading her legal incapacity as a wife to plead to the action — on the 2d part of the plea, the Court held, that although it was necessary that the Pltff should make out in proof that he was the proprietor of the note and that it had not gone abroad in the world in such way as to render the Defendt liable to another action for the payt of it, yet that this was not necessary to be stated in the declaration — Deftes exceptn was dismissed. -

---

M'Kay vs Earl } Judgt for Pltff. for value of watch as proved

---

Deschambault vs Patenaude } Judgt. dismissg exceptn for bad debts

---

October Term 1819.

Friday 1st. October 1819.

Present

Mr J. Reid, Pyke, & Foucher.

The Chief Justice was absent at Quebec, and acting as President and Administrator of the Province — Mr Justice Foucher was reinstated on the Bench by order of His Royal Highness the Prince Regent. —

Barker
vs
Moreau } on mo. of Plff to reject plea filed by Defend and to proceed to enquete — plea filed too late in vacation —

Beaubien for Defend — plea filed on 9 July — and in term. 20 days after term given — moves to set down cause ex parte as Plff has not replied, nor pleaded to Incid. demand

Saturday 2d. Oct. 1819

No 804

Barter
vs
Moreau
& Contra } The court rejected the Plffs mo. as not founded considering Defend within the time for filing his plea in vacation — ant. rt. 9th June — plea filed 9th July — and on Defends mo. the Court rejected it on Plffs pleads on Monday & paying costs of motion. —

Guillette
vs
Telro —

action by Sous-Voyer for damages for not having done certain labors on public road
on Evocation — quest. as to right.

—

No 39

Plessis Billair
&
Durand

Quest. on fin proof —

—

No 584

Henderson
vs
Babutz

on Pltff's mo. that Defend. be held to
alter conclusions of plea & to conclude to the
Court —

Rolland for Pltff. Defend. not entitled to this
trial by Jury — has pleaded in con — does not shew
that she is entitled —

Beauvais for Defend — Defend. is sued as a boarding
House-keeper, not necessary to have pleaded in abatement
to the addition stated in Decl. The transaction —
between the parties shews that they were merchants —
a note negotiated in blank —

Rolland for Pltff — there can be no previous enquete
to ascertain the qualities of the parties — a Defend. ought
to have pleaded in abatement if his quality is wrong —
action formerly dismissed, because note endorsed in blank
by Defend — not being a merch.t —

No 176
Dubord
Vve Ervo
vs
Crispeau

on Pltff's mo. to be permitted to fyle a certain
agreement to be used as a reproche to the testimony
of one Morcau, in respect of his credibility —

~~L. St. Luc~~

Monday 4th October 1819

No 37
Thayer
&
Hartley
&
Mrs Hartley
Opp.

Opposition dismissed — saving further recourse

No 522.
Millaroal
vs
O Donnelly
&
Indians Opp.

Order for communicating the proceedings to the Law Officers of the Crown. —

No 291
Moreau
&
Focasse
&
Parents

Action dismissed —

No 324
Ray
&
Solomons
&c

Judgt for £36 — damages & Costs —

Menard et al
vs
Decoigne

On Defendt mo. for rule on Arbitrators to make their report –
Objected by Defdt – that an affidavit was necessary to shew they had operated – moves to enquete upon Court. –

—

Sylvain
vs
Cuvillier

On Pltff mo. that Sheriff amend his return –
Stuart for Defdt – appr. enquete – all matters have been settled on this question by the former order of Court & the Sheriff's return thereon –

№270
John Curry
vs
John Phillips

On action of assumpsit
Trial by Special Jury –
Grant for Pltff – Boston for Defdt –

John Curry, Junr – son of pltff, vs Defdt – who carried on business wt Pltff in 1815 – Pltff supplied goods – saw note of hand of Defendt for upwards of £200 in the Pltffs hands at his house in Up. Canada in Lancaster – Vs hand writing of Defendt – has not kn. that this note was presented for payt – saw four other notes given by Defendt in favor of Pltff payable at different dates, ~~from~~ 6 months – one 12 months & 18 months & one in two years – each of Notes for £55 – dated 3d augt 1816 – Vs That Pltff came to Montreal in July 1817 – ~~to~~ went – Wt to his house in Up. Canada to ascertain whether he had left the two Notes

obje

Echeau

behind him — went there & spoke to his brot & unlocked the Pltff's desk, & found the 2 notes, now produced — the other 2 notes not found — In 1818 in the fall — he brot one of the notes now shewn & gave it to his father in Montreal —

X

Has left his father's house 5 years ago — saw first note of Defdts in Pltff's possession in 1815 — it was for £250 a £260 — saw no indorsations on it — saw four notes afterwards — of Defdts understood they were lost — cannot say where they are — Wr Pltff's handwrit & the handwrit & of Pltff to Pltff — ex'd. No 1 — Proves Pltff's signature on back of 2 note filed by Defendt — the amount of which corresponds wt that mentioned in the discharge does not know that Pltff brot any note wt him when he came to Montreal in July 1817 —

The deposition of James Curry another wr for Pltff was read, he being absent from the Province —

The fact that Laws of England govern in Upper Canada — was admitted by Defendt —

Defence

Boston for Defendt — objects, to no Value stated on note. imputation of payt — applicable to notes produced.

Thomas Hunter — Wr parties — was present at settlemt that took place between them in 1817 — in July — Defendt — consented to give 2 notes for sum of which so lost — there was no other demand for any other notes — considered the receipt

Then

Then given as settling all demands between the parties – dictated the receipt – q[r] – he considered as having this effect.–

x.

Does not recollect that Pltff [illegible] he had 2 other notes at home –

Wm[m] Hunter – was present at settlement between parties in July 1817 at house of Mr

Verdict for Pltff £97. 12. 6

—

Johnson
M[c]Arthur } action for Lords & Rents & Surp. rights – Heard – ex parte. —

—

Tuesday 5th October

Deschambault
&
} }

Hudsons Bay Co
Chretien —— } on Defend[s] mo to dismiss action from want of sufficient power of Att[y] –

Stuart for Pltff – the Pltff have not had sufficient time to produce the power of Att[y] – and now moves for further delay –

Rolland for Defend[s] The Court granted the delay that Pltff asked for and more ought not to be given – The power ought to have existed at time of arresting Defend[s] –

№ 1513.

Robertson Mason & Co
vs
Baron ——

On Defdt mo. to quash writ from want of sufficient delay between servis & return — Benden for Defdt. — Defendt was entitled to three days notice — cites cases of Galipeau vs Mathe — offers to prove that return is incorrect

Bourret for Pltff — The Defendt has had more than three days delay — as appears by Sheriff's return — The Defendt should have produced an affidavit in support of his motion — the application was made too late, having been made on the day of taking off the default, and no sufficient reason given why he could not have made his application on the day of the return —

Lang
vs
Stevenson

Bolton for Pltff asks for Judgt on evidence before Court —

№ 929

Lawson
vs
Hemeau & ux

action on deed of sale. —

Pelletier for Pltff — Defendt alleges a mortgage and incumbrance on land sold — it appears by the Defendts answers on fait & droit that they had a servitude reserve in question, except as to the reserve of the road, but in admitting the reserve of the wood, the road became a necessary consequence —

Bolton for Defendt — the land was sold without any reserve, and the cost of a coupe de bois and of a road are very onerous — as to the coupe de bois he submits to the consideration of the Court on Defendts answers — but as to the road it is

wholly

wholly denied; and it cannot be imposed on Defts by this Court — That Opposts ought to be named to estimate this charge —

—

No 422.

Stansfeld
Stanfield
Stanfeld
Stanfeld
Oppt

On opposition of Joshua Stansfeld, to ~~case submitted by Oppt Pltff~~ set aside the sale & seizure of the property in question —

Stuart for Oppt — The Sale made upon arrangements between Pltff & Defendt — to injury of Creditors — There is evasion in Defendts answers to Interrogatories, he admits his being indebted to the firm of Joshua Stansfeld & Co — but says nothing as to his not being indebted to Oppt. individually, which must be implied — As to the proposed conditions of sale subject to annuities, it cannot be admitted to the injury of Creditors —

Rolland for Pltff — The Oppt ought to shew his individual interest in the Debt due to the firm, as it is now dissolved, it cannot be presumed or known — and as there is no proof the opposn must be dismissed

Stuart for Oppt. It is enough for Oppt. to shew that he has an interest, without shewing the extent of it — The Defendt does not answer the 4th Interrs — and as he does not negative the fact there asked of him, it ought to be taken agt. him — The Court may call on Defendt to answer more fully —

№850

Noro tal
Nichols tal

On Defendr mo. to suppress 5. 6 7. 8 9. 10. 11 & 13 & 14. Interrogs and answers of ~~Defendr thereto~~ Wm Wilson thereto — as irregular and inadmissible

Stuart for Defendr — The questions are all leading questions — Some of the questions also tend to prove a suit of Condemnation in Vice Admiralty Court —

There are similar objections to questions put to Andw Stuart and one Thomson —

Rolland for Pltff — The objection comes too late, and ought to have been made before the Witness was called to answer — the Pltff cannot be now turned round by being deprived of this evidence under the Com. Rogs —

Stuart in reply, it is usual to claim the suppression of Interrogatories from their containing leading questions —

№656

Boston
Noro tal

On Pltff's motion for leave to use certain papers №1. 2 & 3. as evidence, & filed in another Cause

Rolland for Defendr — The application is too late — The Pltff has closed his evidence — the enquete is open for Defendr only — the papers ought to have been filed w. Repr — or delay asked for to file them — at least an affidavit was necessary to shew that the papers could not be obtained sooner — It will appear by the papers at the time they were filed, that Pltff had them in his power and could have produced them with his replir —

Stuart for Pltff — at time the Repliq was filed the papers in question were not in power of Pltff, but had been sent to Quebec — 5 June 1818 — the papers were not filed in

the

in the other Cause in Oct. 1818 — Pluff in this Cause is a different person from Nichols & Sanford & could not have access to the papers —

—

№ 1076

Boue & Robitaille } On hearing on Inscription en faux — Rolland for Defend. Pluff has produced an acte de transport, after the signification of which the Defend. has made an inscription en faux — Exh. № 6. filed by Pluff — the words "et copie," being a falsity and added afterwards — cites Rep. v. Faux, to shew that faux may be had of acts sous seing privé, as of authentic acts — The evidence adduced besides shews the falsity —

Roi for Pluff. — The inscription en faux has not been proved as stated by Defend. The bailiff has signed other copies of same certificate in which the word "et copie" are inserted —

Henderson & Babuty } Rule absolute — diss. Mr Justice Pyke

Menard & Provencal } Rule granted on Experts —

Curry & McDonald } Rule absolute —

Sylvain & Cuvillier } Rule absolute —

Wednesday 6th October 1819.-

Thain
vs
Dillon

on mo. for hearing - & for further pleads

Wingate
vs
Dillon et al

Action to account

Grant for Defendt - The Defendts were unable to dispose of the Staves, and therefor not liable for this article - Defendts endeavoured to dispose of them without effect - concludes for recovery of his Incidental demands -

Henshaw for Pltff - The Defendts were authorised to sell the Staves for the best price they could bring, but they have been negligent -

Hoyle
Hall
& contra

On awards -

To see if Record is in state to hear cause -

Pattinson
vs
Armour

Nothing said

Bigelow
vs
McDonald

On Defendts mo. to put in Suit certain persons as proprietors of timber in question.

Walker cites Repts. vo. Revendication p. 619.

No 649

Aylwin & Curillier & Sheriff — On rule obtd by Plff on Sheriff to shew Cause why he should not amend his return by adding the names of the persons who had caused the obstruction to the seizure of the Defendrs effects.

Stuart for Sheriff — The Sheriffs return is here sufficient answer to the Kings Writ — The Sheriff cannot be bound to return the names of the persons who obstructed him in the execution of his Writ — Sheriff is unable to comply with the rule — names of parties unknown to him —

Rolland for Plff — The Plff is entitled to know, who the persons are who obstructed the execution, as far as he is enabled to state it, in order that Plff may have his further recourse under the law as Defendr — if he was one of the persons —

Lawson & Huneau — Interlocutor, for report of Experts to ascertain value of road. —

Potts. — & Burton. — Delay granted to plead to 15th inst.

Bouc & Robitaille — Judgt on Inscription en faux. —

Robertson & Co & Barron — no. discharged

Hudson's Bay Co & Chretien — Defdrs mo. rejected — Plffs no granted

Lang & Stevinson } Judgt. for Pltff.

Glassford & Fraser } Defendrs mo. for leave to come in and answer granted. —

Thursday 7th October. —

No. 949.

Bigelow & McDonald } Mo. dismissd — The Court were of opinion that the Defendr. ought to plead to the demand and leave the pltff to take such course thereon as he might be advised. —

No. 1018.

Thain & Dillon } Pltffs mo. rejected — Defendrs mo. granted Defendr. filed exceps. à la forme wt plea to merits — Pltff answered the Exceps. & plea, by a pleads. stiled Replication — Defdr. objected as the Exceps. is a pleads in law the pleads of Pltff thereto ought to have been by answer & not by Replication — as in this Cause by bar & abatement, the law admits of Plea — answer & Replr. to form the issue — and of this opinion was the Court, as the Pltff had answered the pleadings of the Defendr. he ought to have answered it in the course required by Law —

The King & The Justices } On motion for quashing return of Certiorari from want of papers —

Ross for Prs the cond was in appeal

№ 772.
Lussier dit
& Perrault

action pr. Defendr. for recovery of certain quantity of wheat sold &c

Beaubien for Defendr. The proof on part of Pltffs is not sufficient – not proved that wheat was the produce of the South side of the River St Lawr. The wheat on the North side was of an inferior quality & many merchts refused to purchase it – refers to evidence of Modeste Toutens who measured 2898 minots – his receipt for more was irregularly given – the 40 minots difference arose from the transport to Quebec. – There is a difference in value between North & South side of River of 10 ℔ Cent – as acknowledged by Pltffs Witness on the whole –

Stuart for Pltff – There is nothing as to produce of what on North & South side of River in the Contract – The wheat is proved to have been merchantable – was received as such – There is no augmentation in the wheat – the Capt. of the Vessel Toutens was the agent of the Defdrs for the wheat, and his receipt must bind Defdrs –

Friday 8th. October 1819. –

Saturday 9th October 1819.

Barker
Moreau
& Contra

On mo. for hearing on law

Vrs Evans
&
Gamble

On Defendrs mo. to reject an exhibit filed by Pltff

Monday 11.th October 1819.—

Alsopp
Cook &al

On Defend.r mo. to take off two defaults entd
ag.t him and to be allowed to enter appearance
Walker for Defend.r produced affidavits to shew
the grounds of application

Cadieux
&
Conefroy
&
Goethe' Gar
&
Goethe' Intes

On Defend.r mo. to reject the Intervention
of Bringuet pere, as too late, after the Cause
had been heard and an Interlocutor rendered
Dunoni for Defend.r the effect of that Interlocutory
is that there is no longer any plaintiff in the Cause
Bourret for Intervening party is regular, as
the Cause is still pending and the party has an
interest in the Cause — there is no final argument yet had in the
Cause —

Lemoine dit
Martigny
&
Boissette

On action to rescind a lease made by Mr Daillebout
to the Defend.r

Rolland for Pltff — action grounded on the negligence
of the Defend.r — and the deterioration of the land —
Experts have been named who report upon the negligence of
Defend.r — not sufficient to rescind the lease, but Court
ought to allow damages, & order Defend.r to make necessary repairs
with Costs — It appears that Defend.r has pulled down a building
and cut down trees — injured the cultivation of the land —

Laurin for Defend.r The first part of Pltff's demand is discontd
for the resolution of the Lease — The Pltff has no right to any
damages until the expiration of the Lease, when it is stipulated

the defend^{t}. must restore the property in the same state & condition in which he found it — the Pltff's action is therefore premature —

Rolland in reply — the Defend^{t}. should have pleaded that Pltff had no right of action until the expiration of lease — but it is certain that in law the proprietor may at any time demand the rescision of the lease —

№ 607

Perry. qu. t.

Ab^{r} Barnes flour & Colt^{t}. claim^{t} —

On Information for exporting the flour, contrary to proclam^{n}. of Gov^{t}. Wilson

Sewell for claim^{t} — There is neither law nor fact to support seizure — Proclam^{n}. of the Gov^{r}. is of no force to prohibit exportation of grain — King can make a proc^{n}. to inforce a law but not to make a law — Vin^{r}. Ab^{t}. 17. p. 197. 8-9 — What cannot be punished without proc^{n}. cannot be punished wth. it — 1 Bl. Com 207. — The proclamation has not been proved — it ought to be under the great Seal — There is no proof that claim^{t} was going out of the Province — he was disposing of his flour within the Province —

1 Bl. 207

Ross for Pros^{r} — To stand over

Hart — St. Louis & McBean T. S.

On Rule to shew Cause — why T. Saire shd not be held to pay over the monies in his hands to Pltff —

Rolland for T. Saire — the Staves in question were sold to him by Defend^{t} — before his failure —

Bourné for Interv^{g} parties. The sale to T. Saire was after the failure of Defend^{t} — when it could not legally be made — There was no tradition of the Staves —

№ 333
Lacroix
&
Manchester

On action on a lease —
An Exception of lis pendens pleaded by Defdt —

Lacroix for Pltff — first action was action of ejectment up to time of instituting it — reserving his suit for damages — the present action is to account since the time the first was instituted — There is also a claim for damages for not having constructed a certain mill, as bound by lease — and also for the profits of that mill — from 1 Jany. 1818 —

Stuart for Defdt There is a general demand for damages for not having constructed the Mill — which is contained in the first action now pending — The conclusions go to the damages as well as to account — the right of demand for account is correct.

№ 98
Algar
&
Wright

action of damages for breach of Contract —
Stuart for Defdt — There is no such covenant as that alledged — Defendt never agreed to furnish any materials to Pltff for carrying on the manufacture of Scythes Defendt was not bound to furnish Coal beyond what they might find convenient — no specific quantity was ever agreed upon, beyond what Defendt had, or could spare — the words of Contract imply no more — Besides it is not stated in Declr. that Defendt had any Coal in their possession nor is it proved —

Rolland for Pltff. Defendt — were as much bound to provide the Coal as the Iron and Steel — the words are express — there is no specific quantity stated, nor could there, as they were to furnish whatever coal should be wanted to carry on the manufactory —

Seminary of Montreal v Maynard & Rouleau mis en cau.

On the right of Evocation —
Sewell for Plff — action is purely of damages and not such as can be evoqued —
Lauvin for Defendt — Plffs claim as Seigneur shis the Defendt has a right to contest. —

—

Craven v Nichols & Sanford } action of damages for negligently keeping certain quantity of beer, by which it was spoiled —

Boston for Defend — not alledged that Defend was bound to keep or take care of the beer — it was consigned to one Jas. Woolrich — they merely permitted the beer to be stowed away in their Cellar — What they did was an act of friendship — the least onerous obligation they can be made liable — But the beer has not been injured — The evidence of Gillis & Tessyman is contradicted — The cellar is proved to have been good & sufficient — the whole was put in the inner Cellar upon 4 a 5 bands — that the air holes had been stopped up — & that there was no ice whatever in the Inner Cellar — Defendt had same care of that beer, as they had of their own beer of — was in the same Cellar — they cannot be bound beyond this — the Winter of 1816 was uncommonly severe — Raymd Coggs. v. Barnard — Jones on Bailments. p. 43. & seq. — The Defendt were the mere depositaries of the beer, had no charge of it, nor power over it — Peake's N.P. p. 114 — case of Giesberg — Bull N.P. 72.

Stuart for Pltff. The beer was sent to Defend^s to be stored, 9^r means, suff^t storage — Def^t Com. Merch^s bound to this, and the law annexes the award — Defend^s bound to ordinary care. The Defend^s were entitled to sell the beer, by the Clerk of Pltff, in Nov^r previous to the injury — The air holes in the Cellar were not closed in proper time — the door of the Cellar appears to have been burst by the frost — water got in & froze in the Cellar — Geller's testimony is corroborated by that of an Durocher —

No 1577

Aylwin
vs
Cuvillier
&
Ermatinger
T. D.

Ou action to recover money in the hands of the Sheriff —

Ou mo. that proceedings be suspended until a power of Att^y be filed —

Rolland for Pltff. no power was necessary beyond what is filed in the original Cause, as the present proceeding is to enforce the execution of the Judg^t rendered between the parties —

Beaubien for Defend^s This is another & different cause & parties not bound to look into a record not before the Court —

No 954

Clarke
vs
Wilson
and
E contra
and
Clarke
vs
Wilson

Ou action for rent of a farm — cross demand for damages done to Pltff's land by Defend^s — Arbitrators named — who have made their report — Pltff moved to set aside the award of Arbitrators from irregular and partial proceedings — The Arbitrators have not decided on the demand for rent, but only on the damages claimed by Pltff, & on the claim of Defend^s for articles furnished — That one of Arbitrators Aylwin was drunk at time of hearing parties and prevented Clarke from being present when work was

were heard — That Chapman was present & heard Witss but was not present when award was made up — That David Nelson, was also present as an Arbit. at a part of proceedings & has not joined in the Award — That Arbitrs refused to hear Pltffs. Wss That Defendt Witss were never sworn, except one — all pltffs Witss were examined

Bender for Defendt — The arbitrators have done justice between the parties, and proceeded regularly — and demands homologation of the award —

Boston of Counsel for Defdt — The Pltffs affidavit comes too late, it ought to have been produced with the motion qt was made in June last. —

No 802

Menard dal
vs
Pointe dal

On reasons given by Experts on rule to shew Cause why they should not make their report

L. M. Vigé for Defendt — question whether the experts ought now to be ruled to make their report alone or with a third to be named by the Court, under the rule of reference — as they have taken cognizance of the matters in dispute & heard the parties —

Stuart for Pltff — The original rule could have been made only by the Consent of the parties — as the Experts are unable to report without further hearing the rule cannot be renewed without the same consent by which the Rule was first made — Had the Experts been enabled to make their report, they could have been compelled to do so — but as they are unable to do so a new authority must be conveyed to them by the parties —

Vigé — The Pltff having once consented to go before

there

these Experts, cannot now withdraw that consent without a contempt of the Court — any more than the Expert could refuse to give in their award after hearing the parties — It was not the fault of the parties nor of the Expert if a report was not made —

Denau & Barron } Ex Exceptions filed by Defend^t — Rende for Defend^t The Defend^t irregularly summoned — served at a different parish stated in sum^s —

Grant for Pltff — The Defend^t has answered to the demand and is a waiver of this second plea of irregularity —

Russ & Cameron } On Pltffs. mo. to reject an exception filed by Def^t
Mr Henshaw did not appear —
Except. dismissed —

Hardie & Miller } action for wearing apparel & goods sold
Grant for Pltff — first part of demand clearly made out — 2^d part for a sum due to one Robert Main, transferred to Pltff —

Beaubien for Def^t admits first part of demand no proof of the 2^d part, of that due to Main — that ought to have been an undertaking in writing to

Ellice & Digonard } This Court directed a Survey & report of Experts to ascertain, value of improvements made on land by Defend^t

Asylwin & Cuvillier v. Sheriff — Rule on Sheriff absolute.—

Jacques & Jacques v. Tremblay — Order for proof.—

Savary & Meunier — To be re-heard.—

Noro & al. v. Nicholls & al. — Defend[rs] mo. granted in respect of certain Interrogatories—

Boston & Noro & al. — Pl[ff] mo. granted—

Tuesday 12th. October.—

Saberge & Newcomb & E contra —

Action for house rent—

Quære for Defend[r]. denies agreement of leases by the months, but by the quarter, and as there is no proof of the lease, the pay[t]. of rent by the quarter must be admitted — the saisie arret in this case is irregular as the balce due to Pl[ff] at time was only £8, 5. 1 — leases paid the balce — Incidental demand for repairs to the house not participation of Pl[ff]—

Rep[s]. v[s]. Bail p. 20 — Fer. v[s]. Bail. Rent payable by quarter.

Beaubien for Pl[ff] — action founded on quant. mer. for rent, and not on a lease — saisie arret for £17. 5— repairs cannot be made by tenant. Pothr. Louage. n[os] 107. 108. & seq.

No 1814.

Valiquet
v.
Valiquet

action for arrears of rente & pension —

Lacroix for Pltff — submits case — on report of Expert, but contends that from prevarication of Defendr — in his answers to pairs dat. Defr be condemned in Costs

Vigé for Defr — The exceptions pleaded by Defendr are founded and so adjudged by the Court, and the report of the Experts confirms report of Defr

—

No 270

Curry
v.
Phillips

On motion for a new trial —

Burton for Defendr — Two grounds of motion

1st Improper evidence allowed to go to the Jury — The production of the receipt of the Defendr compelled the Pltff to shew the loss of the Note — but evidence of this fact ought to be received — no suffr evidence that more than two Notes ever existed — the Contents of a writing cannot be admitted to be proved until its loss can be ascertained — no evidence ought to be allowed to explain the receipt filed by the Defendr — The Sons of Pltff were received as Witr to charge a fact not Commercial — the Note was lost at Montreal and the proof of that fact should have been made by the persons where the relations of the parties — one of Wrs interested, as he was prosecuted for a part of the money, which was said to have been paid on the Note — cite Gilb. Ev. p. 79 — Peake. p. 66 — Poth. Obl. 781 — Chitty on Bills 161. 169. 171. 174. Bull. N. 294 — Lofft's Rep. 507. Com. Dig. Evidence p. 89. Atkins Rep. Villian. v Villiars — That one of the Notes said to be lost was not due at the time of the Settlement of the accounts between the parties

Grant for Pltff — The existence of four Notes was sufficiently

proved, and this was all that was necessary, to shew by the Receipt that it did not apply to the notice on wh the action was founded — That Sons of Pluff were good witss as transaction originated in Up. Canada — & the loss of wch was proved under laws of England —

No 507
Bouthillier
Mathurin

Action to get Defend. from poss. of a house. ×

Roi. Defend. has stated that house was leased to him without any fixed period, it was a verbal lease — and therefore notice was necessary to entitle Pluff to his action Defend. has objected to the admissibility of verbal evidence the Defend's answers cannot be considered as a commencement de preuve par ecrit. voy. Dauty. ch. 1. p. 585. No 5. 13. Ch. 1. p. 585 No 5. 12. The verbal evidence is insufficient were it even admissible as witnesses do not speak positively to the fact of the lease — That Defend's was entitled to 3 months notice the sum being above 400ˡᵗ — Rep. Vᵒ Bail, p. 16 —

Grant for Pluff — Only question if lease for a specified period — evidence shews it was — had been otherwise, admits that he must have given notice — That here sufficient notice was given viz. on 30ᵗ March to quit 1 May — if this was suffᵗ and Defend. ought to have complained of the insufficiency at the time, and not wait over to the expiration of it — his silence is a presumption of law 2 Pigeau. p. 60 — Pigeau

Glassford
vs
Fraser

Debt on deed of sale —
Grant for Defᵈ — Pluff bound to give suffᵗ title to Defᵈ — before he can be bound to pay money —

No. 187.

Birss
vs
Duell
&
Duell
vs
Sales

action to warrant poss. of a lot of land sold by him to Pltff —
Sewell for Dfts — Defendt not bound to warranty here as it was only a Sale of Defendts right ~~only~~ — Poth. Vento. No. 186 —

Aylwin
vs
Civilier
&
T. Saisi

The Court were of opinion that the proceedings here being in the nature of an execution for the satisfaction of a Judt in the Cause — that no power of Attt was necessary under the rules of practice to institute the action. —

No. 788.

Alsop
vs
Coo[illegible]
et al

The Court granted the Defendts mo. on the statement contained in his affidavit of his right in the question before the Court, & his inability to appear and ordered that he should pay Costs, & plead to merits to morrow as a condition of his being allowed to come into the Cause.

Wednesday 13th Oct. 1819 —

Clarke
vs
Wilson
&
Contra.

Interlocutor for hearing Arbitrators on 16th —

Thursday 14th October. —

Wedgwood
vs
Sharp —

on Defendts mo. for Security for Costs

Menard et al
vs
Prince et al

The Rule discharged — The Court being of opinion that the rule to the Experts could not be renewed without the consent of the parties —

Friday 15th October.

Richardson
Scott

On Defend. mo. to obtain poss. of property seized under attachment in his hands —

Boston for Pltff objects to the mo. that the question involves the right of the action —

Lefebvre
& f. Marid

Action of assault & battery. —
Trial by Special Jury —

Edouard Lanclot — dit en compagnie avec le Def. le 18 Janv. avec Franc. Lanclot — ont passé chez le Pff. a vû le Pltff sur sa grange — Def est sorti de sa voiture pour aller trouver le Pltff — a vû les parties se tenir & le Def. frapper le Pltff — lorsqu'il a primement vû les parties elles se tenoient — le Defend. a donné plusieurs coups — les parties se defendoient tous les deux — il s'est rendu à cup & les a separé — le Def. a voulu repondre mais il l'en empêché — a vû que le Pltff. avoit le pouce fendu à seigniot — Que c'est le Def. qui a frappé le premier coup — le Def. est un hom. riche —

X

Ils étoient tous trois dans la voiture du Def. lorsqu'on est arrivé près de chez le Pltff — lorsque le Def est sorti de sa voiture il a dit qu'il s'en alloit parler à Lefevre — ils étoient distant environ 2 perches de la maison du Pltff. — n'a pas entendu ce que les parties disoient la premiere chose qu'il a vû étoient les parties qui se

de tenoient, et après a vû donner le premier coup par le Defend- a vû quelques marques sur le front du Def. le Plff avoit une marque à l'œil. —

The Plff offered the deposition of Franc. Lambert a witness who had been examined under an order of the Judge as he was at the time about to leave the Province but it appearing that the witness is now living at St Philippe. the Court refused to hear his deposition —

Upon this Plff moved to withdraw a Juror — which was granted. —

Bowman
Dewitt
& Barnett opp } Rositer for Oppost. demands that the other oppositions be dismissed as no moyens have been filed — and consents that money in the hands of the Sheriff be paid over to Plff saving their rights

No. 1025
Blackburn
vs
Warwick
& Contra } an award of arbitrators
Grant for Plff demands hom. & Judgt —
Bosworth for Defend- The arbitrators have gone beyond their authority in awarding Costs — There is besides ambiguity in the report. —

—

No. 435.
Chamereau
&
Chamereau } action of amount —
Vigi for Defd- The action is an act. of amount generally — Objs. that the action cannot be maintd until all the heirs are in suit — this appears on the face of the declaration, as one Jn Bte Chamereau is not in Court — cites Cas Halloway & McGillivray 2 Dall —

on 20 ap. 1816 – Marquis on. v. Lauzon – same Just.
the exep. was maint. and the other heir was put in
Suit – cits also. Poth. Cont. Soc. No. 162. §1 –

Traité de la Communauté No 697.

Lauzon for Pltff – Cases cited do not apply – Here
the Defend. has ended an act & a certain partition
has been made thereon – and the only property not
accounted for is the promissory Note in question – at
all events the Pltff ought to have an opportunity of
calling in the absent heir –

M^c Gillivray dal.
v.
St. Germain –

Action on promissory Note
Hearing on Exception –

Gale for Defend – Exceps. that note
appearing that the note being made to the North West
Co as well as to Pltff the N. W. Co ought also to have
been parties to suit – Cont. for most by document –

No. 1543.

Dalrymple
v.
Mair –

Action on promissory note –
On hearing on Exceps
Mr Stuart did not appear on behalf of
Defend. to support Exceps

M^r Lallock
v.
Scott

Same proceedings

Saturday 16th October.—

Birss
vs
Dick
et al

on Rollands mo. for hearg on oppn—

Donegany
vs
Bush

action is brot. agt Defendt— individually whereas it was signed by him as a partner—
No regnet of payment stated—

Rolland for Plff— Plff alleges a dissolution of the partnership can of Agbroi. v. Cuvillier—
that no demand was necessary—

—

Leblanc
et
Beaudry

action of separation de biens—
Vezi for Plff asks Judgt on evidence addced
L. M. Vezi. can submitted

—

Blanchette
et
Forbes

Action for money paid & advanced—
Vezi for Defendt— action of indebitatus assumpsit is not known in the Country— when there are writings between the parties, action ought to be brot on those writings— The action is agt a farmer for arrears of fermage— no proof of that fact has been made out, only papers filed in support not referred to in declaration

Rolland for Pltff - The only dis tinction we make in this Court is in regard of the proof, not the form of the action, & is the same in regard of action for a matter as a former — The Defend. ought to have excepted to the form of the action if it was irregular — Pltff has made no proof on record Court —

—

Mallett
vs
Lorman

action en reintegrande. —

Pellerin for Pltff. complains of voie de fait committed by Defend., which alleges to have sufficiently proved —

Boston for Defend. Pltff is in bad faith as he had consented to the boundary line being drawn between the parties, and the boundaries were planted in the presence of the Pltff — There could be no voie de fait in Defend. in planting the fence in the line so drawn — The Procès Verbal of the Surveyor is not exactly conformable to the Ordinance, but this does not render it null — That Pltff was not in poss. of the land in quest — not entitled to action — Poth. Poss. No 105 — Judge should not be too exact to admit light evidence of Defend. in poss. — cites Lacombe v. Complainte — Rapp. vo Inst. Pru. liv 10 tit. 1. Poth. prop. 269 — Contends that Court ought to name a Surveyor to verify the line drawn —

Pellerin for Pltff — The operation of P. Verbal of Surveyor are informal and illegal — Pizeau — vo Reintegrande Do. vo Complainte — The design of Defend. tends to cumulate the right of possession with the right of property — That operation of Surveyor was only begun, but never

finished

the testimony of Benj.r Cameron & the Surveyor Ackley are brt. to prove the operation, but they are interested Witn.s and Cameron is the brother in law of Defd.r — There is besides a suit at Pltff by Ackley for the half of the charges of the Survey. That the Surveyor himself declared that his operation was not correct, and it was only upon the supposition that the line was good that Pltff consented to plant boundaris — That voie in fact was subsequent to the plant.n of the boundaries — Moves to reject testimony of 2 Witnesses —

Decoigne & Gariepy } action on deed of Sale —

Roi for Defend.r then was mortgages on land sold, & the 2000.s P.d to Pltff, was on condition of her applying the money upon other real property so as to secure the purchase — That as Pltff does not shew she has applied these 2000.s in this way she is not entitled to her action against Defend.r —

Bourret for Pltff — The Defend.r has no interest in the employment of this money, it was paid on act. of a third person who was her debtor — & she was mistress to apply it in whatever manner she thought fit —

No. 966

Lebeau & Lebeau } action for work & labor done

Rolland for Defd.r in Excep.n — pleads that the action is premature — under an agreement entered into between the parties — as to the £50 payable at St. Michel, it was not due when the action was brt — The parties could not change the terms of payment by hastening the work — the obligation to pay, could not

be

be affected by the work being soon done —
Poth. Cont. Louage. N. 394 — Then it was a Contract of Sale as workman provided the Materials — The terme here was part of the disposition of the Contract, and not the Condition — The condition of Debtor is always most favorable —
Bourré for Pltff — It was for the advantage of both parties that the work should be done as soon as possible and the Contract and intention was that as soon as the work should be done the payt. became due —

Burton & Collier & Forstall & Troy

ouverture for Hours rent —
Rolland for Pltff — The Pltff has made a Saisie Gagerie in hands of Garnishees for certain effects they carried off from the house on which the Defendt. lived & for wch. Pltff has a Droit de Suite in hands of Tiers Saisi, —
That the effects seized were the property of Deffr and Tiers Saisis had no right to carry them off — the paper produced by T. Saisi shews an absolute Sale and not a conditional one — otherwise any proprietor would be deceived — by fraudulent Contract between him and the Tradesman — it depended upon the Defendt. to retain if he saw fit the effects, and the Tradesman could not take them back without the consent of Defendt — But even if the goods were sunked, the proceedings of Pltff wd. attach.
Poth. Louage 263. As to the diligence of Pltff to

follow

follow the effets — the Defend. absconded 4 Sept. & the Saisie Gagerie on 23 — The art. 171. fixes no time to follow up the effets — and even this droit de Suite appears to be given after the expiration of the bars when only the Propr. could be charged w. negligence — But here Pltff could have no knowledge of the Defends flight which was accidental — When the effets are carried away in open day, more negligence must be imputed to Pltff — By usage in the Custom of Orleans the Propr has 8 days to follow — Rep.n Vo Bail. p. 21. 23. 24 — the Custom of each place must be followed — In the Cust. Paris Cp. Com. art. 171. Tyler 2. Som. 13 — the delay is two months, even agt the proprietor of another House Auzanet. p. 137 — When the effets have been seized. the Propr. could give two months delay to the Debtor after he left house 1 Desp. p. 619 — same length of 2 months to exercise the privilege

Grant for the Trs Saisis — The property was neither not sold — the T. S. were the proprietors of the effets — The effets were let to the Defendt as appears by the entries in their books of act. and as they declare upon oath — The Pltff has not taken the legal course to preserve his right, he has sued out a Saisie — arret in the hands of T. Saisis, affg all the effets of the Defendt — and they say that they have no effets belonging to the Defdt — but had the proceeding been by Saisie Gagerie, the Pltff wd be too late — viz.t 8 days, after Defendt left the house — cites Pothr. Louag. Nos 257. 258. The authorities cited by Pltff apply only when a Saisie Gagerie, had already been made of the Effets —

Rolland for Pltff. The Pltff states in his declr the fact of the Defendts having carried away the effets in question & claims a Saisie ag.t them effets as liable to the rent —

Molson
vs
Martineau

Action for Horse rent —
Hears on Exception —

Boston for Defendt — The lease made with Defendt. & one Dyde, & Defdt sued alone — but at all events is liable only for one half — by the Terms of the lease, even if he could be sued alone —

Beaubien for Plff — The exception is not founded — no grounds stated — only now stated Verbally — the action is solidaire — The Contract made with Martineau alone — who alone has possessed since the death of Dyde —

—

McDonell
vs
Wedgewood
Frichette
Intervs

Action on deed of Lease for Rent —

Pelton for Intervs party — claims the property effects seized, he being the Sous-locataire, & offering to pay the rent he owed with the Costs up to the time of the seizure — cites 172 art. Cout. —

Boston for Plff — The agents of Defendt — who had absconded, took upon themselves to lease the house to the Intervs party — The Intvs party does not occupy the whole of the property leased to Defendt. but the chief part of it — The Plff not bound by such lease, & Defendt — liable to him for whole —

Pelton

Pellew – as long as the lease w^h Wedgewood subsists, that to Int^s party must subsist also – besides Int^s party pays the full value of what he really occupies

---

Manning v^s Hoose
D^o v^s Derrick

On report of Surveyors –
Rollin ju^r Pluff asks hom. of report and Judg^t accordingly –
Grant ju^r Defend^t – submits the regularity of the report to Court – has not complied with the Interlocutory order –

Monday 18^th October 1819

Leroux
v^s
Lebeau

Just as to suffic^y of proof –

O Doherty
v^s
Willard

Same question as to sufficiency of evidence

Kimbert
v^s
Nanry

action q. t. for practising Physic without licence –

Roi ju^r Pluff. contends that he has established sufficient facts to support his action –

Grant ju^r Defend^t – The administering of simples is not within the Statute – Action not laid on the Statute –
Dep. on Penal action. necessary to shew action to be founded on the Statute
Roi. ju^r Pluff – Defend^t not entitled even to sell simples –

p. 108. 109. –
2 East 341

Scott
&
Molsondan

action for nine planks sold to Defdt
Beaubien for Defendts - pleads tender before action
of £11.5.6. with 15/ which Pltff owed them -
has proved that Pltff owed this sum for beer sold Pltff
Rossiter for Pltff - bons were given for the beer - no
proof of beer being sold, only 2 empty barrels stamped in
the plea -

—

Aylwin
&
Cuvillier
&
Ermatinger
Garn.

On Saisie-arret on Judgt
Beaubien for Defendt - The Pltffs declr does not
contain sufficient matter to entitle him to his Saisie-arret
That of Cuvillier was ousted of his right to the monies
of Bardet. Pltff has no right to sue Cuvillier, but
ought to have applied to the Sheriff of Bardet for the monies so
adjudged to him - That there are no monies belonging to Cuvillier
in the hands of the Sheriff - That Pltff does not allege
that Cuvillier is his Debtor, but only that Sheriff has in his
hands the property of Bardet of Cuvillier claimed - Pltff
cannot have attachment of monies not belonging to Cuvillier
Rolland for Pltff The declaration is regular - it states
that Defdt obtd a Judgt of Bardet for delivery of part of
monies to him, which monies are still in the hands of the
Sheriff - & on wh the Saisie is made - Not necessary to
state that Pltff was Creditor of Defdt by any other Judgt than
that of Feby 1818 -

—

Gullet &
St Mars -
&
Tetro —

On right of Evocation -
Rolland for Pltff - action regarding exon of a P.V
cannot be evoqued -
Bourret for Defdt - as action is stated, it can be evoqued
the question whether action is well founded or not is not before
the Court -

№ 481

Castonguè
vs
Stansfield

action for 3/4 hours rent due 1 May last —
Bourret for Pltff — The Lease Verbal — Defend. kept poss. to St. Michel last — contends by evidence adduced he is intitled to the whole year — at all events is entitled to the second quarter — That answers of Defend. on facts & articles ought to be taken as Defend. — as being contradicted by the other evidence — † That the disputes between the parties cannot be viewed as any cause for his leaving house —

† 1 Pigeau 243.

Rolland for Defend. — The answer of Defs. cannot be divided except where there is contradictory evidence — Sirs. 104. 105. — here there is none — cites case of Chamberlain & Charles — last Term — That Defs. ought not to pay 2d quarter, because he rec. a notice ~~to quit~~ in June to quit immediately — that he did not then quit, but left at St. Michel — but from the interruption of the Pltff, Defend. ought to pay nothing for the other two months — much less for the 2d. quarter —

Sirs 104. 5

Bourret answers — The Defend does not plead any trouble on the part of the Pltff to prevent his enjoyment of the house, and the evidence in this respect was singular —

Berthelet
vs
Bourg

action on promissory note —

Rolland for Defend. contends he has proved more payts not allowed by Pltff — namely £16. 15. 2 also £15 — made a certain quantity of flour sold by Mr Fraser, who is the real proprietor of the note —

Boston for Pltff. the payts set up by Defend. cannot be allowed — the sum of £16. 15 was not paid on acct. of this note — but to other debts — see Mr Francis testimony —

Corse
v
Gaznier

action of revendication for a mare —
Grant for Plff. asks for Costs —

Bourné for Defdt — The evidence not sufficient to maintain the action — That Defendt. purchased the mare at public auction — & therefore Plff cannot maintain the action — at all events Plff ought to pay Costs —

Grant in answer — The evidence is sufficient. — no evidence on part of Defendt to shew how Deft came into his possession —

Forsythe
v
Davis —

action for money lent, & also for monies had and received —

Grant for Plff — by the evidence adduced & the answers of Defdt on faits & articles, Plff is sufficient to maintain the action —

Borton for Defendt — Plff cannot maintain action

Desfonds
v
Pillet

~~Cr action of account~~ —

Noro Lal'
vs
Nichols et al

action to recover damages for a quantity of tobacco sold to Plffs. by Defendts which was afterwards seized & condemned as illegally imported into this Province —

Rollard for Plff — The Defendts were bound to warrant the goods sold — by law — There is also a Special warranty

warranty on the part of the Defds to this issue, as stated in 2d Count of Declaration —

Stuart for Defend — action brot is an indebitatus assumpt instead of an action of Guaranty, — the decln concludes to a specific promise to pay a certain amount in damages whereas here the promise is not stated when the sale took place nor the breach of the promise upon that sale — Under the English forms, this would be an undertaking to pay a specified sum of damage —, and ~~not~~ the damage not stated as a consequence of the breach — but it appears as a liquidated sum of damages agreed on upon the parties which the Defds undertook to pay — Under the French Law this action could be supported only by proving the specific promise — But if the action could be maintained, the proof is not sufficient — instead of one Contract as laid — there appears to have been two Contracts as will appear by the two bills of parcels filed by Pltff — there is therefore a variance between the Contract laid in the decln & that proved —

1 Esp. on act of assumpt. on agreements.

As to proof of agreement of part of cargoe of Tobacco, the facts said have been had recourse to — by answers of one partner cannot bind the other in this respect — Sanford not bound by answers of Nichols — This not in course of carrying on their trade — In a court of Justice every partner stands in his own right — there is no implied authority to bind each other — There is no proof that the Partnership existed at the time the answers were given —

That the Interrogatories and answers thereto rejected leave nothing to shew in what manner Defends were concerned about the claim for the Tobacco —

That Pltff ought to have shewn that the Judgt of the Court of Vice admiralty condemning the tobacco was legal and well founded — The Tobacco was legally imported

from upper Canada and not from the United States – refers to a case decided in this Court – The Defendt not bound by the decision of the Court of Admiralty as no parties to that condemnation – when the Garant is no party to the suit, his right cannot be affected by what may be decided – Pothr. Vente – 1st. Garantie – There is no identity between the tobacco sold, and that seized and condemned. –

As to the damages claimed – all the party injured can demand is the value of the thing itself – the article besides fell in value after sale – there is also the subject of Costs expenses in the Court of Vice-Adm[ty] – no proof of this –

Rolland in reply – The declaration cannot be considered as coming under the English form, or any form but a statement of the injury complained of by the Plff, and the laws of this Country require no more – the adding the words, undertook & promised to pay, are merely words of surplusage, & without them the action can be maintained – The Count for money had & rec[d] is alone sufficient to maintain the action – The sale of 20 hogsheads is well laid, altho' proved by 2 papers – the allegation of one Contract to that is sufficient – The identity of the Tobacco is clearly made out – That the rejected Interrogatories are of no value in the Cause, as the facts are sufficiently made out without them – That claim made in the Court of Admiralty was at the instance & request of the Defendants – As to the faits & articles – the act of one partner must bind all. in the general management

of

of this business — and if the agreement — would have been made by our Partner, that our partner by his acts and admissions must still bind the partnership interest as well as ~~out of~~ Court — That the Judg. of the Court of Vice-Admiralty must bind the parties, where notice was given — That the Tobacco was illegally imported, and the Defendrs have shewn nothing to the Contrary — There are certain certificates of the Collector of the Customs of Upper Canada, but they do not correspond with that filed in the Cause as the original Proof — as to the damages, contend that the Plffs are entitled to all he claims from the nature of the Circumstances —

Menard
Niven — } action of Separation —
Grant for Plff, contends that evidence is sufficient to maintain action
Stuart for Defendt. contends that from the nature of Proof — action ought to be dismissed —

Hudsons Bay Co
Chretien — } Rolland for Defdr — moves to be admitted to enter a conte appee — no power of Attys having been filed as required by the Rules of practice —
Stuart for Plff — the Court has enlarged the time to file the power in this Cause —

Nadon
& } action to recover arrears of rents & pension under
Corbin } transport to Plff — Heard on Exceptn
Lairoux for Defdr — The action ought to have been an action hypothecaire, & not personal — cites Caron Toupin & Shoultz —

Vizé pr Pltff — In act of 30 Sep. 1816 — the Defendt is a party to the act. and promis personally to pay to Marie Genin — the Defendt accepts & signs the return of transport made to pltff, acknowledges himself to be indebted to Pltff — The act of 5 Aout 1818 — That Defendt ought not to be allowed to allege any claim pr arrears of cens & rentes, not having made his demand in time —

Cadieux & Conefroy & Grothé Dal

on motion by Christian Grothé to take up the instance in the place and stead of Jn Marie Cadieux —

Bourret pr Cadieux, contends that party cannot must intervene come into the Cause in this manner — in the Cause —

Whitney — Ingalls & Opps —

Cause put en delib — motifs rendu

Woodhouse & Stanley & Devilleray & al.

on declaration of Tiers Saisi — Grant pr Pltff — contends that T. S. ought to be condemned to deliver up the effects, as the sale to Obt of them was fraudulent & to cheat Creditors —

Watson & Heath & Hibbard appts

On opposition of the Guardian for the purpose the appeal appd was ordd —

Grant for Pltff — The first decision was set aside, & Guardian cannot be paid out of the proceeds —

Arnoldi & Panet

On mo. of Pltff. to shew cause why this cause should not be heard on the merits ex parte & Pltff pd his dem.d

Bourret for Pltff cites 1 Pigeau 217 — Lacombe vo. Faux — Poth.r Procedure —

1. 243

Bedard, opposed by L. Vigé — The mo. irregular, the Defend.t is not in default — as proceedings on the Inscrip.n en faux must be made before pleading — and the Pltff is himself in fault in not producing the Minutes & Orders up a P. Verbal of the state of it — That there can be no provisional Dec.n unless the cause could be heard without the pro.ces —

Griffin & McLean & al

Action on a promissory Note —

Stuart. Bailey on Bills — 48. — Quest. whether Pltff as Cashier of Bank can maintain the action — every holder is entitled to his action.

Gale for Defd — Pltff cannot recover — unless he had a right to the thing itself — Inst. Instit. — Pltff. is a mere agent — Pand. Just. p. 79 — p. 176 — 179 —

1. Pigeau 59. 60. 61 —

Stuart — in reply — The authorities cited by the question and do not apply —

The blank indorsement gives the right here
Chitty 148. & Seq. — 154 —

Bicket
vs
Davis

action for goods sold —
Rossiter for Defdt — the goods sold were unmerchantable — the goods proved worth nothing at all —
Walker for Pltff — the goods were sold as unsound —

Pistle
vs
Jones
&
Bagg
Intervs

On Intervention —
Grant for Pltff, avers Instt. of Defdt —
Rossiter for Intervs party — one of the papers were seized in the possession of the Intervs party in the hands of one Labour and this must be given up to Intervs party as to the other the evidence is not so clear, but sufficient to show right of Intervs party —
Grant in answer the answers on the Interrogatories cannot bind pltff, nor make a title to Intervs party —

Tuesday 19th October 1819

D. A. Grant & Roi & Prevost & Decoussepp } Lewell for Pltff moves that opposition be dismissed as Oppt could acquire no rights under the act produced by her —

Roi for Oppt contends that the Oppt had sufficient authority under the act —

Vve Laperriere & Larocque } Judgt for Pltff's matrimonial rights &c

Raymond & Billaugen & Contra } Incidental demand dismissed —

Gagnon & Bourassa & Pouspart o/y } Main-levée of the Effects seized

Hardy & Millar } Judgt for articles furnished by Pltff — right reserved as to demand assigned to him by Main —

Leblanc & Beaudry } Judgt of Separation —

Chamereau & Chamereau } Exception pleaded by Defendr — maintained

Glassford & Fraser } Judgt Pltff to execute deed on first demand of Dfr

Blackledge
vs
Warwick

Report of arbitrators confirmed – Defdt to pay costs
costs of arbitrators divided –

Manning
vs
Dorrick –

Interlocutory – That Surveyor make a supplementary
report of Survey –

Laberge
vs
Newcomb
& contra

W

2 quarters rent only allowed – Court being of opinion
that rent of a house held by the Year was payable
by the quarter and not by the month by the custom
of paris, and as obtained in Canada –
Defendants Incidental demand allowed – and Judt
in favor of plff for a balance of 16/1 –

The Seminary
vs
Meynard
&
Rouleau Intervt

W

On Evocation –
The Court were of opinion that the evocation
could not be maintained – the action regarding
a bare trespass in which a sum of damages was
demanded, but whereby the future rights of the
parties were not bound –

Lemoine
vs
Bissett.

Judgt hom. report of Experts –

Valiquet
vs
Valiquet
sup

Judgt hom. Report of Experts – & dismissg
Pltf's action –

Decouagne
vs
Garieppy

Exceptions pleaded by Defdr – dismissed
as he was a party to the transactions in question
had a knowledge of the mortgage agt pt he complains

Lebeau & Lebeau — Exceptions dismissed — The Court being of opinion that the terms of payment stipulated depended upon the delivery of the buildings in question —

Watson & Heath & Hibbard opp^t — The opposition admitted — The Court considers the frais de garde of the vessel seized, as a part of the frais de Justice & payable by privilege —

Cadieux & Conefroy & Grothé dat^d — The Court admitted the motion of Grothé to take up the proceedings in the Cause, as the regular course to be followed —

Nadon & Coron — The Defend^rs exc^ps dismissed — it appearing that Defend^t had undertaken personally to pay to the Pl^ff the rents & pension in question, by his consent and agreement to this effect at the time of signifying the Pl^ff's transfer to him —

Hudsons Bay Co & Chretien — Defend^rs mo. rejected. —

Menard & Neven — action dismissed — dearth of proof

Corse & Gagnier — Judg^t for Pl^ff

Berthelet & Bourg — Judgt — for balce on promy note —

Guillet & St. Mars & Tetro — Evocation dismissed — the matters in question being of the competence of Justice of the Peace on Circuit, to be summarily heard, & not cognizable in the K. B. — in the Superior Terms —

Scott & Molson — Judgt

Mc Donell Wedgewood & Frichette Intervs — Judgt. Effets to be delivered up to Intervg party on his paying the rent of his occupation, as an under Tenant — costs of Suit from time of Tender —

Craven & Nichols & Sanford — action dismissed

Pickle & Hunter and Econtra — Judgt

Leroux & Lebeau — Judgt —

Wednesday 20th October 1819

No 772.

Lussier
&
Perrault
vol' — Judgt

Hutchison
&
Lester & Co — Interlocy. setting aside proceedings

Perrault
&
Fraser
&
E Contra — Interlocy. ordering Plff to amend

Woodhouse
&
Stanley
&
Devilleray
T. S — action dismissed

Jacques.
&
Jaques
&
Tremblay — Judgt

No 1506.

Kimbert
&
Mawzy — Judt for penalty

Beckett & Davis — Judgt for Pltff Costs.

Castonguié to Stansfield — Judgt for 1 Quarter's rent —

O'Doherty to Willard & Co. — Judgt for £35 — ways to clerk

McAuley vs Sleeper — action dismissed w Costs —

Forsyth to Davis — Judgt — Writ taken up by Deptd

Toof vs Partridge — Rule on Gov. Cook and Lieut Salamé to shew cause why an attachment should not issue as thereon — granted for first day of next Term —

Malette to Lorman — Judgt for Pltff

Burton to Lampman — Mo. for folle enchere granted. —

Stansfield & Stansfield & Stansfield opp^t — H — Opposition maintained —

Donegany & Bush — H — Exceptions dismiss^d —

Molson & Martinant — H — Exception dismissed —

Lacroix & Charles — Action dismissed

Serot & Holmes — Interlocut^y for appointment of Experts —

Wurtele & Dozjel & Perrault opp^t — Jud^t on opposition admitting claim for balance —

Raymond & Bizaillon — Jud^t but not for interest as demanded

Billet 700
Oblgn to Seminary

Blanchette vs Forcier — action dismissed —

Cooke et al vs Roi — Defts mo. rejected — Pltffs do granted

Burton vs Collier & Fostin & Inyo — Interlocutz — to Garnishee to file plea —

Perrault vs Dutelle & Contra — Judgt on demand in Chief reserved on Incid. demand till issue be completed

---

J. Curry vs Phillips — Judgt on verdict

Whitney vs Ingalls & Stewart opposants — opposition admitted —

Aylwin vs Cuvellier & Sheriff T.S — Action dismissed

Forsyth
vs
Davis

Judt for Plff Damages taken & Inq. Sd