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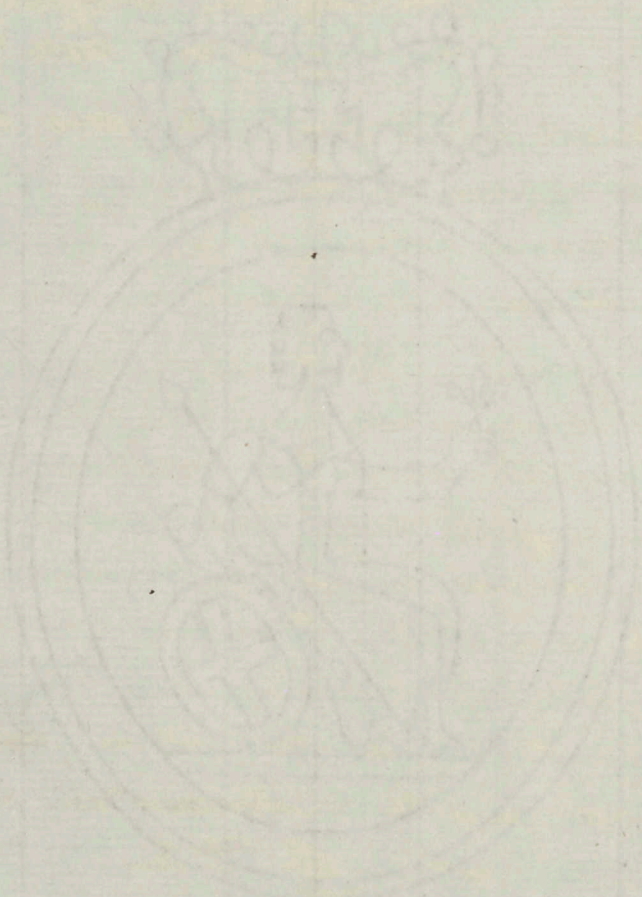

February Term 1820.

Tuesday 1st Febry.

Present
Justices Reid, Foucher & Pyke.

No. 625
Cartier
Mc dowall & al

On Pleff mo. to ex. a Witness called by Pleff and who appeared, but without having been subpoena'd, and also after the Enquête had been begun. —

Mr Stuart for Defendt objected to mo. as Witness did not appear at the opening of the Enquête, nor was his name called, or inscribed in the diary for examination. — cites Rules Prac. Sec. 27. §. 11 —

It appeared that one Lawson a wit. for the defendt was in Court on the 6th Decr. last, the Pleff had gone through his testimony upon that the former enquête days, but conceiving that the testimony of this Lawson might be material for him, he called him up as a Wit. — Lawson took the book to be sworn, but before giving his testimony requested that the Defendt counsel might be present, to which Pleff consented, and the examination was for the moment suspended — when the Defendt counsel came in Lawson was then called to come forward & give his testimony but did not appear — upon this the objection to his testimony was raised by Defdt —

Wednesday 2d. Febry 1820.

Henry
v
Potts

on Pltff's mo. to reject Defendrs. list of Exhibits, as no papers filed —

Rochon
xal &
St Germain

on Pltff's mo. for hearing on Evocation made in Inferior Court in Novr. last —

'Vigé' for Defendr. states that he discontinued his plea of Evocation on the 31st Janry. last, in the Inferior Court — this he had a right to do as the Superior Court was not yet in poss. of the Cause. —

Rolland for Pltff — The order of the Judge in the Inferior Court on the Evocation takes the Cause out of the poss. of that Court. —

R. Orkney
v
J. Orkney

On trial by Sp. Jury. —
Boston for Pltff

John Gaynes — Ks. parties — Ks hand ws of James Allison of Montreal, has seen him write & to best of his kn. the signature J. Allison to bills Exhibits No. 1. filed in this cause is of proper handwriting of S. Allison —

John Spittal — proves nothing —

Jean Bte Lavergne – proves handwriting of Defendt to several bills filed in Cause –

Michael Scott. That Pluff was in Britain and appointed Wr as his agent in Canada – has a Ltr. That the different bills & protest were returned by post from Liverpool in Janv. 1819 – The bills had been in the hands of Ratsbon Hudson & Co of Liverpool in a course of circulation – That same day or next day he wrote a note to the Defendt intimating the dishonor of the bills – That upon request of Defendt Wr gave him another copy of the notice in order to serve it on the drawer Allison – & said that he had taken the precaution to secure himself for these bills by a mortgage on Allison's property, as he suspected they would return –

x

That all the bills were returned at the same time, and were all in circulation – Delivered no copy of Protests to Defdt – with the notice of dishonor. –

John Spittal – is Clerk to Last Wr – was in his employ in January last – delivered a notice he rd from Mr Scott to Defendt on 14 Janv. 1819 touching the dishonor of bills drawn by Allison on Mr Plasket of London – That the copy returned of the notice has been lost or mis-laid & cannot be found

x

The purport of the notice sent to the Defendt – was that the bills had been returned for non-acceptance & for non-payment – That he delivered no copy of the protest with the notice to Defendt. –

It appr that one of the Bills for £500 Stg was drawn on 4 June 1818 - & another, for £150 Stg on 16th same month, both which were presented on 12th Novr 1818, and protested for non-acceptance - Two other of the bills for £300 Stg each, of which one was drawn on the 13th & the other on 15 June 1818 - were presented on 1 Augt following - and accepted - these last bills were afterwards protested for non-payt - on 2d Novr following - 10 days before the other bills were presented -

Grant for Defdt - contended - That there was a want of diligence in presenting 2 first bills, otherwise they would have been accepted as well as the other two - this want of diligence is fatal to holder - Chitty. 247 - That no notice was given of the non-acceptce of the bills till all returned for protest for non-payt - in Janry 1819 - this is also fatal to holder - Chitty. 213 - That form of the notice sent to Defdt was irregular, and no copy of protest sent therewith - which was also necessary - Chitty 231 - That Defdt not bound to prove damages sustained, this is presumed from the laches of Pltff - Chitty. 213 -

The Court charged the Jury, that due diligence in presenting the bills, and notice of their dishonor was necessary to be given - That the same diligence had not been used in presents the two first, as in presents 2 last bills - and if this arose from any neglect, or keeping up of the bills by the Pltff, he could not recover them - That this want of diligence might be waived if these bills were at the time in Circulation, and if Jury believed the evidence of Scott, this appeared to be the Case - That there appeared no laches in forwarding the protest of non-acceptce of these bills - as it was made on 13th Nov. & came to hand in Janry after with the protest for non-payt of the other two bills as had been accepted - That notice given to Defdt of this non-acceptce & non-payt was in form & substce sufft - & no copy of protest was required to be served therewith - That Defdt seemed to have waived any defect in notice by asking for another copy of it & saying he had taken his precaution to secure himself - on proofs of Drawer

Verdict for Pltff £1603.17.7½ & interest on Principal.

Ellicebal
v.
Diganard } On Pleff's mo. to set aside nomination of Thomas Barlow as an Expert, he having been a witness to object for qt. he is named

Stuart for Defdr. it is no objection to the nomn. of Expert —

Laroque
sal
+
Brachies } On Defendts. mo. to set aside process as having been irregularly served —

Walker for Pleff refers to the Sheriff's return as sufficient —

Rollin for Defendt. the Sheriff's return does not mention the hour at which the process was served

Stevenson
+
Cunningham } on Report of arbitrators
Ross for Defdr. contends that costs shd. be divided —

Wildsal
v.
Brooks. } On Pleffs. mo. for publishing the Com. Rogrs. returned in this Cause —

Yates. 119. Stuart for Defdt. no proof of the regular conveyance of the Commission — cites case of Ainslie v. Young where such proof was reqd. —

Rolland this proof not required on a Com. to a foreign country —

Dom.s Rex
In B.r Bouchard } On Petition presented by Jean B.te Bouchard praying for a Hab. Corpus to bring him before the Court in order to be liberated from a wrongful Imprisonm.t in Gaol —

It appeared that the Petitioner had been appointed Gardien to certain effects seized, on an Execution sued out on a Judg.t obt.d by one Malbœuf before Mr Turgeon a Justice of Peace at Terrebonne, and not having represented the effects committed to his charge when required, he was condemned par corps to pay the balance due on that Judg.t — and committed to Gaol in consequence —

Bedard for Pet. contended that the Justices in the Jurisdiction granted to them by St. had no authority to exercise the Contrainte, which belonged only to Courts of Superior Jurisdiction —

Thursday 3d Febry 1820

No. 1553.

Lusher & Berthelet } On defendts mo. to quash writ of Ca. sued out in this Cause —

Bedard for Defdt writ not attested as it ought, not being in the name of the Senior Judge —

Grant for Pltff, in the absence of Ch. Justice may be tested by any other Judge —

Reeves & Berthelet } On same mo. made by defendant —

Bedard for Defdt a true copy has not been served of the writ of Capias —

Grant for Pltff — The Sheriff's return certifies that a true copy of the writ was served which was sufficient —

No. 34.

Hoyle & Hall & Econtra } On mo. to quash writ of Ca. Sa. — as not having been sued out in time —

Ogden for Defdt — Prisr charged in Exon only on 6th Novr which was too late — The Defendt was surrendered on 2d Novr by 8th art. of 36th Sec. of Rules of Practice Defdt entitled to his discharge

Stuart for Pltff. The order of 1785. The Defendt was

was at large on special bail and surrendered to the Sheriff on the 15th day after Judgt. but no notice given of the surrender until the 17th — The rule of Prac. refers to surrender before Judgt — But by another rule of 8 Sec. No 8 — which refers to cases where Judgt. has been given. —

Ogden in reply — The two rules of prac. are contradictory. and the latter ought to prevail That notice was given of surrender of Defendt. on 5th Novr. when Pliff ought to have sued out his Ca. Sa. refers to case of Galernau. v Crotean where writ was sued out in same manner —

No 260
Genereux
&
Charron

On action hypothecaire for arrears of Rente & pension —

L. Vigé for Defendt — The Pliff filed a discontn as to one half of the demand before plea — The Defendt. has pleaded a tender of the arrears due, before the action brot — That the sum of 112# for the Chambre &c is not included in the demand — by the conclusions of the declr — and Defdt. has objected to proof on this head — No demand proved for the Cheval attelé. — As to the moitié de vache laitière — Defdt. owes only 18# — as the paccage & hivernemt. are not included in the demand — all which objects must be deducted from the demand — as to the other objects the Defendt. has proved sufficient tender before the action. —

Lacroix for Pliff, contends that the Defendt. has made no proof of any suffit. tender — & Pliff entitled to her Judgt —

№ 105.

Pickle Jr
vs.
Forsyth

On mo. of Defend- to be discharged from Gaol as writ of Ca. Sa. had not been lodged in time allowed him —

Boston for Defdt- The Defend- was in Gaol at time Judgt was entered — which was on 19th Oct. and the writ of Ca. Sa. was sued out only on 6th Novr —. Pltff moved on 19 Oct. that Dft. shd stand committed. —

Grant for Pltff- there is no evidence of the surrender of the Dft- but the mo. of 19 Oct. and the Ca. Sa. was sued out in sufficient time under the rule of prac. as Pltff had 2 terms to charge him in execution. —

—

№ 1591

Toof
+
Partridge
&
Cook & al. —

On rule agt Geo. Cook & Leon Lalanne to shew Cause why an attachment should not issue against them. —

Walker for Cook & Lalanne —

over till to morrow

—

№ 376

Henshaw
vs
Lough

On Pltff's mo. to amend his declaration

Sewell for Pltff cites Tidd's P. 652. & 653 — 7 T. R. 699. 1 Towls Exch. P. 120. refers to case of Symes vs Sutherland, Cur. — The amendment demanded being to amend date of Bond, & to add the conditions in regard of payt- that on failure of first instalment the whole should become due. —

Stuart for Defd. The application is not to amend in point of form, but to make a new demand diff^t from that in the declaration — The adding a new count may often be mere matter of form — The amendment here tends to shew a different principle of demand

Sewell in reply that amendments may be made as well in point of substance as of form —

The King
v
The Justices

On pros^n ag^t Cuvillier & Cartier —

The Court dismissed the mo. on part of Defd^s for quashing return of Justices, & sending ~~same~~ wrt back to them to ~~add~~ annex to their return a certain manuscript copy of the Regulations of Police referred to in affidavit of Cuvillier, as the Court considered that they could not receive any supplementary evidence not referred to in the Conviction —

Rochon
v
St. Germain

On Evocation —

The Defd^s. evoqued the Cause in November on 31st Jany after the Defend^s. moved to be permitted to discontinue his plea of Evocation and to plead in the Inferior Court — The Judge declined giving any opinion or making any order thereon in the Inferior Court reserving to parties their right to be heard thereon in the Superior Term — It was now argued that from the time of Evocation the Inferior Court was dispossessed of Cause and no proceedings could be had after until a hearing & order in the Superior Court — But the Court were of opinion that Defend^s. was regular in his application to discontinue in the Inferior Court, & sent the parties back to proceed thereon further

Larocque & Brucheis } The defendants motion over-ruled as it contained no specific grounds of irregularity, upon qh the Court could proceed

Friday 4th Febry 1820

No. 1552

Eri Lusher vs Aug. Berthelet } Rule absolute.

No. 1553

Wm Reeves vs Aug. Berthelet } Ordered that all proceedings in the Cause be staid until the Pltff shall have served a copy of the writ — and that Pltff pay Costs of motion.

Henry & Potts } Defendt cites cases of Douglass vs divers — where filing exhibits was dispensed with as the originals were in another Cause —

No. 443

Torrance & Jones & Jones opp } On opposition afin d'annuller. — Boston for Oppost — no regular publication made at Church-door of sale — no officer published sale —

Rolland for Pltff — opposr states only that the Defdt had paid the debt. The moyens are diffts & ought not to be admitted, as they state merely the irregularity

No 685
Curtis & al v Heatte & Econtra } Case submitted

No 178
Donegany v Bush } Action on Pro Notes —

Henshaw for Defdt — The 2d Count in the decln not proved — note not proved to be made by McDowall. Chitty 306. 307. — The note proved to have been made by a different partner from that stated —

Rolland for Pliff — The allegation as to the person who made note not material. Bailey 103 —

No 1100
Torrance v Moores & al } Action on Promy Notes. —

Ogden for Defendt — The amendt. permitted not regularly made, ought to have been made by the Proths — No evidence suffct — in this cause — there are two defendants & only one named —

Hoyle v Hotchkiss & al } Action for breach of Contract & damages —

Pliff asks Lngt — on evidence —

Sewell for Defendt — Damages ought to be small from the evidence adduced. only £2. 4. damages ought to be allowed on way C plaintr. —

Stuart for Pliff contends for more

D: Rex v Doucet dal. — } On mo. for a Certiorari to bring up proceedings of a magistrate under late act —

Over till to morrow. —

Henderson v Babutz } Action on a promissory Note — alledged to have been lost. —

Beaubien for Defendt — There is no suffte evidence that the note was ever lost — That R. Frost is an interested Witn and Defdt moves to reject his testimony — If this testimony is taken away, there is no proof of the loss of the note — But there is no suffte evidence to shew that the note was destroyed — as Frost is not positive that it was burnt, or how it was lost That the loss of note must be proved, before its contents can be proved — Repre vo Preuve Testimoniale — Chitty 168. 169 — on action on lost note — no indemnity will be received in a Court of Law, unless the note has been proved to be destroyed. — There is only the testimony of one witness before the Court, which is not sufficient in a case not commercial. — The Pliff is not the true ~~the~~ Pliff, he only appears for another, Poth. change No. 151. — real party interested must be pliff. cites case Bedard. vo Lemere. Octr. 1811 —

Poth. change No. 222 —

Rolland for Pliff. — The existence of note is admitted by plea. — The Pliff interested to recover the debt for the real owner. Lacombe. vo Transport. No 5. — tit 39. Code — liv. 4. Pliff is still seized of the debt — the transfer made not being valid in law. — The loss of the note is made out, which is sufficient, whether by its being destroyed or not — Chitty 114 — note mislaid, the bearer gives notice to accepter of loss —

Saturday 5th Febry. 1820.

On the Petition of Wm Hall — } On mo. to grant a writ of assistance on 47. Geo. 3. ch. 6. sec. 10 —

Dominus Rex
vs
Fr. O Doucette } On application for a writ of Certiorari in order to revise the proceedings illegally had before the Magistrates in the Inferior Jurisdiction cites Bac. ab 559 — Tidd's Prac. 455 —

Rossetti — for Magistrate —

Toof
vs
Partridge
&
Cook &c } On rule for attachment on Cook & Lalanne for forcibly taking away certain effects seized under writ of attachment —

Bourret for Pliff. The magistrates sued out a warrant agt Pliff & held him in duress until he consented to give up certain horses seized at suit of Pliff —

Walker for Cook & Lalanne, denies facts alledged & files affidavits to shew that they had not interfered beyond their authority as magistrates, on a charge of felony before them — Contends that upon the affidavit of Toof there is not suffct. ground to grant the writ. —

Stuart for Pliff. — The individuals here complained of used their public authority to obstruct the process of Court —

No. 1024

Jac. Cartier & al
v.
J. M. Mondelet
& al

On certiorari on a Conviction of the Magistrates —

Stuart for Appellts — The Regulations of Police are made under a provl. Statute of 58. of the King — The 2d Sec. of law requires certain formalities to be observed — They were made in a Court which had no legal existence — Stated to have been made on the 19th April, and so confirmed & approved by the Judges of the K. B — and returned to the 2d Sessions — This was afterwards altered to 30th April by an individual Magistrate, in order to make that valid which was not so — There were 2 copies of regulations of Police produced at hearing one by Prosecutors and the other by the Defendt — in one of which the alteration was made and in that presented by the Defendant there was no alteration — both there ought to be before the Court to see that the alteration has been made which is complained of — There is no statement in the certificate of the Judges of K. B. that the Reg. of P. had been published and posted up as required by law — Here Counsel submitted whether further argument should be had, as no motion was before the Court for confirming or quashing the Conviction —

The charge agt. Defdts. in Inferior Court was neither a complaint, nor an information — there is no demand for condemnation — no penalty demanded — The Informer does not prosecute in form of qui tam — but in his own name alone. As to Marie C. Perrault the Summs — was not regularly before the Court being a feme coverte — & her husband not

not sued. 1 Haw. p. 4. — There are also defects in the evidence, the offence was committed by Mr Carvilles, & his wife could not be liable for the penalty —

Ross for Pros^r — The objection taken as to the publication of fixing up the Regulations is too late, as the Judges were satisfied with the evidence on this point before they confirmed the Regulations, but this cannot now be inquired into — The alteration of the date is immaterial, of the making the regulations of Police — they were passed in the Quarter Sessions in April which is sufficient — cites case 2 East. 195 — it was an indivisible date — The Court can look at the Case only as it stood before the 2^d Sessions —

4. Burr. 2270. Dickson v Fisher.

The complaint is regular in case of a Summary conviction The action need not be qui tam debet — Com Dig. 324 — That wife is here alone able to stand alone Cause without her husband — Rex v Croft — 2 Str 1121

8 T.R. 590
3. Burr. 1785. 6.
Reg. of Convictions

Every thing stands on conviction presumed right 1 Str. 608 2 T.R. 666 —

Strand — The certificate of the Judge mentions only a publication of Regulations in Gazette, but does not say that they had ever been posted up — wh is required by law. — That there is a difference between cases cited in regard of alteration of Reg. in question & the date of a conviction or other paper whose date may be immaterial. — H.H. 44. 45. 1 Haw. the presence of husband w. wife excuses the wife, but act done by husband alone. —

Boudreau
Roy — } action of Separation —

No. 353.

Doiron
v.
Argenton

On hearing on exception —
Vigé for Defdr. pleads mis-nomer. Defendr named Genton —
Rolland for Pleff the difference pleaded not material — between Argenton & Genton —

649

Aylwin
&
Cuvillier
&
Cuvillier
oppt

On opposition afin d'annuller —
Beaubien for Pleff. The writ sued out in this case is regular as the Judgt upon gt it is grounded is suranné — As to proceedings on the former exon the Defendr. not bound by them as they regarded other persons — and Pleff. did no sufficient diligence on the oppositions made to that Exon —

Rolland for Pleff — The Exon has issued generally and 12 months have not expired since the return of the last writ in this Cause — but rule applies also where proceedings have been had on the return, but has effect to stay Pleff in suing out a new writ — Pleff may cumuler the Contraintes — cites Serpillon

Beaubien — last return of Sheriff on Exon is in March 1817, since which time nothing is done.

McDouall
v.
Dudley.

On mo. to quash writ Ca. Resp.
Gale for Defdr. wrong person arrested. no affidavit of Debt — Defdr. not named in affidavit — no christian name given

Necessary that a christian name be mentioned in every process — 1. Pig. 158. — art. 2. tit. 2. 1667 — 1. Chitty on pleads 250

Ogden for Pleff — objection ought to be made by pleading, & without affidavit — 1. Bos. & Pull. 645 —

The Defendt has entered Sp. bail, without availing himself of the objection — under name by wh he has been sued — 3 T.R. 611 — Doe v Butcher Selk. 7. Tid. Prac. Plea & abatement. 582. 1 Sha. 146. 156.

Quere no affidavit is here necessary — fact appears of the writ & affidavit of no name being mentd — Has not moved in name of Defdt but in name of person arrested —

1032

Cadieux & Morand } On mo. to quash writ from irregular service —

Roi for Pltff. The Sheriff's return shows regular service of process & Defdt. at plea stated this ought to prevail over present allegation

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Ex parte John Sheppard } On rule why Jn Bte Valleraud should not be struck from list of Bailiffs, from irregularity of his proceedings —

Ogden for Valleraud, proceeding is irregular no such rule ought to have been granted, nor can the same be carried into effect —

256

Molson & Martineau } on Defendt mo. to quash writ, as not being tested in name of Denis Pacaud Judge

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Ex parte
In re Bte Bouchard } On petition of In re Bte Bouchard for a Hab: Corpus —

The Court rejected the application — the Justice Pyke differed in opinion from the Court

Henry
vs
Potts } The Court considering that the two exhibits filed in this cause had been improperly taken from another record, by the permission of the Parties and filed here, and ~~that~~ whereby Defend had been induced to rely upon the papers so filed in support of his defence — directed the said exhibits to be remitted to the Record where they had been first filed and permitted Defend. to fyle copies thereof agreeable to the Rule of practice —

Monday. 7th Febry. 1820.

Witness-day. —

Doiron
&
Arguston } As the parties were at-issue on the point of fait, the Court admitted them to make proof

Cadieux
&
Morand } The Plff admitted to amend —

Tuesday 8th Febry. 1820.

Dominus Rex
v
Franc. O. Doucet
&c

The Court made rule absolute for the Certiorari

Wednesday 9th Febry. 1820.

Aylwin
&
Cuvillier
&
Cuvillier
oppt

On Pliff's mo. to reject mo. for a Com. Rogn as being a question already decided, and no affidavit to support it.

Roi
&
Descelles

On Pliffs mo. to reject Defendt. plea & conclusions to Country, as he has not deposited the money reqd. by rule of 1o rac. Sec. 30 – art. 4.

O Sullivan – If the Prothy. receive the plea, it is presumed that he has recd. the fees for Jury – The rule ceases to apply when the plea is filed –

Wingate
v
Dillon &c
&
E contra

On hearing on ~~Interlocutory~~ rendered for sale of Staves –

Henshaw for Pliff – Defendts. had no right to have sent the Staves to Quebec –

Grant for Defendt. – articles wholly unsaleable at Montreal & Defendts. did for the best in sending them to Quebec – besides Dfts had an interest in the article –

No. 961
Fruchley
Smith

Action for immoderately driving Pliff's horse
Gale for Defend^t — proof of action not suff^t
all the proof consisting in a probable inference
of ill-usage, but nothing shewn to ascertain fact —
But the evidence for the Defend^t puts matter out of all
doubt

No. 398.
Debartchze
Moreau

Action for Lods & Ventes —
Rolland for Pliff — first sale made to Def^d
by one Plamondon. 2 Dec. 1816. to enter into
poss. im. the maint^g a verbal lease, has same effect
Same day, Def^d. ex ch^d. id^e one Ledoux upon certain charges
& among other things to aid him in the pay^t of the Lods & Ventes
of Def^d's purchase — In 20 March 1817. Ledoux rescinds act
w^r Def^d. & Def^d. rescinds act w^r. Plamondon. in g^l
last act Def^d. undertakes to pay all the Lods & Ventes upon
the different mutations — Question already decided in
Case of Dubize v^s Duvert — in appeal — on a voluntary
resiliation between the parties — 3 Trait. Fief — Guyot. 479
possession feinte.
Poeq. de Levoniere. p. 211. 213 — pas de tradition — & bref
intervalle — 3. Guyot ~~490. 711. 712. 716~~ — 502. 3. Despasses
85. Bourjon. Censives. No. 102. — Ge. Cout. art 78. Sc
3. Som. 39. 40. Bourj. Tit. acq. des Im. No. 27. If
party could have created mortgages, they sale must have
effect to create Lods & Ventes — Guyot. p. 490 — Resiliation
est ex tunc — pour cause ancienne — Here the acte is
resolu de ce Jour, not from the date of the first sale —
add to this that Def^d. undertakes to pay all the Lods & Ventes
Here the acts were perfect and complete — Rep^re verbo
Lods & Ventes. 709. retention d'usufruit. 712 as to a
tradition feinte — Parties not put in same state they were
in before. Def^d. undertakes to pay Lods, & interest for one year
on the am^t. of sale — Dec. des Domaines. v^o. Lods & Ventes —

L. M. Vigé for Defendt. — Argument must apply to what regards Defdt. personally — That Defendt. never had poss. under his purchase, as same day he exchanged wt. Ledoux An action was com. by Plamondon agt. Moreau for payt. of first term of payt. — & this was cause of the resiliation — That the promise of Defdt. to pay Lods cannot bind him in favor of Pltff That a Sale without tradition does not create Lods — There is no mutation, no new Vassal — no proof made of any mutation — Prudh. 150. — also 356 — There is no time fixed by the Custom of Paris in qt. the resiliation ought to be made. Bourj. 288. resiliation from want of payt. Repn. vo. Lods & Ventes — 709 — there must be tradition as well as Deed to make a perfect Sale — Case of Debartchze v. Duvert does not apply — there was possession — cites. Taschereau & al. & Allard — in 1819. Case of Kruz. v. Habitant in the Seigry. of Laprairie —

De Longueuil & Allaire — 1811

Rolland for Pltff. — Here double lots are due Guyot 501 — there must be an absolute incapacity to pay before Peller can take back his property without obligation to pay Lods — Repn. 719 — retention d'usufruit, is tantamount to tradition Prudh. contradicts himself — mutation may arise from a tradition feinte. — case of Taschereau does not apply — there was no title, & that proved only conditional. —

Grant v. Roi & Deousse oppt.

On opposn. à fin de charge & à conserver The oppte. is separated from her husband. On 4 March 1797, there was a transaction made between Oppt. & her husband — The oppt. has since held & enjoyed these lots — in 1815 Denon sold to Roi the Defdt. these lots subject to Jouissance of oppt. — Some days after oppt. desists from her matrimonial rights wt. Purchase in consideration of a certain Rente in lieu of her Jouissance —

Sewell for Pltff. The oppost. gave away all her rights by act of 1815 — this she could not do, as it required the

the consent of her husband to made this act, and having founded her right & claim of opposition on this act of 1815, it must fall, as she ought to have set up the rights she had previously acquired on the lots in question —

Roi for Oppt — There appd. a sufft. consent of the husband to the act of 1815 — but it was not necessary being merely an act of administration — but if this act be null the Defdt. has no right whatever in the lots —

Barnard v. Page. } On Report of arbitrators —

Boston for Defdt — There can be no Judgt in favor of Pltff. as the money to be pd by Defendt. is for the payt. of Debts due by the partnership qt. existed between the parties —

Rolland for Pltff — Pltff entitled to his action pro socio at Defdt —

Thursday 10th. Febry 1820 —
Present
Justices Reid & Foucher —

No 1030

John Roi v. Descelles } Defendt. to pay costs of Pltffs mo. as Defendt. had paid the fees into the office the day after filing the Plea —

1502
J. Roi v. Chatu — } Defendt. allowed to deposit Jury fees in the office setting & pay Costs of motion — failing which — motion granted —

No. 985.
Quintin
t
Poitras

Defendt. took off default 4th and on 7th instead of filing a plea, obtained a rule on pliff to shew Cause

361
Hare
n
Cameron

On defendts. mo. to dismiss Cause from want of proceedings for upwards of two terms

O'Sullivan for Defendt. says he is ready to proceed.—

No. 256
Cadieux
t
Bourque
vs Poirier

On account rendered by Defendt. of a Succession to qt. her late husband had been appointed Curator —

Ross for Pliff. moves for Judgt. confirming report of practicians.—

Rolland refers to the acct. rendered & states thereon his observations. 1st an error of 500th. in the recette this he admits — but contests that Defendt. ought not to be charged with a sum of 882th. for interest on the principal, which it is contended that the Curator ought to have recd. from one Grotté. — The Defendt. is charged with the whole of the dettes actives of the Succession, whereas he has recd. only a small part of it — as to the allowance of 2200th. for care of the interdit, one hf. has been deducted — this ought to have been allowed in toto. — The Interest allowed by Practicians ought to be deducted — The Curator had constant occasion for the money in his hands for the use of the interdit. The authority of law (see Pigeau) says that a Tutor is bound to put out money in his hand when it amounts to 1000th —

That Defend^t ought not to pay interest, as she is not Curatrix, and not bound, as another Curator ought to have been appointed — at most can owe interest only from day of demand. —

Ross for Pliff refers to the debats de Compte filed by him —

940.

Savary v^s Pellier — Meunier & Doupras par rep. d'inst

On Pliff's mo. for proceeding to establish that part of Pliff's demand as to maintenance of Child in question — ...

Vigé for Defend^t there can be no further proceeding in the Cause after the trial by the Jury, nothing has been reserved for any further decision — That the filiation of the Child being

Over to another day. —

No. 474.

Taschereau v^s Pion —

On action for compelling Defend^t to pull down mill built by him in Pliff's Seigneur —

Rolland for Pliff — action is not possessoire or en complainte — That the plea of the Defend^t goes to merits, more than any prescription to the Plaintiff's demand, but alledges that he has built a mill in the Defd^s Seig^r —

Nouv Denz, v^o Bannalité shews that action for trouble is not the most regular, and that the

party

party ought to alledge a possession beyond year and day, and the Pltff has done so here, & Pltff's action is here Petitoire — Repn vo Complainte. — may be had in a droit reelle — But complainte does not lie, between Seigniors & his Vassal —

266 That the right of banalité is established in this Country by arrêt du Conseil d'Etat du Roi of 4 June 1686 — cites opinion of Cugnet — as having always been followed & observed in the Country — The ordce of 1676 orders that all Seigr mills shall be banal — There are several other arrets which all tend to shew that the banalité was established in Canada — Repn vo moulin — p. 676

Vigé for Df. That Pltff's action is evidently an action en complainte — must judge by the conclusions That this is not a droit Seigneurial, & therefore authority cited from Repn vo Complainte does not apply — That Pltff has produced nothing to support his right of banalité — even as an action petitoire. — That proof of poss. is wt Defendt — Under 71st art. of Coutume the Seigniors who had the right of banalité, were bound to erect banal Mills — and the erecting of the mills does not give the right of banality as pretended It is extraordy that the arrêt of 1686 was not publishd till 20 years afterwards — this does not look as if it been in favor of the Seigniors — but by this arrêt no new right is imposed, nor any change operated in the law till then in force under 71st art. of Coutr The Judgts and arrets cited by Pltff, establish noths in his favor — particularly arrêt of 1675 — which is perfectly consistent with the Custom of Paris —

Defendt has moved to reject certain papers produced and filed 12 Jany last by Pltff, as irregularly filed,

they

they were filed at closing the enquête, and as making a part of it — this is contrary to the Rules of practice — qt is conformable ~~also~~ to the law see 1 Pigeau. 331. — party here had no opportunity of answering these papers — which appear to be agreements with certain individuals to be permitted to have & enjoy mills of their own in the Plaintiff's Seigneury on paying him a certain Rente of wheat annually —

Rolland for Pleff in reply — the action can be maintained as action petitoire & ought to be considered as such, rather than dismiss Pleff, as he can never have a better nor another right than that before the Court — That in case of the Seignie of Mille Isles the Court gave to habitants a right which they had not by their Contracts with the Seignior, but qt was founded on law of 1686 only. —

Longueuil
vs
Frichette. —

On action to compel Defendt — to pull down a mill erected by him in Pleff's Seigneury —

Sewell for Pleff — This is a possessory action purely so understood for a real right — In this instance the title of the Defendt — is filed under qt the original concession obliges the Grantee to go to the banal mill of the Seigneury — The arrêt of 1686, alone establishes the right of banality, it is a general law and applies to all cases — All the Subsequent Judgts give this interpretation The right of banalité being a droit réel the Pleff may be troubled in it, and on this

principle

principle the present action is brought — 1 Gr Cont p 1038. No 13. — Petit Comre on same Aut. Repr vo Bannalité. — Repr vo Complainte. — N. Denize Vol. 6. p. 26 —

Bedard for Defendt — That the conclusions taken by Defendt in his plea are conformable to the arret of 1686 — This arret was rendered to deprive the Seigneurs of the right given them to build mills, & allowing individuals to do so — Pleff can have action de complte in this Case — whether by law or by contract she holds the right of banality — All agree to say that arret of 1686 is the first law qt gives the right to the Seigneurs That 3 a 4 months after the publication of this arret altho' a year was allowed, the Seigr of Turbonne was deprived of his right of banality — this must therefore have been ordered upon the titles of the parties — The delay of publishing the arret is against the right now pretended by the Seigneurs — None of the subseqt Judgts or arrets of the Courts of Justice are founded on the principle that the arret of 1686 alone gave the right of banalité — That even if such Judgts did exist this Court must decide upon the law as it now exists in the Country, unless the same point now agitated shall appear to have been finally adjudged — Suppose ban. real right. Rep. vo complaint 293 first col. there can be no complainte by Seigr agt his Vassal for any Seigneurial right — Pleff shows no general title of this right, but a particular deed of Concession in this Case, but it does appear that the land where the mill built by Defd makes part of this Concession — but even in this Case the action ought to be founded on this particular contract & not for a general right Repr vo Moulin — droit de ban. is a Servitude Poth. poss. no 88. 89. 90 - 91 — & in matter of Servitude

the

the action of complaints does not lie —
Poth. Introd. Cout D'orleans — p. tit. fiefs. No 353 — 256.
Gr. Cour art. 71. remarques prelim^rs — Seig^r cannot hinder tenant to build Mills, if he have no title —

Friday 18th Febr^y 1820.

I was prevented by indisposition from attend^g Court from the 10^h inst^t till this day. —

Hoyle v. Hall. } The Court discharged the Rule obt^d by the Defend^t being of opinion that ~~wh~~ as Defend^t was held by Ca. Sa. they had no power to set it aside —

Pickle v^s Forsyth } On Defend^s petition to be discharged from Gaol — The Court on same principle as in the above Case — rejected the Petition — —

Torrance Jones & Jones op^t } The Defend^s opp^n maintained & Costs adjudged to him —

Hoyle Hotchkiss & E Contra } Judg^t —

Donegani Bush } The Court were of opinion that the allegation was immaterial in regard of the person who signed the note, & therefore not necessary to be proved Judg^t for PHP —

Henderson vs Babuty. — } W action dismissed

Griffin vs McLean } W action dismissed

McDonald S: S: Dudley } W Motion to amend granted —

Dimond vs Roswell } W Coram. Foucher & Pyke —
action by a third person on Stipulation in his favor between Defend. & Pliffs Debtor
action dismissed —

Toof vs Patridge } W On Rule agt Cook & Lalanne for an attachment —
Rule absolute. —

Finchley vs Smith } Action dismissed

Hare vs Cameron } In two Cases — Pliff allowed to proceed on payt. of Costs —

Saturday 19th Febry. 1820.

Glassford vs Fraser & Fraser opt.	The Pleff's mo. to reject moyens d'opp. over-ruled. & made after moyens filed
Ellice & Diganard	Pleff's motion granted —
Aylwin vs Cuvillier & Cuvillier oppt.	Opposition dismissed in so far as regards the regularity of suing out writ of Exon —
Grant & Roi & Decousse oppt.	Opposition maintained
The King Solomon	The Defendrs Exception over-ruled. —



April Term. 1820.

Saturday 1st April.

Present. Justices Reid & Foucher.

The Ch. Justice was still detained at Quebec and Mr Justice Pyke was absent from indisposition.

Glassford & Fraser & Fraser oppt. — On Plff. mo. for hearing on moyens d'oppn

Monday 3d. April 1820

Aylwin & Cuvillier & Cuvillier oppt — On Plff. mo. for enquête — Defendt objects — as his mo. for Com. Rogr has not been decided upon —

Desrosiers & Robillard & Robillard Gart — On action agt Defendt. on Oblgn. on Excep. to action en Garantie. — Rolland for Defendt. — The Exception insufficient the discussion pleaded is irregular, & not accompanied with necessary offers — & is besides pleaded as an Exceptn Peremptn. — 1. Pg. 181. to 186 —

Lacroix for Gart. persists in his Exceptn

Monday 3d April 1820

No. 880
Moore vs Knight & E contra

Action of assault
Trial by Sp. Jury –
Verdict – £10 – damages & Costs on Principal demand – & for Defendt on Incidental demand

No. 351
Bartlet vs Grant

action for negligence in transport of goods – Trial by Sp. Jury
Verdict for Pltff – £78.12.9

Tuesday 4th April 1820

No. 552.
Garreau & Ch. B. Bouc & Ed. Bouc oppt.

On opposition afin d'annuller –
Roi for Oppt – The Cattle & effects seized belong to oppt – and were on a farm possessed by him – Oppost. has proved his property by Dufft. evidence –

Rollin for Pltff This delivery of poss. to Oppost of the farm is a pretext used by him to cover his property from execution – The oppost. was not of age when the Judgt. was given – Their Wits. prove that Oppt. is not etabli in any way, but lives wt. his father the Dept –

Refers to evidence of Fr. Pierre pere, to shew that Oppt acted more as the Servt of Defendt than as a master.

No. 929.

Jos. Lauzon & Ant. Huneau dux — } On action on deed of Sale — On Report of Experts —

Peltier for Pleff submits report to Court has only to remark in point of Costs that Pleff ought to have them —

Boston for Defendt contends that as there is only £8. 0. 9. due to Pleff by this action, Defdt ought to have his Costs — —

No. 1613

Caldwell & Ellis — } On action on Penal Statute — Sewell for Defdt contends that evidence is not sufficient — no payt taken by Defendt —

No. 1614

Caldwell & Meade } Similar Case. — Sewell for Defdt — range of evidence is too large, much out of time laid in declaration

1500

McKay dux & Fraser — } action on P. Note

Boston for Defdt — Widow Park never authorised to take note — no evidence that McKay is husband of Widow Park — Doucet was appointed Curator

Curator to the Succession — at all events Defts ought to have security to save them harmless —

Rollins for Plff: Rhoda Griffin is Plff - whether she is or is not married is immaterial. —

No. 917
Manning
vs
Derick

On report of Surveyor

Rollins for Plff - submits to report, contends that Costs of action ought to be granted

Grant for Defend - no costs ought to be allowed to Plff - she was wrong in bringing the action. —

McGill
vs
Benton
&
King Intervs

On Report of Surveyor, touching line of division between Seigniory of Nepean & Township of Stanbridge. —

Beaubien for Plff, asks for hom. of report of Surveyors - it gives to Defend. whole depth of his Seigy - the line B. C. is true line - ~~from~~ A. M. is the front-line of Seigy - from A. to B. they drew depth of the Seigniory - rear line of division is B. C. & is parallel to A. M. - The Defend. is not entitled to any compensation for that part of the mississoui bay which falls within his Seigniory there being no law for such compensation on the lateral lines. —

Ross for King - compensation made by Surveyors for the projection of the bay in front of Seigy - and the front line drawn upon this principle — concludes for hom. of report

Rolland for Defdt — The Defendt ought to have 6 leagues in superficies — or the latteral lines ought to be drawn from points of land in front — That a romb de vente of the River should be established & upon this from point of land the ~~front~~ lateral lines should commence. 2 Vol. Arrels 189. —

189

2. Romb de vente of the River on the front of the Seigniory ought at least to be taken — the front line ought then to drawn on land, leaving the points to the Seignier — Cuquet. 48.

3. Court may adopt line L. M. as front line — and the line A. D. as par. line in rear — similar compensation allowed in the Seigniory of Laprairie for the water included in the front —

Domat. Traité des Loix. Ch. 12. Som. 13. p. 24 —
Tr. Loix Civ. Vol. 1. Sec. 2. p. 8 —

Burton & Coverley & King Intro 3

on Report of Surveyor

Rolland for Pleff — the rear line of the Seigniory of Noyan must determine the right between Pleff & the King, as Defendt has no sufficient title —

Cause is joined wt the preceding — & must remain till it is decided —

Derosiers vs Robillard & Robillard vs Robillard

Judt. dismiss Defendt Exceptions —

Glassford v. Fraser & Fraser oppt. } On opposition afin d'annuller —
Rossiter for oppos^t. says he has not been sufficiently instructed of facts — The property

—

M^c. Douall v. Dudley. } on mo. to stop proceedings till costs on amendment be paid —

—

Monk v. Hall. } on Defend^ts. motion for Stay of proceedings till Security for Costs be given for prosecut^s

Ogden for Pliff. Pliff appears by decl^n. to have been within the Province when cause was instituted. —

—

Torrance & Rivard & Gardiens } On rule Nisi, why attachment should not issue ag^t. Gardiens for not representing the effects seized

Vigé for Gardien — Ready to deliver up the effects remaining, except a poulin which died since the Saisie, & of q^t. they are ready to pay the value — as for Defend^t. makes same offer & to pay Costs of rule —

Ogden for Pliff. contends that there has been an open contempt of the Court by the conduct of the Def^d & the Gardien —

W Practice

Kimber
v
Kimber

On Defend^rs mo. to set aside writ of Ca. ad Sat. – on account of irregularity two writs having been sued out one ag^t the body of Defend^t – and another ag^t the goods & effects of Defend^t –

Rolland for Defend^t – contends that Decl^n was not served in time on the Capias as required by the Rules of practice – That rule of practice has altered the law in regard of service of Decl^n q^t ought to be attached to the writ of Summons.

Peltier for Pl^ff. – The Defend^t was lodged in Gaol the 21 March & service of Decl^n at office on that day – That a copy of the declaration was served with the writ of Saisie-arret on 11 March that no other service of a copy of Decl^n was necessary on the Capias, as both writs were joined –

Rolland in answer – The Defend^t looks at the notice given him on the writ signified to him it might be a different demand, as the writ was separate from the writ of attachment –

Vadenais
v
Bruyere
&
Bruyere
v
Frejo

On Defend^rs mo. for reunion of the Causes –

Lecourt & Gariepy } On Defend^r. mo. that Writ be quashed ~~not~~ having been tested in the name of the Ch. Justice —

Vizé for Pliff. — over till to morrow. —

—

Struter — Girouard & Vincelet Sal Gardiens — } On rule on the Gardiens to show cause why an attachment should not be granted for not represents the effects seized. —

Vizé for Gardiens — contends that they were not legally appointed Gardiens — that the Defend^r. was the person who made away with the property —

Wednesday 5^t. April 1820

—

Mason & McRea } On Defend^rs. mo. to ex. Pliff. on facts & art. touching affidavit made by him on q^t. the arrest was granted —

Grant for Pliff — Def^t. too late — ought to have made his application on first day of Term —

Billings ñ Wright } Action on Promissory note — Case submitted —

Varin ñ Bleakley } On Report of arbitrators — Case submitted —

Debartzch ñ Lemay — } Action en bornage —

Rolland for Pltff. — action for boundary lines of three lands belonging to Defendr in the Pltffs Seigniory — Defendr claims by prescription to the rocher of the mountain of Rougemont — The Defendr does not describe clear points of boundary by his plea — & cannot determine any point where the prescription can attach — one of the titles mentions a depth of 22 arpents — & this ought to apply to all the others — the Defendr cannot prescribe beyond his title — The making of sugar upon waste lands not always a poss. to carry prescription — but this possession not clearly proved —

The right of Pltff as Seigr. to his action en bornage is confirmed as well at Common Law, as by Repertoire 2 vol. arrets. p. 149 — Jurisp. Do — p. 79 — & shews the custom of the Country — The rents must be fixed by the terms of the adjoining Lands —

2 149
79.

L. Vigi for Defendr The bornage is asked for at the Costs & charges of Defendr & to be bounded ab

the

the extremity of 22 arpents — The right of bornage as voisin or as Seign.r is not contested — There is no fixed limits, but the rocher of the mountain — whatever the depth in acres may be — besides the greater number of lands extend to depth of 30 arpents in that quarter That the possession of the Defend.r & his auteurs, extend to upwards of ten years — The Pltff purchased a acre of land from Defend.r at the extremity of Defd.rs land — bounded by the rocher de la Montagne thereby admitting this rocher as the boundary — The Pltff prosecuted Defend.r for Lods & rentes for same lands under same designation — this proved by Pltff's receipts & ensaisement on the Defend.rs title deeds — The Rocher must be considered as extent beyond qst there is facility of communication no means of Cultivation —

There is no proof that ever any trait quarré in depth of these lands ever existed — The right of Censitaire is favorable of Seign.r who is bound to concede his lands — The law cited shews no obligation on Censitaire to pay — charge of bornage — The demand of Cens & rentes ought not to be joined w.t action en bornage —

Rolland in reply — refers to Reglement cited, to shew that concessions are to be bounded at expence of Censitaire — That there exists a borne close to a rocher qst ought to limit the depth of Defend.rs land — he has no poss.n beyond ten years — & the making sugar cannot be considered as giving it — The land of 22 arpents is borné, & boundaries are known — this is only title when prescrip.n & poss. can apply — All lands of Defr can not be bounded by the rocher, & there can be no prescription, because no limit ascertained beyond the words of deed —

Douglass & al vs Berthelet

On Petition and motion of Defendt to be discharged from his confinement in Gaol, having been illegally confined there under the Ca. Sa. sued out in this Cause — That the letter of licence in this cause was signed by Auldjo Garden & Co the agents and attorneys of the Pleffs, to prove this 2 letters are filed with the requête; & also the balance of amt. due by Pleff by Defdt — to shew this agency — That Auldjo & Co were not themselves Creditors of Defendt — Pleffs obtained Judgt agt Defendt on 20 April 1819 — at that time Defendt was proprietor of certain real Estate in Montreal agt gt Pleffs could have had their recourse — The Pleffs could have had their recourse agt this property, but not agt his person, under the letter of Licence — There was a return of Nulla Tenementa on the Exon agt Defendt which was untrue, and illegal — this is also a ground of demand for the release of the Defendant — That Reeves also was a Defendt but not arrested — the Ca. Sa. not in the terms of Judgt —

Rolland for Pleffs The Pleffs are not parties to letter of Licence — The Signature of Auldjo & Co as agents of Pleffs even if they had been so, could not bind Pleffs as they are not parties nor mentioned for any right or interest in the letter of licence — had Pleffs themselves even signed it — That Defendt has failed in the ratification of this letter of Licence —

it

it ought to have been deposited and signed by Defendt — he never made this depot — Mr Carmel a Stranger carries it to Notary's office without any authority, & we know not where Carmel found this act — That the ratification by Defendt even if valid ought to have been notified to Pleffs — but it was impossible for the Pleffs or their agents to know where to look for such ratification — That there was a condition that Defendt should have applied the proceeds of his Estate to the payt. of his debts, but he recovered a large sum of money in Up. Can. & pd. it to his father in Law —

That every research was made before the return of the writ of Exon, and nulla tenementer returned — Defendt. was not here to point out his real Estate he had left the Province —

That as to property on Pte a Calliere, it is — substitutive, and Defendt bound to pay £150 pr an rent — the other is a house for the residence of his wife —

Not alledged that Pleffs had a kn. that Defendt had property — & therefore return of nulla Ten. must subsist —

Mr Stuart in reply for Defendt — The intention of the parties is to be considered in the letter of Licence in the body of it Auldjo & Co appear as Creditors, but they sign as agents, which in truth they were and their signature stamped the intention — The Defdt contends he has complied with all the terms of the letter of Licence — The ratification is sufficient — it could only be sous Seing privé, Defdt being in Up. C. There was no form, nor notice stipulated for this

ratifn

ratification —

The discussion of Defend^s property necessary to entitle Pliff^s to their Ca. Sa —

Lecourt
v
Gariepy

On Defend^s mo. to quash writ of Sum^s as having been tested in the name of the Ch. Justice, during his absence —

L. M. Vigé for Defend^t — The Ch. Just. was not administrator of the Province on 27 March, his absence from district, not within the Law

Bedard for Def^t — The Judge when out of his Jurisdiction is not a Judge — Jousse Just. Civ. 2 vol. p. 25 — Rep^n v^o residence.

Dillon
v
Scott
&
Scott op^t

On opposition afin d'annuller —
Beaubien for Opp^t — pleads pay^t of Debt ~~before~~ day action, is bro^t without reserve as to costs — but Pliff obt^d Judg^t for Costs — this was irregular. at all events costs must have been limited to a small sum & not sum taxed on Pliff^s proceedings

Grant for Pliff. debt paid before return of writ the Costs taxed accordingly & Exon thereon. —

The King
v
Martindale

On mo. for a Certiorari —
cites cases. Ven. ab. Tit. Certiorari —

№ 884.

Torrance vs Rivard et al — Rule on Gardiens to deliver up the effects made absolute —

№ 458.

Shuter. vs Giouard & Vincelette & Haid. vs — Same rule. —

№ 446

Glassford & Fraser. vs Fraser opts — Order for proof on the 14th. vs —

№ 537.

Monk vs Hall. — Rule absolute. —

Pin. — & Robillard — On report of Mercure, Nots — now for the acknowledgment of the husband of the rights due to the wife can be admitted in the report. as to proof — To stand over —

McDonall vs Dudley — Mo. for Costs discharged — no taxed bill ready

Thursday 6th April 1820

Main
v.
Hawley
& al

On defendt. motion to discharge Writ of Capias ad resp. —
Grant for Defd. submits as to Costs occasioned by Pliff's insuffl. affidavit —

Scott
v.
Andrews

On Pliff's mo. to reject Defendts. conclusions to the Country —
Boston for Defd. — action on a promissory note — a com. transaction — can be tried by Jury.
Lussier for Pliff — parties not merchants or traders

Wedgewood
v.
Sharp
&
E contra

On action for balce. of acct. —
Stuart for Defendt. — Gigs sold under an express warranty, that they were new, but they proved second-hand — The Incidental demand is in nature of a demand — quanti minoris. — No limitation of action in a case of this kind, when defects are discovered, it is in time
Boston for Pliff. there was no warranty on the part of the Pliff, that the Gigs were new, the Defendt. took them as he found them, & never returned to Pliff —

No. 740

Savary & Meunier & Dupras } On Pleff's mo. for evidence as to the maintenance of the Child in question —

Bedard for Pleff. cites. Resp.ns v.o Fornication Id. v.o aliments. —

Vigé for Defend.t contends that in law Pleff can have no right to maintain this action — refers to the evidence adduced before Jury — That the exception he has pleaded remains still to be determined — That the father of the bastard Child is not bound to maintain it, only where there has been Seduction — That Pleff has no right in her own name to ask for this maintenance — it must be by the Tutor named to this Child only —

Bedard — all actions q.t have been instituted have been by the mother ag.t the supposed father, first to establish the filiation, & thereupon the maintenance of the Child — Christie v. Laing — Homes v. Tucker Audacie & Dorions —

—

Lavoye pl. De Longueuil } On action to obtain a Concession from Defend.t a lot of land in her Seigniory —

Stuart for Defend.t — The arret cannot now be carried into effect, as the officers who were authorised to do so, do no longer exist —

Bedard for Pleff — This Court now possesses the authority, at least Judiciary, which were possessed by the Governor & Intendant —

By

By the 2d. Sect. of the Judicature act all power in regard of Civil rights is vested in the K. B. —

That before the existence of this arrest, the habitant had a right to have applied to His Majesty's Courts in Canada & obtain a Concession from the Seignior because the Grant of the Seigniory by the King was made upon condition of making such concessions

Stuart in reply — The question here involves two points — 1st a judicial authority to ascertain the default of the Seignior — and 2d. an Executive power of the Crown to make the Grant upon such default — as Court cannot make grants in the name of the Crown — on this account the powers of the Governor & Intendant were united by the arrest. —

Cartier
McDouall
& al' —

} action to recover amt. of goods shipped on board Steam-boat & lost

Rolland for Pliff. 1st Count — on bill of lading for receivs on board certain goods, to be delivered at Wm Henry — qt — were not delivered — 2d. that Goods were lost — 3d — promise without any bill of lading — Poth. Charte Partie. No. 31. — 50. — Jacob Law Dec. Vo Carrier — Sec. 3. No. 5. & 6. One owner bound for the whole. —

Stuart for Defendt — action ought to have been for negligent carriage of goods — but it is laid on an express promise to pay subsequent to the loss — form of

of the action by assumpsit. In a quasi-debt cannot be maintained — according to rules of law of this ~~contract~~ country, this is an express contract entered into between the parties, but there is no evidence to support such contract. — There is no evidence that the Defendrs were proprietors of the vessel in question some of Defendrs answer on faits & articles, but the answers of one cannot bind the others — Such of Defendrs as admit liability will not support the action unless proved after all as laid — There is no evidence as to the bill of lading, only proved by answers of one Witness ~~who~~ there ought to have been two — The answers of 2 Defdrs on faits & articles cannot affect other Defendrs — There was no want of ordinary care in this Case —

Rolland for Pltff — The declaration sufficient without consideration to form of assumpsit. and admits that his action must be judged by the principles of French law — The evidence is sufficient, by the non-appearance of some of Defendrs and by the answers of others, &c This is a Commercial Case, evidence of one Witness sufficient — —

Moved that facts not answered by Defendrs on the faits & articles — be taken as confessed —

Stuart objected to motion as too late — There is a necessity for this motion without which the Court cannot take them up —

Aylwin & Cuvillier & Cuvillier opp^t	The Defend^ts motion granted
Douglass & al' v^s Berthelet	Order for proof on two first heads of demand in the petition —
Masson & Mc Rae	Rule discharged — application too late & not founded on motion to set aside or quash writ — no issue raised respects the fact stated in affidavit.
Dillon & Scott & Scott op^t	Opposition maintained
Kimbert & Kimbert	Rule absolute —
Caldwell & Ellis —	Judg^t for Penalty —
Caldwell & Meade	Do ——— do
Mc Kay & Fraser	Judg^t for Pl^ff — The Court were of opinion that as at the time the Def^ds made the note the Pl^ff's wife was Tutrix to her Minor Children — and was legally authorised to give a discharge to Def^ds — The subsequent appointment of a Curator do not prevent Pl^ff's right of action —

Friday 7th April 1820

McDonald & al v Robillard } On Defendts mo. for stay of proceedings till Pltff shall have filed a power of attys Granted on 8th inst —

Monday 10th April 1820

Durand & Perrault } action on Contrat de Vente — hears on Exc/s

Bourré for Defdt — The whole land sold not delivered & Defendt. not bound to pay but on recd possn of whole 1 Bony. p. 482. 3 — a specific quantity of land being sold although within certain boundaries, rpt entitled to a deduction for the deficiency —

Rollin for Pltff — Defendt. not entitled to right claimed by him —

Orkney v Orkney } On motion for a new trial —

Grant for Defendt. states that — 1 That the verdict was granted contrary to evidence — as Pltff did not shew suffct. diligence in giving due notice of dishonor, nor diligence in presenting the bills for acceptance — 2d. Discovery of new Evidence since the trial — shews by affidavit that the Pltff in the Cause on 25th Septr the bills were in the possession of —

of the Pleff, & not in circulation — cites. 2 Bl. Rep. Broadhead, & al. vs Marshall & ux — 1 Bos. & Pull. 427. Lester vs Mundell —

Bosson for Pleff — The affidavits filed in support of motion are inadmissible & insufficient — one of them is the affidavit of Defdt. himself — qh cannot be recd — & besides does not contain sufficient — one of the setts of the bills shewn by one Warlow at Montreal, on 25 Septr. which might have been very true, & yet the other setts, have been in circulation — The other affidavit of one Leveque, states same fact, but not very precisely, & therefore of no more validity. The application too late — Bull. N. P. 327. — The Defendt. had means of producs. Leveque at trial, as he was his own Clerk — Where evidence has been given ~~on evidence~~ on both sides, new trials not granted particularly when in conscience & equity Pleff entitled to recover —

Grant in answer — The affidavit of Defendt. is regular — in case cited, the affidavit of the attorney was recd — if the bills negotiated, all would have been out of the poss. of Pleff —

Decoigne & Garupy — } action on deed of sale. —

Roi for Defdt. The Pleff has not complied wt. the terms of deed in purchasing a property on wt. to place the 2000^{ft}. demanded — The land mortgaged to Surp. Pleff has produced receipts of payt. since the action commenced and ought to pay costs of this action —

Bourré for Pleff — These points already decided —

No.

Chameran
&
Chamereau
&
Chamereau
mis en Cause

action for a balance due on a certain promissory note —

Vigé for mis en Cause — this is an action of acct. agt Defendt — & not on a note as stated after death of Fr. Chamereau all his property was sold — equivalent to an acct. ~~was~~ rendered by Defdt — That by action a demand of partage de meubles only asked for, it ought to have been a general partage, qt. is only action allowed the action ought to have been special for the object of the billet in question — The Defendt. not liable to acct. not an administrator of the property 2 Pig. 475 — The Pltff was entitled to his action agt. the Debtor of the note, instead of the present — if Defdt. refused to communicate note for this purpose, he then had his action agt Defdt. on that account —

L. M. Vigé. The mis en Cause put in Suit on the principle of the action being an action of acct. & partage There was a sale made by consent of all parties of the effects of the deceased & a division of the proceeds — the only thing remaining being the note in question, a special action ought to have been brt. for the note in question —

Lacroix. for Pltff. the plea of Mis en Cause is wholly irrelevant to the conclusions taken agt him

Cobb & al
v
Lefevre
&
Lefevre ept

On opposition of the Defendt. a fin d'annuller — on rule to shew Cause

Grant for Oppt — this course by rule to to discharge of oppos^n — is irregular — no moyens not yet filed nor required by Pleff

Hinshaw for Pleff — The grounds stated —
motion with dracon —

Henry & al
v
Carr —

On motion to be admitted to enter appearance for Defendt —

Boston for Defdt — an omission to fyle appa

Hallowell for Pleff — Course demanded irregular and too late —

Burton
v
Yule —

On hearing on question reserved on testimony of S. Potts —

Boston for Defdt — enough has been proved by written evidence to an answer the question — refers to the general Pr. of Attys to Potts in Augt. 1803 — in this there is a power to sell certain parts of his Estate at certain prices. — and Defdt. has shewn power to sell the very lot in question — Potts sold to Defdt — and the present Attys has ratified all the acts done by Potts — The papers filed by Pleff, shewing terms & Conditions of the sale — The poss. of Defdt — is a title in his favor & having been in poss. from 1812 to 1820 — Poth. ob. 767

Rolland for Pltff — The original instructions from Pltff to Potts not produced nor proved — No identity of the house called Sullivans, so as to make out identity wt. house in question — The answer of Potts to Defendt's letter is express to shew he reserved to obtain the consent of Pltff & authority from him. —

Gareau & Bouc & Bouc Oppt.	Opposition dismissed —
Lavoie & DeLonguenil	Plea to the Jurisdiction dismissed —
DeLonguenil & Frichette —	Judgt for Pltff
Taschereau & al & Pion —	action dismissed —
Debartchez & Moreau —	action dismissed —

Gagnon. & Primault & Richardson appt — } Judge admitting Opposition

Tuesday 11th April 1826

No. 104

Mason & McCrae & al — } action on promissory note — not payable to order — money lent — & account stated. Pltff, blacksmith. Defendrs Carpenters & Joiners

Plea — & Conclusions to Country. —
Motion by Pltff — to compel Defdt. to change conclusn.
Granted —

Hardie & Brown } Defendt. filed plea 6th
Mo. to reject plea yesterday, as filed too late.
Dismissed —

Monk & Hall } on Defendrs motion to set aside
Blennerhasset for Defdt — all pleadings and affidavits ought to be positive & not be inferential — Pltff estimates by 2 inferences as to injury, and as to the amount of the damages —

In England such a proceeding could not be maintained — 1. Wilson. 279 — affidavit alone not suff^t — The affidavit here contains no positive oath — so as to frame an Indictment for perjury — as 2 Wilson. 224 — swears only to estimation of damages — 1 Wilson 231 — Cause sounding in damages — 1 Wilson 120 —

O'Sullivan for Pltff — objection too late — ought to have been made at return of writ — The Defend^t delayed asking for security for costs for 3 days — he ought to have made his motion sooner — cites cases where this has been ruled. — The Rule of practice made in aid of Law — the affidavit is sufficiently positive as to the injury & to the damage above £10 St — leaving it to the Judge to fix sum — That Defend^t has waived the benefit of second part of the motion by fyling Plea —

Rolland in reply — the mo. to suspend the proceedings until security for costs be given, suspended application to set aside.

Birss
Duel
Curtis opp^t
Duell
Sälli —

Cause submitted on arguments already had —

Gagnon. } Opposition afin d'annuller —
St. Onge. — } Rolland — for Pliff. no legal notice of
& St. Onge opt } Interdiction not given —
1 Pigeau 343 — Repn 305. Reprise
Du. Droit. Reprise de Proces —

Stuart for Oppost — an Interdiction took place and was intimited to the Pliff in due time and in a sufficient manner — There has been surprise used in proceeding to Judgt afterwards. —

Lepaillem } On hearing on Exceptions —
Turgeon } Roi for Defdt contends that sentence arbitrale is null, as the Compromis is null, containing no fixed term for giving in the award. That ~~Pl~~ Defendt as Curator could not compromise the rights of the Succession he represented

1 Domat. liv. 1 des Compromis — 14 Sec. 1 —
Du. Droit. Vo Compromis —
Poth. Proc. Civ. Ch. 4. art. 2
Repn Vo arbitrage —

That where there is a clause of prorogation of time when exercised by arbitrs under the Compromis such extension ought to be notified to the parties. That an extension of 2 months was given, but report not given within this time — But if the Arbitrators could extend their power beyond this it is in power of parties to revoke it. Repn Vo arbitrage p. 548 — The Defendt did revoke the authority he gave

had given to the Arbitrators, after qt they made their report — That the Sentence leaves parties in the state difficulty as much as they were before, and therefore insufficient — cites Domat —

Rolland for Pltff. The only exception pleaded goes only to the sufficiency of the ~~exception~~ compromis The action upon qt it was founded was a personal action agt Defendt — As to the time limited for the award, it appears it ought to have been given in 2 months, if they should extend the time —

Repn vo arbitrage. 547. —
1 Pigeau. p. 19. —
Jousse. Inst. Civ. 702. —

On Incidental demand — Pltff has excepted to it, It ought to have been in reconvention — a debt not liquidated is set up agt Pltffs demand qt is liquidated — Pro. Civ. Poth. 39. 40 — 1 Pigeau 336 — The compensation has been admitted having effect of a demande in Reconvention Fer. on 107. Cont. — That the Incidental demand is besides Inadmissible as containing same points already decided by the Arbitrators — cites case of Gray & al. vs Isaac Hall. — Jany. 1809 —

Roi in answer — The Defendt has not pleaded compensation, but a demand in reconvention, qt is sufficient — refers to case McKenzie & Oldham vs Roi & E Contra — That Incident demand is equally clear as principal demand —

Hall. — to Baker & McLeish by Refd Int

Pltff asks for Judgt for £4
Grant for Defendt The Capias illegal — as £5 was paid before Sued out —

Munn v McKenzie } action on bill of Exch. by Indorsee agt. Defendt. as representing the Indorser
Bill payable to Dreau — was indorsed by late Mr Walker to Pliff — it was protested & returned — Chitty 370 — Bailey. 47 — also 54. 66. 68 — The action also founded on money Counts —

Burton v Collier & Foster & Wy. T.S. } action for House-rent
Rolland for Pliff — the effects seized in hands of T. S. liable to rent —
Repr. v Bail. p. 21. 23. 24 —
1 Dupless. 619 — on Exon —
Auzanet. 137. on 171 art.
2 Gr. Cont. p. 1261. Som. 13 —

Supposing the case under Saisie-arret — the action is maintenable — the lease of the effects to Defendt. cannot be considered as such — it was a sale & must be taken so — Over till to morrow to hear T. Saisis. —

Cadieux v Bourg } Ross — moves for confirmn. of report
Rolland for Defdt. — contends that there has been an error on part of Practicians

Scott & Lamenger } on Defendts. mo. to quash writ —
Pliff mo. to amend — cites can. McDonald v Dudley —
Lacroix objects to amendment —

Stevenson
v.
Craig — } on mo. ~~to quash to quash~~ change conclusions of plea

Ogden for Pliff. contends that parties are merchs & Traders within the view of the Ordn of 1785. — The transaction here is mercantile — making a negotiable note — 3 G. Sec. — vs. Skinner — Pyke's Rep —

~~Defend.~~ Pliff. refers to ——
Contrat de change. No. 210 —

Brouyer
v.
Frejean } on Pliff's mo. to reject plea filed by Defendt. as an Excep. not conts. any specific grounds — & filed without deposit of 2 Guineas —

Vigie for Defendt. The exception is peremptoire and goes to the merits of the demand. —

Douglass
v.
Berthelet } on Defendts. petition to be liberated from Gaol.

Bedard for Defendt. now submits his case on the second ground, as having proved it —

Rolland for Pliffs. states that the Ca. Sa cannot be set aside, as it was regularly sued out, the Pliffs not having any knowledge of the existence of the Defendants property —

Smith —
Th. Aylwin & al
&
Cuvillier opp^t
&
Ob: Aylwin. Int^g

Over till to morrow

Wednesday 12^t April 1820

Benoit
&
Petit
& al

action on deed of Sale —

Vigé for Defend^t — action is brought ag^t Defend^t personally & not as Tutrix of her minor Children in g^h capacity only & he can be bound. —

Rolland for Pleff. action is not personal ag^t Defend^ts but as Tutrix &c —

Burnside
&
Cuvillier
& al.

On Pleff^s mo. to reject the written reasons filed by the Defend^t on a rule Nisi —

Beaubien for Defend^t — The Def^t is interested to have reasons appear on record

Hudson's Bay C^o
&
Chretien

on Pleff's mo. for a Com. Rog^n to Up. Canada —

Rolland for Def^t — no affidavit to support demand — so ruled — too late to have a com. Rog. on Principal demand —

Stuart says that this applies only to Def^ts —

Metzler vs Filgiano } action for money had & recd —
Hearg on Excepn

Vigé for Defdt — pleads prescription —
Defendt a minor at time of undertaking —

Bleury for Pltff — prescription set aside by new Undertg
Things furnished were necessaries — Repn de Jur. —
Vo mineur —

Vigé — It was necessary to allege that the artcls
were furnished as necessaries to the Defendt —

Belanger & Lussier & E contra } action for goods sold & delivd
on Exceptions —

Roi — pleads as Ex. to Incdt. demand
that there is no value stated to have been given
for the billet part of the demand —

Rollin for Defdt — value is stated — Excepn
is irregular —

Douglass Berthelet } Judgt. on Petition —

Birss & Duell, & Curtis oppt & Salts. Gart } action on Garantie, dismissed

Scott & Laurenger — Leave given to amend Writ —
Munn & McKenzie, Curr — action dismissed
Stevenson & Craig — Defdt. ordered to change conclusions of Pka.

Thursday 13th April 1820

Duplessis v Moss & al' } action for house rent –

Beaubien for Pltff – Moss leased on 4 Feb 1816 – underlet to Northedge – Northedge let to Geo. Stanley –

Grant for Wm Northedge – There is no privity of contract between Pltff & Northedge. & no action can lie agt him – not entitled to subrogation of right of Moss. –

Beaubien for Pltff – Action is regular & Pltff entitled to his demand – cites cases of Freeman v Badgley & Mabbett –

Newton v McClure } action for value of gold watches delivered to Defendt. to sell for Pltff –

Gale for Defdt. That W. Jas Orkney delivered the goods to Defdt to be sold – Defendt has an interest to set off any demand he may have to make of Orkney, particularly as Orkney is now a bankrupt – That Newton wd have his whole debt of Defdt. whereas of Orkney he would be entitled only to his dividend with other Creditors

Boston for Pltff – The property is proved to belong to Pltff, and therefore the Defendt is accountable for it to Pltff, as he does not pretend to have paid or accounted for them to the Ps Orkney –

Arnoldi & Panet

Action on deed of Sale
Inscrip^n. in faux – heard on the pertinency of the moyens de faux

Bedard for Defd^t –

1. The act in question was not passed before 2 notaries as alledged, refer to Decr. 6. May 1733 – art. 5. – ordering act to be signed immediately by the Noty & witnesses – By art. 5. the Notaries are held to comply with the forms of the ordres of Kingdom – & by these particularly of Blois – both notaries ought to be present – a contrary custom cannot avail at the law – Fer. v^o Usage –

2^d. regards the tenor of the act – the seller declares the property free & clear of all debts & incumbrances which was not the case – as there were mortgages on the property at the time – Rep^re v^o Faux – Denis^o – v^o Franc & Quitte. see v^o Stellionat –

Bourret for Pliff The ordre of 1733 speaks only of acts of notaries when passed before witnesses – This does not affect acts passed before Notaries – The usage in France was different – cites. Rep^re v^o Not^re p 207 – The 2^d. moyen is not cause of nullity in the act – Auldjo. & Jordan & all – Leclaire & Groselliers –

Vezé ~~ff~~ counsel for Pliff contends that Stellionatum may be punished, & the act made by him serves to ascertain the fact –

Smith
Aylwin & al
Cuvillier opt
Ob. Aylwin
Intevs

On Opposition
Rule for Exon abs. 9 fev. 1815.
Regle 20 feb. 1816 — grants Subrogn
Regle 9 Oct 1817 do — do
Judt 6 Octe 1817

Beaubien for Oppt to sale of moveables 1 Moyen de droit — that more than year & day had elapsed — also gt Rule — that effects did not belong to Defd — & that debt had been pd. by one Thos Aylwin one of Defendts. The question of law have been determined — As to payt. of Judgt. the Pleff has stated that it was chose jugée by the rule of 9 feb. 1815 — The parties were allowed to prove this payt — Facts & art. to Pleff on this point under Com. Rogn in Jany 1818 — The Pleff failed to appear & answer so that the fact ought to be taken agt him — proof of fact is thereby established — Exd. also Geo. Symes — who states Pleff's admission of the fact — this payt. was made in 1810. — That Aylwin now prosecutes under name of Pleff. Repn vo Subrogation — Aylwin as a Partner can only claim his proportion of the debt, being himself bound for a part of it — That 3 years after in July 1813 Pleff transferred his debt to Ob. Aylwin the Intevg party —

Sub.

Rolland for Pleff — The Pleff has pleaded chose jugée to the claim of payt set up of payt — as it was a payt. before Judgt — The reason why the proof of payt. was admitted, was, because the date of payt. was not stated in the oppor — reserving to

to determine upon the law of the Case —

That rule nisi 20 Juni 1814 to shew Cause 1 Oct. 1814 — declared absolute 9 feb. 1815. determ^d question as to pay^t — of debt to Pl^ff — this proof was had, same as now adduced — & after all this proof was heard the Court by its Judg^t. of 9 feb^y 1815 found it insufficient & the rule declared absolute — Supposing this not suff^t — The faits & articles are not of a nature to be declared confess^d — That test^y of Symes is inadmissible being a relation of opp^t — besides verbal testimony cannot be admitted to prove pay^t of Judg^t — even in a Commercial Case — That under the last Commiss^n Rog^n — the Interrogatories are equally insuff^t. & no certain inference can be drawn from them one way or the other — That in 1813 the plaintiff having made over the Judg^t. to Obadiah Aylwin, who is entitled to have Ex^on in his name —

Beaubien — By subsequent order to the Judg^t of 9 feb^y 1815 — the Court considered the point now pleaded as to pay^t — not to be a chose jugée, and admitted the parties to make proof thereon — That this is a Commercial case in its origin & all matters touchs it to its conclusion must be so considered — That here Cuvillier was no party to the act, & must be admitted to prove the pay^t of the Judg^t — by that kind of proof which is in his power — Obl. N° 775. 6. 7. — &c

The Interrogatories are regularly put and

the

answer must be taken agt the Pleff — It is the affirmative qt must be always proved —

On the opposn to sale of real property —

1. There was no order allowing writ of Exon of Vend. Exp — in this Cause —

2. By ordce of 1785 — personal estate must be first disposed of before suing out Exon agt the Realty —

3. The payt here is also alledged —

Rolland, for Pleff, the proceeding is regular there being a return of Nulla bona as to the moveables — By Judgt 9 Octo. 1817 it was permitted to Pleff to proceed by Exon agt Defds property — qt Judgt was afterwds confirmed in appeal — it is upon this Judgt that the Vend. Exp. was sued out — no order or Judgt of the Court was necessary —

By entry 8 Ob. 1817 the Enquete was declared closed on the plea of payt between the parties —

On the Intervention of Obadiah Aylwin Ogden for Intvs party — under transfer of July 1813. The Defendr has not proved payt of the Debt to Pleff & as this fact is now a chose jugée, the Defdr cannot be admitted to renew the contest. — That the faits & articles proposed for this purpose, no inference can ~~you~~ be drawn from them by Pleff's not answering —

Beaubien in answer - pleads
1 payt. to Thos. Aylwin prior to the transfer to the Interv. Party -

Delinelle & Mathe } Action on an alledged trouble on purchase by Pleff from Defdt. - On Exception -

D. Vizé for Defdt. - The conclusions of the demand do not correspond with the matters alledged in the declaration - Not stated what kind of trouble has occurred to him in the possn. of the estate - The action alledges trouble, but concludes for payt. of money. -

Rolland for Pleff. The Defendt. sold to Pleff - franc & quitte & he is entitled to his demand

Letant & Diquairie } Action on promr. Note - On Excepn.

Vizé for Defdt. - The Pleff does not alledge that Defendt. is indebted to him, but that because our Jean Marie Roi was indebted to him Pleff. the Defendt. undertook to pay - this is nature of a cautionnement & ought to have been more clearly set out in Decln. - no diligence stated to have been used agt. the princept. Debtor -

Lacroix for Pleff. The declaration is sufficient -

Burton. — Collier. — Foster & Try T. S. — } Grant for T. Saisi. — Contends there was no sale of the effects in question to the Defdt & even if there had, as they were not pd. the T. S. were preferable to Pleffs — cites Gr. Com on 61 art. —

That the course followed by Pleff here is irregular to fix priviledge on the effects — the declaration contains no specific conclusions agt the T. S. in regard of the said effects. — That there was a too great a lapse of time before the pursuit was made — Louage. No. 257 Has made no proof that the furniture in question was ever in the Defdts house — The answers of Garnishees not suffts to ascertain this fact. —

Rolland in reply — That action is regular agt. Defdt & also agt the T. Saisi — the declaration of the T. S. shews that they were possessed of effects upon which the priviledge of the Pleff attached — qh is enough to maintain the action — see also the agreemt. of loan

Girard v. Huntoon } action for fees as bailiff — & for a debt transferred to him agt Defdt —

Boston for Defdt admits taxed bill of Pleff — but contests Metzler's claim, as not founded, there being no allowance made for carriage hire to bailiffs. —

Henshaw for Pleff, contends that the demand is made out — refers to answers of Defdt. on facts & art. —

Friday 14th April 1820

Hudsons Bay Co
&
Chretien

The Court were of opinion that as the Plffs mo. for a Com. Roga was not founded on an affidavit, it could not be granted — but gave leave to Plffs to file the affidavit —

Saturday 15th April.

Monday 17th April

Duplessis
&
Mossoal

Exceptions pleaded by Defdt — dismissed

Mabchler
&
Filgiano

Exceptions to be determined w. merits —

Delisle
&
Mathe

Exceptions dismissed

Lelarg
&
Decarie

Exceptions dismissed —

Chamerlan
&
Chamerlan

Exceptions reserved to be heard on merits —

Monday 17th April 1820

Guy
Rivers } action for house rent on a Verbal lease between the parties for 3 years

Bedard for Pliff — contends that the lease has been proved in consequence of Defendt answers on faits & articles, and the testimony of other Witns — refers to 4: Interrs. & answer thereto — no greater formality requisite to make a lease binding, than a Sale — & under circumstances here in the manner the parties explained themselves the Contract was binding Poth. Vente No. 33 — The conceptions of Defendt not expressed at the time cannot be allowed to affect the Contract — That no notice of leaving house has ever been given by Defendt to Pliff, 3. — months preceding 1 May — see ans. to 26t Interrogy. There is a com. de p. par ecrit. No. 801. & 804. Poth. obl. from answers of Defendt — 1 Pig. 268 —

33

Stuart for Defendt — The Defendt answers do not amount to a com. de p. par ecrit — there is ambiguity in the answers of Defdt — The answer, "very well", cannot be construed to extend to a specific engagement to take the house on Pliff's terms — this not so strong as the case cited from Pothier — The testimony of Witns cannot be looked at as there is no such com. de preuve par ecrit — That the answers of Defendt cannot be divided — No spcial plea as to notice to quit necessary — 3 mt notice sufficiently given, & ought to determine the lease between parties —

Jones
v.
Buchanan } action of Revindication for timber —

Sewell for Defend^t — The property was taken by the Kings Enemies — Militia are a part of force employed in a Country — no condemn^n necessary — suff^t that the property was out of the power of the owner — refers to case of Drean. v Fraser & King Inter^s —

Stuart for Pl^ff — The property was taken by an unauthorised banditti — parties on both sides of the Rivers un-molested by public authority — the Captn was given up —

Alger
v.
Wright
Lal } action for breach of Contract —

Rolland for Pl^ff — action to recover damages for not hav^g furnished the article of Coal as agreed on —

Stuart for Defend^t — Whole case rests upon the explanation of the contract between the parties — The terms used in respect of Coal are different from the others as to Iron & Steel — the Defend^t undertook to furnish Coal only at a given price — not to furnish any specific quantity — as to the Iron & Steel there was more than sufficient on hand to enable Pl^ff to carry on his business — y^t was all that was requisite — the only question is in regard of Coal —

Rolland for Pl^ff. The contract extended as much to Coal as much as to Iron & Steel, & equally necessary,

5. Bur. 2611 — & 13 — 1 Esp. 118 —

Perry — } action by Pleff agt. Defdr. as having
Bouthillier } become Security for certain raft of wood
& al — } claimed & delivd. up to Jr Br Leger —
Leger. Gart —

Vigé for Defdr — has put in Suit Leger for whom they became Security — There was no demand ~~was~~ made on Defdr after Judgt. to deliver up the Raft to be sold — Is entitled to his recourse over agt. the principal debtor Leger —

Provendier } On Rule to shew Cause why Ca.
& Murciani } should not be set aside —

Vigé for Defendt — The affidavit is insufficient, no ground of debt stated — the party alone states the existence of a debt, but nothing appears to ascertain how or in what manner such debt arose — Judge could not ascertain whether the debt was personal or not —

Roi — for Pleff — Mo. is insufft. no object stated or ground shewn upon gt. Cause should be shewn — That the affidavit is in the words of the Law & is sufficient —

Hart & ab. n McNider } action of account — On ~~Pltff~~ Defdts mo. to reject certain papers filed by Defendts

Walker for Defendts objects to filing deed produced by Mr Doucet as a wit on duces tecum being a public instrument qt he could have had a copy —

The property came to hands of Defendts as assignees and Trustees of Shaw Armour, which is an answer to the demand enough to dismiss it, as Defendts are not sued in that capacity —

Beaubien for Pltff — shews by his declaration that he is the Creditor of Shaw Armour — & is not yet satisfied his debt — Defendts became possessed of Armour's property under assignment — Different Counts in declaration — The regular course of producing a deed to qt you are not a party is to bring it up by the wit in whose possn it is —

Scott & Andrews } action on promy note —
Boston for Defendt — no consideration stated for the Note — not said that it was ever delivered to Pltff — Pothier. No 34. 217 — Cont. de Change —

Lussier for Pltff — promise is a ground of obligation Repn vs Billet — reconnoissance to owe is enough —

Woolrich Struthers } action on Bail bond —
Rossiter for Defdt pleads Surrender in Court at return of process — Pltffs attorney agreed to let party go —

Beaubien for Pltff — The plea of Defdt insufficient

There can be no surrender to Pltff attz — as pleaded by Defendt —

Hardie
v.
Brown

On Pltff's mo. to compel Defdt to change conclusions of his plea —

Ogden for Defdt — Pltff is stated to be a merchant trader — and Defendt — a merchant — conclusions are right —

Grant — action for wearing apparel, not within law — not to trade with.

Dufresne
v.
Legauet
&
Larivière opt
&
Stuart Intrs

On Desaveu

Vizé for Pltff in desaveu — states that proceedings are complete — & prays Jugt. —

Monk cur
v.
Archambault

On Exceptn

Vizé for Defdt — action by Pltff as Curator to Succ. of late P. Pangman — no cause of administration shewn — Defendt not liable to him — Pltff not Curator to a vacant succession — such an appointment as that stated by Pltff not known — The heirs of Pangman are the persons seized of the succession, & the Curator is a name without authority —

Bedard

Bedard for Pluff — No person in this case can prosecute but the Curator — and the Defend^t. in this cause not entitled to contest his capacity — The capacity of Curator in this Case is known —
2. Jurisp. Digeste. tit. 8. p. 527 — The suspension of the Condition is cause of appointment of Curator —
~~Digest par~~ Huneau. Institut de Just —
Minorité par Mesle p. 9 —

Vigé for Defend^t — The Defend^t. is well founded in contesting the capacity of Pluff, as in law there can be no such appointment of a Curator under the proceedings had in this Cause — therefore Defend^t not accountable to Pluff — There appears nothing here to shew that the Succession was vacant — The reasons stated by Pluff in argument are not stated in the Petition for the appointment of the Curator —

Burnside v. Cuvillier }

On Rule Nisi

Beaubien for Def^t. a. Cuvillier — The service of the rule irregular — all parties not before the Court —
2 That Pluff has made over his Estate for the benefit of his Creditors —

Loquer
vs
Trudeau

Action to compel Defendt to pass deed of sale of a lot of land sold by Pltff under authority of Judge by reason of absence of her husband —

Rolland for Defdt — Pltff had no authority to sell — could not be authorised to sell by the Judge — Comté No 497 — a Curator ought to have been appointed to the husband as an absentee — the wife can have no right during Coverture under any Circumstances to sell the real Estate of the Community —.

Bedard for Pltff. Poth. Puissance du Mari No 12. p. 459 — The absence of the husband is a suffte Cause to obtain the authority of the Judge which is sufficient — That Defendt is not interested to allege

Rolland for Defdt. The authority referred to does not extend to sell or aliene the property of the husband but other acts — as husband is the proprietor, and his absence cannot deprive him of his right over the property —

Fellows
vs
Munn sal

Action on award —

Boston for Defdts All the owners are not before the Court — not bound solidarrement tenus — but only to extent of their share — Defdts are entitled to the benefit of division as they have not renounced thereto —

Bennet & Munn	Same point —
Benoit & Petit —	Exceptions dismissed —
Bellanger & Lussier. & contra	Exceptions dismissed — Promy note declared on withd. value ex. —
Arnoldi & Panet	Moyens de faux — over-ruled as inadmissible —
Lepailleur & Turgeon	Exceptions to princip. & Incid. dem. dismissed
Bunker & Lally —	Judgt —
Decouagne & Garrepy	Judgt —
Hall & Baker	Judgt
Girard & Huntoon	Judgt
Pin & Robillard	Report of Praticien, liquidating rights of wife on Judgt of separation, set aside — it being founded on the acknowledgment of the Defend. only — saving to Pltff to ascertain the same by further legal course —

Tuesday 18th April 1820

Curtis & al
&
Heath
&
E Contra

Rolland for Pliff asks for Judgt. on the acct. rendered. —

Cormier
&
Robertson

action hypothecaire —

Roi for Defdrs the action cannot lie agt the Defdrs as they are not proprietors of the land in question — Poth. Bail a Rente — No. 96. 97. — Defendt. states that she is tenant of the proprietor, whom she points out —

Rolland for Pliff — The Defdrs came into poss. under an act translatif de propriété — have not changed the nature of their possn — nor can they exercise the right of defence of another —

Nadeau
&
Frejeau

Over

Boileau
Yule et
E contra

On action for monies had &c —

Vigé for Pltff — only contest is on the Indt demand — for a bon set up by Defdt — qt Pltff contends had already passed in acct between the parties — and Pltff obtd Indt on Tournée for the balance on that account. —

Grant for Defdt — admits principal demand but considers there is not sufficient evidence to shew that the amount of the bon ever passed in a/c —

Bridge
Blackledge

On action for goods sold

Grant for Defendt wife of Blackledge excepts to regularity of action as process served on wife alone —

Walker for Pltff, contends that wife is alone responsible —

Henshaw
Dwight
Dwight oppt

On oppt a fin d'annuller —

Stuart for Oppt — only question is in regard of certain cases said to have been returned to Pltff, under agreement entered into — as stated in exhib No. 10 — contends that words of this receipt bear a suffte clear import that Pltff had recd those articles — Besides this the evidence adduced shews these cases were returned to Pltff. see testy of Lamarche — Cases sent back afterwd to Defendt to make sale of, but this did not vary the original agreement, & was never acceded to by Defdt —

Rolland for Pliff – Question whether Defendt has made a sufficient tender to exonerate him from the effect of the execution – The exception is as to money not to the cases – Pliff never meant to receive these cases, as they were not in the Original Invoice – and when sent to him Pliff returned them immediately to Defendt – It was never intended to take back these cases by Pliff – &

Stuart in answer – common mode of expn – except £7.10 as referring to the article, & not to the money, in regard of which mention is made – but refers to the evidence on the point as to the fact of their having been returned.

Lamb & al
Gardner } Action for goods sold –
O'Sullivan for Pliffs asks for Judgt

Boston for Defendt – Pliff's case not made out nor an Defendts case even proved – Goods were returned by Defendts –

Hudson's Bay Cy
Faillet –
& E'Conha – } Action for advances in money to Defendt –
Rolland for Defdt – No evidence to support demand in chief – The evidence of Forrest – not sufficient

This case similar to that of Blanchette v Fortier – money advanced to Defendt upon a particular contract not stated in the declaration – But this

this is not a Commercial Case — There was nothing mercantile in the services to be rendered by the Defdt to Pltff — Verbal evidence not admissible — Forrest states that the monies were advanced to the Defendt for his subsistence as a witness in a Cause Ld be prosecuted for the murder of one Keveny —

The proof made is, that the money was to be recovered, if Defendt refused to go to the Upper Country for Pltff — but not shewn that Defendt ever refused to go there — nor is the action founded upon this consideration — —

There is a credit given to Defendt for monies recd. by Pltff from Governt — as a witness in the above Case — Shews nature of contract under qt the original contract was made —

No Engagement to go to the Up. Country is bind^d unless made before a Notary or witnesses in writing — the consideration therefore in view of this Contract here fails — There was no other Commercial point in view under qt the action can be maintd on verbal testimony — a promise to engage must be considered same as an engagement, as to proof to be made of it —

The case must be considered to be mercantile upon the face of it as stated in the Declaration, & not from the evidence which is adduced to support the action — Could not be maintained in the Jurisdiction Consulaire —

Incidental Demand for services rendered to the H. B. Co — considers Ld Selkirk as same

person

and identified with H. B. Co — Defendt. was detained as a Wt. for L. S — on a prosn. for murder agt. Rheinhard & al — has proved the receipt of money by Pltffs — on acct. of Defendt. —

Stuart for Pltffs — action is of daily use — money had & recd. by Defdt. from Pltff — There was no special Contract here between pltffs & Defendt — but a consideration of services to be performed — It is suffct. that Pltffs have recd. monies from Pltff, for which Defendt has rendered no consideration — refers to case of McGillivray v Leger & al — for money advanced on an agreement entered into — but which had not been fulfilled by Defdt — here altho' there was a special contract, yet the Counts for money had & recd. were supported — The Case is Commercial — the disclosure of the facts alone can ascertain this fact — the object of the advance of money here was in contemplation of Commercial transactions — There is no evidence to shew that the money advanced was to support the Defendt. as a Wit. The nullity of the Contract wr. Defendt. as a voyageur, is a right of claim of Pltffs. agt. Defendt. as having recd. monies without consideration —

Hudsons Bay Co
Chretien —
& E Contra —

Similar case as last

Rolland for Defendt — contends that this is not a Commercial action distinguishes case from that of McGillivray & Co v Leger, as there was a Commercial

Contract

Contract was proved —

Defend^t. was in the Service of the Hudson's Bay C^o. — the monies here were advanced to Defend^t. were to him as a W^r. same as last — no moniss to Credit of Defd^t. here — but his Cause equally favorable — Entitled to be paid for his services —

Conefroy v^s Lavallée.

Action on deed of sale —

Rolland for Pliff — question whether Defend^t. is entitled to a diminution of quantity of land sold — The land sold as within certain boundaries, the quantity therefore not the object of diminution of price — 1. Bourj p. 482. Sec. 2 div. 4 — Lacomb. V^o. Vente. N°. 9 — 1. Despeisses — 46. Rep^ce. V^o. Vente. p. 481 —

Peltier for Defd^t. — The lot sold here has not been sold as a corpus certum, but by measure of the number of feet — this he infers when the measure precedes the description of the property sold — refers to Bourj^n. loco cit. — here 4 feet some inches are want^s. making a deduction of £25 — on the principal of the price — Defend^t. has tendered the sum demanded, on condition of Pliff's accounting to Defend^t. for the difficiency —

Desrivieres
& Pillet — } action of trespass —
Stuart for Defend^t — no room for damages but merely the breaks the window — the words form no part of the demand — action for Inferior Court,

Laberge
& Dumas
& E contra } action for building a barn —
Beaubien for Defend^t — part of action is premature, pliff entitled only to 1500^lt

Toof
& Partridge } On Petition of Wealthy Bugbee to set aside the appointment of Philip Toof as Tutor to the minor Children of her former husband

Bourré for Pliff — The petition is presented by a married woman without the assistance of her husband, Pliff not bound to answer thereto —

Henshaw for Pet^r — The person presentg petition is the mother of the minor child, & nearest relation, & although a married woman is entitled to support it.

Beaujeu
& Levac — } Action for Lods & Ventes —
Grant for Defend^t — The act here is in nature of an arrangement de famille — Rep^n. V^o Lods & Ventes. p. 616 — see on Note (1) authorities referred to ugh. shew that Sale by father to son carries Lods & Ventes —

552 Bedard for Pliff contends that the act here is a Sale, & not an arrangement de famille — Poth. Fiefs. p. 152. —

On Petition of Ph: Rogers & al } over till to morrow
John Weare }

Wilson & al
v
Malcolm McDonald } On motion of Pliff, that Record in this cause be amended — by changing name of Pliff from John to James Wilson — on a Judgt rendered in 1812. —
& al —

Stuart for Defendt. McDonald states, that the Court has no power over its record after the expiration of the term —

Boston for Pliff, cites case of Whitcomb v Curtis where the amendment such as now claimed was granted —

—

Valin. —
v
Bizaillon. } On appn. afin d'annuller
&
Dagen Cur' } Rolland — hearing ex parte
&
Debartchze opt }

—

Solomons } On acct. rendered —
&
Tough } To draw Judt. by consent —
&
Gillespie. }

—

Gerrard &al
Turgeon } action on Promy note —

Roi for Defendt — first notice that Pleffs were the holders of the note, is the institution of the present action — the Defendt could not pay until he knewt whom he could pay the Defendt tendered the money immediately upon receiving the process — Poth. Change — No. 213 — 212. also. No. 129 — Obl. No. 549 —

Wednesday 19th April 1820

McCulloch &al
Wm & Jno Scott } On motion by Defdt that surplus of money in the hands of the Sheriff after payt of the Debt & Costs due to Pleff be paid over to Defendt —

Mr Gale for Pleff. moved that as money tendered & lodged wt Sheriff in satisfaction of the Debt & Costs mentd in the Exon sued out in this Cause, was in French half Crown debased & defaced & diminished in Weight — a writ of Vend. Exp. should issue to the Sheriff directing him to sell so much thereof as might be sufficient to pay & satisfy the said debt & Costs — He contended, that

By art. 48. Ch. 8 — no mention made of French half Crowns — but by implication, in same proportion to the value of other persons — but contended by some that as no weight is mentd in law, the hf Crown ought

to pass in sale — this contrary to reason — as the weight is of importance & essential in equity — & otherwise a smaller denomination might be beat out to a larger —

Mr Blannerhasset for Defendt — only question is whether this is a debased coin — it is current money the word weight in Stat. refers only to the gold but not to Silver — The Royal proclamation & a fortiori the Stat. can give currency to any denomn of Coin — money-Silver not paid by weight — by ordn of Louis 13. the Crown was to weigh an ounce 20 pennyrt — Coke Lett. 207 — payt. in Coin made current is good — 2 Rayd. 964. Tender & refusal, a discharge — Do. 1072 —

Rolland for Defendt —
act of Wm 3. for calling in all old Silver Coin — & deficiency to be made good at public expense Stat. 1829 — authorises currency of Coin struck since 1793 —
Rep^n v^o monnoie — v^o Ecu — Ferrier v^o Monnoie —

Gale in answer. hf Crown admitted only in proportion qr. embrace, metal, & weight — when cut, brot — or defaced — it shall be recd. according to its weight Sec. 8 — The Coin here was defaced — Rep^n v^o monnoie — when defaced not current —

Desrosier, & Robillard & Robillard Garn } Vigé for Pliff asks for Judgt Rolland for Defdt — asks for Judgt over agt Garn —

Lacroix for Garn — says he never contracted wr. Defendt — that he was caution of Lambert, but not of Defendt — and that Lambert is not before the Court

Rolland for Defendt — The Defendt is caution of Defendt — as well as of Lambert. —

Thatcher & al & Frost — } On Pliff's mo. to change Conclusions to Country —

Ogden for Defendt — Pliffs are traders by business they carry on — the Defendt is their clerk who was employed in this trade for them — & entitled to the trial by Jury —

Scott & Andrews } Excep. dismissed — see case p. 80 Bellanger & Lussier

Hardie & Brown } Pliff's mo. granted — affair not commercial in regard of Defdt — purchase of wears apparel for his personal use —

Wedgewood & Sharp & Econtra } Principal & Incidental demands dismissed

Burnside Cuvillier		Service of Rule irregular — Rule disch^d —
Woolrich Strothers & al	X	Defend^t Plea of Excess — over-ruled
Skimming Strothers	X	D^o — d^o — d^o —
Clarke Snow		Judg^t on Verdict
Provendier Murciani	X	Rule discharged —
Desrivieres Pillet —		Judg^t
Dufresne Legault Larivier Pl^ff Stuart —		On disaven — Judg^t
Gerard & al Turgeon		Judg^t Each party paying their own Costs —
Burton Collier Forster & Try	X	Demand ag^t Forster & Try dismissed —
Valin Degen Debarbehze		Rule on adjudicataire —

Lamb & Co. to Gardner } Judgt

Hart to McNider & al. } Judgt to render aut

Toof to Partridge } Petition of Wealthy Brigbee rejected not authorized by her husband

Thursday 20th April 1820

Newton to McClure } Judgt

Monk to Hall } Rule discharged

Savary to Meunier } Pleff's motion granted

Orkney to Orkney } Mo. & rule for New trial discharged

Jones to Buchanan } Judgt

Henshaw
Dwight } Opposition maintained
Dwight oppt

Bridge et al } action dismissed
Blackledge

Boileau
Yule } Judgt
2 contra

Desrosiers
Robillard } Judgt
Robillard Gat

Glassford
Fraser } Opposition dismissed
Fraser oppt

Alger
Wright et al } Judgt

Cartier
McDonall } Judgt
et al

Curtis vs. Heath — } Judgt

Fellows Munn — } Exception dismissed



June Term 1820.

Friday 2.d June 1820.

Present.—

Justices, Reid, Foucher & Pyke. a

The Ch. Justice set out yesterday for England. a

Warwick & Yule — } On rule on Sam.l T. Hudson to shew cause why an attacht. should not be granted ag.t him for a contempt.—

The party called did not appear

1 Stile de Gaunt 40 g.—

Burnside & Cuvillier } Over till to morrow

Saturday 3. June 1820

Boudreau
Roi. } Mr Justice Pyke was absent from indisposition on Defendr. mo. to rescind a part of Judgt. rendered the 14. Febr. last. —

L. M'Vigé for Defdr. motion founded on ground that the minor Children for whom the allowance was ordered to be made are come to a certain age and placed under the Care and instruction of their nearest relations of these Children who are willing to continue that charge, the Defendr. ought to be exonerated from the obligation of paying any allowance for the maintenance of these Children. —

Bourré for Pliff — The Pliff is entitled to the care and education of her Children — and there is no reason to deprive her of this right —

Shaw & al
Blackledge & ux } on mo. to quash Ca. ad resp. — as having been sued alone, the Defdr. her husband not being before the Court

Grant for Defdr. 17. Rep. 486 — where a similar mo. was granted —

Walker for Pliff — The mo. does not specify any suffct. ground —

Bridge & al
Blackledge & al } same case —

Dixon
v.
Finchley } on mo. for publicn. of a Com. Regr.

McCulloch
v.
Scott } on Pleff. mo. to discontinue mo. of last Term, and to permit Sheriff to amend his return

Rolland for Defendt. contends that if Pleff. withdraws his motion, that the mo. of Defdt. last Term shd. be granted —

Monday 5th June 1820

Present

Justices Reid & Foucher

McCulloch Scott et al	Judgt on motions —
Shaw Blackledge & ux —	Rule discharged
Bridge & al Blackledge & ux —	Rule discharged
Exparte Wm Hall	Mo. for new writ of assistance granted —
Dickson Finchley —	The Court considered the Certificate of the Proths as equivalent to an affidavit of carriage of the Com. Rog — & ordered publication to be made in consequence
Boudreau Roit —	Interlocr ordering proof
Cook Hildreth —	Mo. for Sec. for Costs discharged, in consequence of Defendt having taken prior proceedings in the Cause —

Shaver & al'
v
Cameron - }

on Petition of Defend^t - to be discharged from his confinement in consequence of the alimentary allowance not having been paid him -

Ogden for Pleff^s - the complaint is for not having been paid his allowance for 27 March last produces an affidavit of one Peter Empey to shew that the money was tendered & paid to Defend^t on 27^t March last -

Bleury for Pet^r - contends that Defend^t is entitled to his discharge, as the pray^t was not made - nor any sufficient offer of it -

Tuesday 6th June 1820

Present
Justices Reid & Foucher

Fleming & al
Thompson — } Notts d —

McIntosh
v
Bowron — } action on P.y note
Walker for Defdt — note payable at bank of Canada — no demand stated or made there —

Bowes & al
v
Howe — } In Error. 5. Taunt. 30.
Gammon & al
v
Schmoll } Id. 344.

Gagnon
v
Moreau
&
E Contra } action ~~for breach of Covenant & damages~~ on contract for ~~not~~ building a house for ~~Pleff~~ Defendt — & damages for not having provided the necessary materials for Pleff in time —

Rollin for Pleff — The number of toises of mason work agreed on — the damages are spoken to by different witnesses — Pleff has moved to reject deposn of one John Taplin, as an interested Wr — & as being a party to the Contract —

Beaubien for Defendt — The Pleff has recd about £25 — on acct. of £55 qr — was due to him for mason-work As to damages demanded, none are due, the injury of any proceeding from the proper negligence of Pleff As to incidental demand, it is founded, at least to extent of

of damages of Pliff — Defend^t. has moved to reject deposition of Chas Bricault de Lamarche — as interested — he was the partner of Pliff — and on this deposition being rejected there is no suff^t. evidence — That Taplin is a good W^r — he undertook to build the first story of the house, and this action is brot. for building the second —

Cadieux
&
Conifroy
&
Grothé Cur.
&
Cadieux, Cur
Interv^s

action by Pliff as Curator to an absentee for recovery of money on deed of Sale — Grothé appointed Curator in place of Pliff who is entitled to prosecute the action Cadieux, now Intervenes as Curator to the father of the minor, in respect of whose property the Contest arises —

Boston for Pliff — Grothé now claims a right to be allowed to discontinue this action —

Beaubien for Interv^s party — The action is to recover monies arising from the sale of real Estate belonging to a minor, Jos. Birlinguet — That by the proceedings in the Cause it appears that the said Jos. B — is dead, & that he was about 23 years of age when he died — it also appears that his brothers & sisters have received the money in question whereas the father of this Jos. B. who is represented by the Intervening party, ought to be considered as the heir, and entitled to the money as it represents the realty, and the father is in that case the heir,

art. 89. petit. Comm. Fr. 187. 188 — the money here must be considered as moveable & not as representing the realty the deceased being of age when he died — cites also. art. 94 to distinguish cases where minority is allowed to affect the money by fiction — Poth. Prop. p. 82. §. 2 — also p. 92. 97. 98

Quesnel for the Defend. — The Interv. party is not authorized to institute this action. 2 Pig. 93 — an autorisation was necessary — p. 102. 103 — 2. That at time the Intervention was made the Defend. had nothing in her hands of the money in question — That Pliff Grothé as Curator had a right to receive the money, which was a discharge to Defend. and if Interv. party had any right it ought to have been against Grothé, the Curator who had received the money — That at the time the money was paid by Defd. it was supposed that Jos. B. was dead, but the fact has turned out otherwise at least the death is not proved — and the Interv. party cannot therefore claim as the heir, because the death is not proved — Denizart. v. absent — an absentee is considered alive for 100 years unless proof to the Contrary — here the only proof is hearsay — The art. 312. & 314. give the real estate to the father & mother of a deceased child, only when there are no other Children — here the money must be considered as representing the realty — 2. Pig. p. 3. Tit. absent. Envoi en poss.n When Jos. B. left the Country he was a minor, & the money must be considered as representing the realty of a minor —

Boston for Grothé the ~~Curator~~ Garant, & Curator of the absentee — The Interv. party has no right to his claim as at the time of making it the money in contest was paid to a person entitled to claim it — There is no proof of the death of Jos. B — & therefore Intervention must fall That the Court by ordering a new appointment of a

Curator —

Curator to the absentee, they recognized that this absentee was alive, & must be so considered. — The Intervs party must make proof to support his own claim, without any reference to what has been stated or proved by the parties in the Cause — That Curator must be liable to Costs — as his private Capacity & not as Curator — cites 1. Bourj. 54 — 2 Peg. 93 — That the action brot by Cadieux being irregular, ought to be dismiss^d and he condemned to pay Costs —

1. Bour. 54
2 Pegeau 93

Beaubien in reply — That the money p^d to Grothé being in a capacity q^h did not entitle him to receive the Defend^t must still be considered as Debtor —

That appointment of C. Grotté ought to be set aside ex officio by the Court, as he acts in a capacity q^h is incompatible, being both Pliff & Defend^t —

Clarke
to
Desforges } action on deed of Sale —

Peltier for Defd^t — part of demand is for interest, & Defend^t contends he owes no interest, as Defend^t was entitled to the jouissance of the property before the sale, & acquired only the bare property from Pliff — The Defend^t also pleads pay^t & produces receipt of one Anthony Paxton who was Pliff's agent — & fr q^h no credit is given to Defend^t —

Beaubien for Pliff. The pay^ts made by Defend^t amounted to 800^tt — & this comprehended all that was then paid — if £18 — more had then been paid it would have been more than the Defend^t owed —

But

But there is no sufficient proof of the payt. of £18 — by Defd. to Paxton on acct. of Pltff — That Pltff was adjudged to pay the interest on his purchase to Widow Defergs & ought to recover them from Defdt —

Perkins + Lagrange } — On Exceptions. —

Action of damages for tortious proceedings at law agt. Pltff

Bourré for Defendt — the conclusions are irregular as there are two Counts in the declaration, and specific damages stated on each, but the conclusion goes only to the demand of one of those sums in damages — & Defendt does not know upon which of the Counts the Pltff means to rely, or to which he must plead. —

Boston for Pltff — conclusion are right

Fellows ~ Munn & al } Action on award —

Boston for Defdt — The award not conclusive no specific sum of money not being awarded

The first Count ought to be dismissed & allow parties to proceed to evidence on the other Counts —

Grant for Pltff — The submission was merely to ascertain the value of the work done by Pltff — gt. is sufficiently established —

Evans
~
Halfhide } On mo. to quash process from short service —

Bedard for Defendt. — Process served on 31 May at 1/2 past nine o'Clock in the morn. — to appear at 9 o'Clock on 2d June — qt. is half an hour short notice —

Ogden for Pliff — service is regular, hf an hour cannot be ascertained — Cause not called till eleven o'Clock on 2d June — motion not stated what the hour of appearance was — no hour necessary to be stated in Summs — The Sheriff's return sufficient evidence — Denizt. vs assignation.

Wednesday 7th June 1820. —

Birss
~
Duel
&
Curtis opt. } On opposition afin de annuller

Rolland for Oppt. states that there is a lease in Cause to shew that the property seized was left to him by Oppr as Curator to Estate of one Campbell —

Grant for Defendt. states that there is no proof in the Cause to shew a title in the Oppost —

Rolland for Oppt. contends that proof is suffit and the Defendt. by his own proceedings shews that Oppt. was founded in calling in his Garant —

Hart
v
Lalanne
&
Holt appt

On question touching costs claimed by the Pltffs or the Exon sued out in this Cause

Boston for Pltff, claims two sums, one for discussing an opposition, & also the Costs of the sale of the Land —

Foretier
v
Morrison

Action upon a deed of transaction between the parties —

Defendt filed no plea — but states by Mr Vigier his attz. that he submits whether the transaction can be valid in regard of a Succession not yet open.

Bourré for Pltff, contends that the transaction is founded upon an arrangement de famille & is valid in law —

Valin
v
Dagan
&
Debartchze opt
&
Plamondon
mis in Cause —

On the opposition afin d'annuller made by the Seignior, to set aside the sale & adjudication of a lot of land made to Plamondon — on the ground of its being an illegal proceeding —

Rolland for Oppt — The sale advertised in the usual manner, qt prevented Oppt from knows that ~~it had~~ the lot of land in question had been

ordered

to be sold subject to the payt of 2 Rentes Vragers by means whereof he was deprived of his rights — the oppt. had no notice of the order given by consent of the parties of such sale, no notice of it being made in the public papers — 1 Pigeon 726 — 781 — where formalities have not been followed, the parties interested may come agt. the decret —

Jenkins v Martigny } action on deed of sale —

Ogden for Dfdt. The Pltff does not shew that he ever gave poss. of the land in question — & therefore insufficient —

Sewell for the Pltff — the sale here is merely of the rights of the Pltff. without warranty — & not of any specific lot of land —

Hardie v Brown } action for goods sold —

Ogden for Defendt — proof insufft, not a mercantile case — one wrt. & a Clerk cannot be sufft — the admission of Defendt proved by two bailiffs, cant support the case, as they do not say that any goods were sold or delivered to the Defendt —

Thatcher et al. t Crossman	Rule for changing conclusions, absolute
Evans t Halfhide	Rule discharged —
Perkins t Lagrange	Exceptions dismissed
Cadieux t Conefroy	Interlocutor, ordering new appointment of a Curator. —
Cadieux t Bourque	Judgt.
Debartchze t Lemai	Judgt. ordering Survey. —

Thursday 8th June. —

Present
Justices, Reid & Foucher

Orkney. — n Allison. — & Allison oppt	On opposition afin d'annuller made by Defendt. —
	Bedard for Oppt. after the Judgt. rendered the parties intered into

into an arrangement for paying the Judgt by providing a certain quantity of Slaves for the Madeira market — this arrangement was made with one Scott who was the authorised agent of the Pliff — Refers to answers of Scott upon his examination to shew that this arrangement did take place, and was considered efficient by Pliff. — refers to Pliff's letter Exh. No 16 —

Boston for Defendt, moves to reject all verbal testimony in the Cause as irregular & particularly the testimony of Robert Main — That a Judgt cannot be set aside nor varied under verbal testimony that altho' the transaction was originally mercantile yet from the moment a Judgt is given the right of the party receives such strength as not to be set aside by any other means than a writing — this is recognized by the French & English law — The arrangement here consists of a mere proposal without any execution — no delivery — qt was reqd by the St. of Frauds, — That Main is the guardian of the property, qt renders him an interested Wt as being bound to deliver up the property should the Oppn be dismissed+ — The whole depends upon the evidence of Scott, and it shews merely a proposition & pour parler of an arrangement — There is no specific term of delay given — nothing final concluded which could bind the Pliff, or arrest the effect of the Judgt — all the right of the defendt if at all founded could only turn in an action of damages agt Pliff — But had there been such an agreement effectually made, it could not avail, as Defendt had become a bankrupt

+ he is also a Creditor of Defendt.

1 Esp. 230 — Bull. N. P. 279 — verbal testimony not admissible. —

Bedard in answer — there has been a novation of the Pleff's debt, by his accepting & interg into a new agreement wt Deft — That a Judgt or obligation upon a commercial transaction does not alter the nature of that transaction, and does not alter the nature of the proof to be made thereupon — But here there is proof sufficient proof if the matter were not commercial, from the answers on oath of Pleff and his letters filed in the Cause — As to the delay, it ought to extend to the time when a return could be had of the sale of the Staves —

—

Peck
t
McLean } On report of Arbitrators. —
Sewell for Pleff asks for Judgt on report —

Grant for Defendt — Report cannot be homologated as arbitrators have ~~executed~~ exceeded their powers & granted more than was demanded

McFarlane
t
Wedgewood
&
Selly. Garnisher } Interloo —

Clarke
t
Desforges } Judgt.

Jenkins & Lemoine } Exceptions pleaded by Defend^t - dismissed

Rolland & Blackledge } Inclt - preparatory to grants conclusions of demand for rescinding the deed of Sale

Friday 9th June 1820
Witness-day.

Saturday 10th June
Ws day -

Warwick & Co Yule & al! - } The Court discharged the Rule for an attachment agt the Ws considering that course not to be regular in the first instance agt him -

see Ordce 1667. Tit. 22. art. 8
Ordce 1792. -

Scott & al & Ermatinger } on Plaff - mo. to reject plea of Excep. filed by Defend^t - as not conts any grounds of Excepn

Monday 12th June 1820.

Perrault
Dutelle
& E contra

action on 2 Promy Notes —
Bourré for Defendt — refers to evidence on record in support of his Incidental demand

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Dillon
Pierce

action for goods sold —
Henshaw for Defendt — if Ingt for Pltff then ought to be a deduction of certain articles qt are in the hands of Pltff

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Drinan
Dickie

on Pltffs mo to charge commission —
Rule absolute —

Peck
McLean

On Report of Arbitrators —
Sewell for Pltff, demands hom. of Report
Grant for Defd. objects, that arbitrators refused to hear his Wits — The arbitrators have exceeded their power — & have awarded upon objects not demanded by the action — files an affidavit of Defendt. to shew this —
Sewell for Pltff — Court cannot admit the affidavit to be of any value, when made by the party himself

Lepailleur
vs
Turgeon } On Pltff's mo. that Defendt be held to answer over to certain Interrogatories proposed to him —

Roi for Defendt — the answers are as clear & precise as the Interrogatories, which are not drawn in a manner to require a more precise answer —

On Petition of
Jos. Hurst — } On Hab. Corpus —
over till to morrow

Chaboillez
vs
Lavallée } The Plan filed & parties heard —

Scott. —
vs
Ermatinger } The Court held, that the rules of prac. made by this Court applied only to Exceps. of a particular description, namely, such as avoided answering the demande, or merits of the action, but as there were other exceptions which might be considered as being au fond in droit the rules could not taken as applying thereto, unless specially described — that here the exception pleaded by the Defendt — was in the nature of a general demurrer or answer to the demande, and was joined with a plea denying the facts stated in the declaration, and could not be considered as coming within the Rule —

Dorions & Labrie } Rule absolute. —

McGillivray & al. — v. — St. Germain } Motion of Defend. to stay proceedings until rep. of declared Sir A. McK. & Archd. McLellan were brot. into Sent — over-ruled —

Tuesday 13th June 1820.

Monk v. Hall — } On Pliff. mo. to discharge rule for trial Sullivan for Pliff — The Defend. concluded to the Country, but did not proceed to do diligence by suing out the Venire, as he was bound Practice in England. 2 H. B. 119. Marnt & Hinton

Rolland for Defend. — the rule is peremptory in regard of Pliff's proceeding — cites cases where the rule of Prac. has been put in force —

Gauthier & Mallet } on report of arbitrators. — Pliff, demands hom.

Mr. Vigor for Defend. — nothing to shew that Defend. was ever notified to appear before the arbitrs — The papers produced before the arbitrators not before the Court —

Skimming & Strothers & al. } To draw Inst.

Armour v. Main — on hearing on Exceptions —

Rossiter for Defendt — The Excepn. is a plea to the action — defence au fond in droit.

Perrault v. Bryden — Draw Ingt

Duncan + Spencer — action for wages —

Sewell for Defendt. action is brot. in the name of the attorney —

Gravelle + Wingate — action for house rent

Boston for Defendt — Pltff was bound to make certain repairs in May last — he failed in doing so, until a month afterwards, & was also disturbed in her possession by the Pltffs workmen — claims damages on her Incidental demand —

Bouc. + Robitaille — action for arrears of rente & pension viagere under an acte de transport to Pltff by Vve Paris —

Roi for Pltff — The acte de transport was duly signified to Defendt — but ~~this~~ was not necessary to leave a copy of the transport wt. Defendt —

Repn. vs Transport — Lacombe No 19 Eo. Verb.

Dec. Droit. V^o Transport. The Defend^t said here that he did not require any such Copy — refers to evidence adduced —

Rolland for Def^d — The transport of Pleff was never legally signified to the Defend^t before he obt^d a transport of same rights from Vve Paris — The bare knowledge of such a transport by Pleff by Def^d is not suff^t — 1 Dup. Tit. De l'achat. Sec. 2 art. 3° — Laurier on 108. art. 316 — Comminke de Fer. on 108. art. som. 7. & 8. — Denoz^t. V^o Transport, simple denonciation of transport is not sufficient an entire copy must be served — 2 Bourg. 556 — The acceptance of Defend^t — if at all was only verbal, which is insufficient, & the proof thereof irregular. — The Huissier in this Country is not legally authorised to make signification of transport he can make no authentic acte extrajudiciaire, he is merely an Officer for executing the process of the Court.

Roi in reply — admits the necessity of service of Copy of transport & signification, but contends, that there are other acts equivalent which dispense with this formality, & these acts are proved in this Case + The verbal testimony is admissible here as it comes in under the admissions made by the Defend^t — in his answers on faits & articles —

Cadieux & Conefroy & Grothé &c

on nomination of a Curator to Ev. Berlinguet an absentee —

Boston for Pleff & for Grothé contends that P^re Berlinguet ought to be named as Curator that Chevallier from his interest ought not to be appointed —

Brown
Pasteur } on Exceptions

Beaudreau
Archambault
Noiseux & al
Interessés } On motion by Interv & Party that record be completed by sending up to this Court the writ of Summons in the Original Cause —

Bourré for Pleff. all the papers on which the demand was founded in this Cause in the Inferior Court, are now before the Court and none other ought to received —

—

Clement
Legr — } action to obtain quittance of Lods & Ventes on a land purchased of Defendt —

Rolland for Defendt. The action is for Lods & Ventes not due by any act of Defendt — Pleff shews nothing by qt any arrears of rent were due to the Seigniors, unless a Judgt. between Mr Beaujeu & another person who sold to Defendt — Here no trouble or demand is shewn on Pleff.

—

Burnside
Cuvillier } On Rule Nisi why Exon shd. not be granted on a Judgt —

Beaubien for Defdt. Boston is not attz of Pleff

2

2d The Plaintiff has failed since Judt rendered and not entitled to exon on Judt. as his property has become vested in the Creditors of Pltff.—

Boston for Pltff. There ought to be

order for proof on 15th.—

Loyer v. Lafrance } action Petitoire —

Defendt. did not appear

Wednesday 14th June 1820.

Brown v. Pasteur } Pltffs mo. rejected + see case of Scott v. Ermatinger.—

Monk. v. Hall... } The Court were of opinion that the Pltff ought to shew some sufficient Cause for not going to trial on the day appointed

Thursday 15th June 1820

Witness-day.—

Friday 16th June 1820

Present
Justices Reid & Foucher. &c

Gauthier & Mallet } Mr. Vigé for Defendt. moves to produce Deptt affidavit in support of the reasons given agt the hom. of the P. V. of the arbitrators in this Cause — in qt. he states that the arbitrs had refused to hear Defendts witnesses. —

Rolland for Pltff. The affidavit does not shew upon what point the Witn were to be examd —

Jos. Poulain
Jn Bt. Menard ~~Chaumart~~
Menard ~~Chaumart~~ Opt. } On motion to set aside the execution of writ of fi. fa. by reason of its having been done on good friday. —

Mr. Vigé for Pltff contends that the proceeds is regular, and that service of writs of Summt have been held sufficient although made on a holy day, the fête d' annonciation. 25 March —

Boudreau & Archambault & Interessés } Bourré for Pltff contends that there is no right of evocation, & parties ought to be sent back to the Inferior Court —

Bedard for Evocation — If the Judgt. on qh the proceedings in this Case are founded, be null, the proceedings must fail — cite Case of Perras. v. Taylor. in appeal. —

Savary & Meunier } On defendr. mo. to set aside rule for hearg on the merits —

Vigé for Defendr. the cause has been already heard on the merits before the Jury, the only point before the Court is an incident in the Cause, upon qh alone the Cause can be heard.

Lemoine de Martigny & Beauchamps } Action for Lods & Ventes —

Papineau for Pltff, by Marriage Contract the father & mother of Defendr. sold to Defendr the lot of land in question upon which the Lods & Ventes are demanded — On a sum of 3500# — Sale may be made between father & son — Pothier. Fiefs — p. 1. ch. 5. p. 152. 3 — The words in this Contract are not "vendu" & cédé — but cédé & quitté — but the consideration received by the father shews the nature of the Contract — which was a Sale — Donation of a part does not exclude the Sale as to the rest — Prud hom. p. 257. — Domat. Don. entre vifs — the party must divest himself of the property gratuitously —

L. M. Vigé for Defendt — mar. Contract is the most favorable, & ought to be considered as contains their arrangements de famille in qh Pltff as Seynior can have

have any pretentions – the intentions of the parties must be considered – the object was to establish the Defend^t. by giving him a lot of land for his future subsistence – the pay^t. of the 3500^# – ought not therefore to be considered as the ~~consideration of~~ object in view by that Contract. The pay^t. of the 3500 to the father ought to be considered as if ordered to be paid to his other heirs – or held by the father to be divided at a future period among those other heirs – it is not to be presumed that the father would dissipate that money, but preserve it for his heirs +

+ cites case in point Rep. v^o. Lods & V. p. 618. Sec. 8.

Mr. Vigé of counsel for Defend^t – This is a Sale if so considered, for 5000^# – & the demand is wholly diff^t – Lods & Ventes are due on mutation of persons, – here there is no such change or mutation between father & son – the nature of contract ought to be considered in all transactions between father & son in favor of the parties cites case of Rolland, Exec of St Germain, v. Bellanger where donation was made by father to a son in consid^n of a rente & pension, which was alledged by the Seig^r – to be equal to the value of the land, yet Lods & Ventes were hold not to be due, the deed being considered an accommodement de famille – can still stronger here of a marriage Contract – where a family arrang^t – was the sole object in view – The sum of 3500^# – reserved by the father, must be considered as reserved for the use of the family – same as if it had been on condition that Defend^t. should pay this sum to a third person for a debt due by the father – which w^d. not carry Lods & Ventes – Prud. 257 –

Papineau in reply – It is not alledged that the

land

land here is worth more than 5000# — but this question does not interest the Pleff — The authorities cited do not apply —

Duncan + Spencer } action for work & labor as a mason —

Bleury for Pleff — the Contract was made between Defend. & one Sage & by the latter his rights were transferred to Pleff —

Sewell for Defd — action brd. by one of parties on a joint Contract, made wt. Pleff & one Sage — any proof to the Contrary is inadmissible — contends that the work in question has not been completed — refers to evidence — whole ought to be referred to Experts —

Bleury for Pleff the work was finished & accepted by the Defend — 2 years ago —

McKenzie v Turgeon } On obligation, transferred to Pleff

Lacroix for Defd — The transfer was made in consideration of £200 the rest was to be for the benefit of the Defend — The Defend. has paid more than £200 to Pleff

Rolland, Lacombe No 8 Vs transport of a liquidated debt is valid & the debtor cannot avail himself of the bargain made by the Cessionaire — Nothing to shew there was any agreement to this effect — The money paid by the Defend. has been credited to the aut. of the Judgt rendered ag Defd in favor of Pleff —

Dow
v.
Pickle } action for a Catarh & work done

Grant for Defd. Pleff has not made proof of his demand — action is on an agreement this proved only by oath of Defd. & according to it, the action must be dismissed — two depositions taken before Defd. he moves to reject — Defd. has made out his case completely —

—

Thurber
v.
Brousseau
& al — } action on a promy note —

Sewell for Pleff — note made in the State of New York by Defds. who do not write, but made their marks in the presence of one witness qt. according to the laws of N. York, is sufficient — Danty. pracm. p 49 —

Vigé for Terrien & Vandal — not stated where the note was made on the face of it — alledged to have been passed at Champlain in N. York — this fact ought to be proved by 2 Witn. or by the oath of the parties —

—

Burton
v.
Yule — } action Petitoire —

Boston for Defd. Pleff, shews no title to the lots of land in question, they are in the name of the late Genl. Christie — Defendt. has denied the Pleffs right of action — Pleads further that he

he bot. the lot of the Att3 of the Pleff — that Potts the Att3 had power to sell — refers to the letters and power of Att3 filed — no authority given to the present Att3, Mr. Henry, to bring this action — The instructions given

Discont^d.

Gerrard & al
v
Yon & al } action on P.N. Note —

Beaubien for Defd^e — action discont^d. agt one of Defend^ts & cannot now be maint^d agt the other —

Armour
v
Peck — } On Exceptions —

Sewell for Defd^e — action cannot be maint^d — Pleff is Cashier of a Bank. for whom action is bot — That as Defend^t is not a merchant, banker or trader, the Indorsement on the note ought to bear a date certain —

Grant for Pleff — Decl^n is sufficient —

The King
v
Alex^r Hart } On mo. to set aside return to writ of Hab. Corp. — & to make a sufficient return thereto —

over till to morrow

Garreau
Bône
Depaty oppt

Ore oppos^n afin d'annuller –

Rollin for Pltff – this oppn is founded on a writ of Vend. Exp. ordering sale of effects heretofore seized & claimed by the Son of the Defendt – The present oppos^n cannot therefore be maintained – Poth. traite Cheptels – p. 45 No 33 – Rep^re v^o – Cheptels. p. 378.

Mason
Ker

action on P^y Note –

Ogden for Defdt – Note was payable in 3 months after date, action brot before note became due – on 23d Febr. Pltff swears that Defdt was about to leave the Province – affidavit of Pltff does not go far enough & ought to say that he verily believed that Defendt was about to leave the Province –

Grant for Pltff – The Defendt has been silent in regard of the sufficiency of the affidavit, and there is proof enough to shew that Defendt was about to leave the Province – –

Warwick & al –
Yule
&
S: Twelve Hudson

on Rule on Wits – to shew cause

Boston for Pltff – rule agt him as Wt

Porteous for Hudson — wrong named — Wr. is called Samuel Twelve Hudson — & not Sommerville Twelve Hudson —

Desingué
Harbee — } On action for goods sold
Bender for Defdt. admits demand, but sets up an incidental demand for certain lots & rents due upon a retrocession of a lot of land qt had been sold to Pluff by Defdt —

Saturday 17th June 1820

David
Osborne

Northedge
Porteous — } On Pluff's motion for trial by Jury. — dismissed. —

Fraser
St. Amour
&
E Contra — } action for goods sold & delivd
Report of Arbitrs. —

Duquette
Sinét — } on Report of Arbitrators.
L. M. Vigé for Defdt. a new arbitr has been introduced without consent of the Court —

Millard & Ayers } On Rule to shew Cause why matters in dispute sh^d. not be referred to arbitrators —

Bourré for Defend^t. the case not of a nature to compel the parties to go before arbitrators. — bends there is a plea of prescription in the Cause. —

Cobb Lefevre & Lefevre opp^t } On hearing on Exceptions —

On opposition to regularity of proceedings & of service of Sum^s —

Henshaw for Pliff. excepts to the oppos^n as irregular, & not founded in law

Grant for Opp^t — cites Serpillon. p. 511 — Ought to have a day for proof —

Aylwin & Cuvillier & Cuvillier opp^t } On opposition a fin d'annuller

Beaubien for Opp^t — contends that the proof is suff^t. & prays Judg^t

Rolland for Pliff — The plea of pay^t. set up by Defend^t — has been decided in ~~case~~ original Case of Jones & White v. Cuvillier & Co — It was also decided in the ~~case~~ oppos^n made heretofore by the Defend^t —, upon g^h. Pliff's cause was dismissed & Jud^t reversed in Court of appeals —

The pretension of payt is not certain, as it does not state whether it was before or since the Judgt — but as this pretension has been already decided on the former Case, it cannot now be received, it being a chose jugée. — but the faits & articles here go merely to shew that Pliff had transferred their Judgt — but this may be, and still the Cause may proceed in the name of the Cedent. Poth. Vent. No 554 — and Lacombe vo Transport. No 5. — The Pliff here has a Judgt in his favor — Court of Appeals —

No 5 Lacombe vo Transport

The allegation of payt. is vague, & uncertain, not sd to have been made by the Defendt — nor to the Pliff no Judgt can be given in favor of Defendt. on such pretension, should the faits & articles be taken as confessés & avenés, because nothing is established that the Defendt. has paid the Judgt. of which the Execution is demanded — and the Pliff is interested to see the Judgt satisfied so long as Defendt has not paid —

That there has been no regular nomination of Commissioners appears on Record — The Pliff has not had suffit time to appear & answer to Interrogs — The Commissioners have not signed the oath reqd by the Rules of practice —

Beaubien for Oppost — There can be room for chose jugée here as it has never been pleaded before agt. Pliffs Judgt. that it was paid until the present Oppn — this is the first time that such plea has been set up agt Pliffs Judgt — That if Pliff be paid, he can

no

Mr. Cumming
v
Williams

action for voie de fait —

Grant for Pliff, states that Defendt took violent possession of Pliffs house

Gravitt for Defdt — there is no evidence agt the Defendt — Mr. Fennel wr. some soldiers took possn of a part of the house for ~~public~~ defence of the Country agt the public Enemy — The troops were billeted in the house by the Capts of Militia — Fennel acted under the orders of these Captains of Militia &c

Grant for Pliff, admits, that there is no evidence agt the Defdt Williams — but it is suffte agt Fennel &c who was a trespasser as well as his party — & in every point of view the damage done to the house must be repaired —

Molson. —
v
Phillips. —
&
Pomeroy & al
garnishees
&
Hitchcock, Intevs

action for house rent —
Default agt Defendt —

Henshaw for Intervs party — The Intervs party leased a store, part of the house in question, & part of his effects were seized — all the Intvs party owed was the rent he owed — cites art. 162 — The return of the service of writ is insuffte & there can be no Judgt in favor of Pliff

Beaubien for Pliff — There is no proof that the Intevs party ever was under-tenant of Defdt —

The

The effects of Inter Ⅎ party were liable for the rent by being found in the house. Poth. Louage. No. 241, 2, 3. 252. 253. — The service of process is regular —

Perriquet
~~Beaubien~~
Henshaw
& E Contra

action for goods sold — £50.10
Henshaw for Defend. no proof of Pliff demand — Incidental demand for sundry goods sold to Pliff & claims a balance —

Beaubien for Pliff — Pliff not bound to sell the goods at the prices mentioned in the Invoices, there was no agreement to this effect —

Black
McArthur
& E contra

action on bon —
Grant for Defd. — Instrument not properly declared upon — also proves that he has pd. all Pliff ~~owes~~ claims & is entitled to a balance on his Incidental demand

Vaillant
& Desilets

action of separation.

Guillou
Moss & al

action for house rent —
Beaubien for Pliff asks Inspt —
Grant for Defd. Northedge has proved payt. of rent to M. Moss —

Beaubien receipts do not apply to time pleaded

1580

McDonnel
v.
Robillard } action for house rent –

2 cases –

Roi – That action is irregular, for a quantum meruit, when there appears an acte of lease between them touching the rent – That Pltffs have not given regular receipts for the monies paid by Defdt –

on 2. action – That Pltffs have not furnished receipts for the monies paid – Has pd. moneys on acct – also the cottization & for repairs –

Grant for Pltffs – action for occupation of the house & lease produced in support of it – the other part of Exp. is insufft – Defendt. produces receipt for two qts. has been admitted – The Cottization cannot come in as a payt for rent – this ought to have been specially pleaded –

Scott
v.
Laurenger } action for Pr. Note –

Lacroix for Defdt – The note signed by one "Regis Laurenge", & not Laurenger – no proof agt Defdt. in this Cause – variance between demand and the proof made –

Smith & al
v.
Robbins & al } Action of trespass agt Defdts. for entering Pltffs' house & seizing his goods –

Henshaw for Defdts. no proof agt. some of Defdts

Shaw & al
~
Gerrard & al } action on p^r note —

Vigi for Defd^t — Pliff^s. sue as assignées — the action ought to be in the name of all the Creditors who were parties to the deed — the pliff^s cannot sue in their own names, while there are a great many more joined with them — the Pliff^s can be considered merely as agents or attornies of the Creditors, & they are named trustees by the Creditors not by the Bankrupts —

Dumas
~
Lemaine
& al — } on Except ~~dismd~~ — submitted

Steel
~
Robertson & a } action on bail bond — submitted

—

Armour
~
Main — } On hearg on Exceptions — resume to heard on merits

—

Shaw
~
Molson } action for wages —
Grant for Defend^t — alledges negligent conduct of Pliff — his ignorance & inattention —

Hallowell for Pliff — action of assumpsit — plea non-ass^t — under this plea — negligence, damages &

and other facts have come in — action well founded —

Delinelle
t
Mathe & al } action on deed of Sale to produce quittance

Rolland for Pluff = Dec. du Digeste. v^e Eviction. N°. 27 —
where a party sells without declaring mortgages it is a dol & gives reason of rescision of the Contract —

Vigé for Defend^t — The Pluff is not troubled & has no right of action — Bourjon. Domat. Pothier —

Rolland for Pluff — The facts are certain, & shew a dol on the part of the Defend^t — q^t is sufficient to maintain the action — Def^r has sold Franc & quitte — the contrary appears —

Etu
t
Etu } On Rule nisi for Exön on Judg^t —
Defend^t. did not appear

Gardner
~
Sewell } Action of damages for retaining a horse property of Pluff —

Rossiter Pluff acknowledges that horse has been delivered up

Cartier
v
Gendron
&
Gervais oppt } On opposition for articles the property of Wife Rolland for Pleff. Oppost. has not proved the identity 2. Pigeau 197 —

Monday 19th June 1826

Present. —

Justices Reid & Foucher. —

Foretier
t
Morrison } action dismissed

Gagnon
t
Moreau
&
E contra } Judgt —

Perrault
t
Dubelle
&
E contra } Judgt

Bouc
t
Robitaille } Dismissed — signifn. of transport insuffn

Dillon
t
Pierce } Judgt —

Hardie
t
Brown } Judgt — Taylor's acct — evidence of bailiff

Biss & Duel & Curtis opt	Judgt on opposn
Orkney & Allison & Allison oppt	Oppn dismissed
Hubert & Cartier	Rule dischd pr Judgt provisionnel
McGill & Burton	Interlocr
Boston & Nora	Motion granted
Dow & Pickle	Dismissed
Dumas & Lemaine	Exceptions dismissed
Masson & McCrae	Judgt — on note before Day of payt

Huntly & Reuter	Judgt on Verdict
Gerrard & Co & Yon	on Promy Not — Judgt
Armour & Peck	Exceptions dismissed
Beadreau & Archambault	Evocation dismissed
Scott & Laurenger	Judgt
Smith & Robbins	Judgt.
Toof & Partridge	Rule discharged
Millard & Ayers	Rule for reference to arbitrators discharged
Shaw & Molson	Dismissed
Etu & Etu	Rule absolute

Delinelle & Mathe —	Judgt
Clement & Leger —	Judgt
Peck & McLean	New reference to arbitrators ordered
Cartier & Gendron & wife oppt	Order to ex: oppt on Serment Judiciaire —
Beaudry & Roi —	On Rule to reforming Judgt — absolute —
Dessinqué & Harber	Judgt
Lague & Gagnier	Judgt —
Black & McArthur	Judgt —
Richer & Varieur	Retrocession —

Gauthier + Mallet	New reference to arbitrs —
Gareau + Bouc + Forget	Opposn dismissed —
Steel + Robertson	Judgt on Recog. of Bail —
Armour + Main	Excep. reserved to be heard w/ Mints —
Armour & al + Genard	Excep. dismissed —
Poulin + Menard + Menard oppt	Seizure — on good friday — Rule discharged —
Durand + Perrault	Judgt — deducting deficiency of land —
Monk + Hall	On Rule to shew Cause why another day should not be granted for trial — Cause shewn — affidavits & reasons stated insufficient —

Tuesday 20th June 1820

Present
Justices Reid & Foucher

Hudsons Bay Co. & Chretien. —	Judgt
Same & Faille —	Judgt
Cadieux & Jos. Chaboillez & Intervg parties	Judgt
McDonnell & Robillard	Judgt
Petition of Morell Mayvon	Rejected
Brown & Ritchotte & Opposts —	motion granted —
Bellanger & Pickle —	Judgt

Gardner & Swell — } Judgt —

Molson & Phillips & Hitchcock } Opposn admitted — Judgt

Monk & Hall — } Rule absolute for grants another day —

Shuter & Lambert & Ross & al oppns } On motion by Mr Ross for opposn to be permitted to fyle ~~moyens d'~~ an opposition Lacroix for Defd — opposition too late must come in within 24 hours after return —

— To make new rule for extending time for fyling opposn & a register of oppositions filed —

Toof & Partridge } On Rule to shew Cause why Contraints should not be granted agt Defend as ant by her filed, is irregular, her husband being no party to it, & she not being authorised to make a fyle such ant —

October Term. 1820.

Monday. 2d. October.

Present

Justices Reid & Foucher.

Tuesday 3d. Oct. 1820.

Redington v. Hitchcock & Econtra } action for board & lodging — Grant for Pliff asks for Judgt. on evidence addend —

Henshaw — Mud. demand for goods sold Defendts. did not board in Pliff. house — & therefore Pliff not entitled to same allowance — Defdts. ant. in part proved —

Evans v. Halfhide } on Defendts. mo. to reject an affidavit filed at Enquete in Vacation —

O Sullivan for Defdt. this affidavit is wholly irregular, cannot be made without being demanded by the opposite party or the Court —

Ogden for Pliff. has a right to file this affidavit

Coll. de Denizart. v° Bail a ferme. Sec. 5. p. 34 — Rep. v° Bail. p. 37. — Pothier. Louage — all go to shew that upon propr. shewing his intention on oath to occupy the house, he is entitled to his action —.—

Lacroix & Parisien } Case submitted

24 Davis v. Snow } On Defd. mo. to quash proceedings from irregular service — no order of Judge

Sewell for Pliff — no evidence in support of motion — the rule not strictly followed, when it is evident that sufficient delay has been granted. Process served on 4. Sept. last — nearly a month ago —

Rolland for Defend. cites case of Ellen v. Dunn — in appeal —

Ex parte R. McKenzie } on application for Certiorari — on a Judgt. by Justices under the road act — from an improper exercise of Jurisdiction —

Perrin v. Prévost } on Defds. mo. to quash proceedings from an insufft. copy of Decbr. being annexed to writ —

Pliff — contends that copy of Decbr. is correct —

Wednesday 4th Oct. 1820

Thayer
v.
Marchand
&
McCord. opt

On Pltff's mo. to reject oppn. as not having been filed in the 24 hours after Sheriff's return —

Gale for Oppt. — The rule ought not to be rigourously construed — That Pltff is too late not having made his application to reject the opposition within the 10 days —

Vigé — the rule of 10 days applies only to oppns regularly filed —

Bell c. Prejean & oppt — con ated —

Taylor
v.
Mears

on Defendt. mo. for Security for Costs

Mosher
v.
Lampman
&
Econtra

Bonnet for Pltff asks Judt. on P. Demand & that Indt. demand be dismissed —

McRoss for Dept. ~~did not appear~~ both demands ought to be dismissed — the Notes in question an arbitration Notes —

Monroy
v
Jolicœur } on Report of arbitrators —
Bender for Pleff, moves for hom. of Report except as to Costs, to qt. he contends Pleff is entitled —

Peltier submits case

Lepailleur
v
Turgeon } action on avis arbitral —
& Elcouher

Rolland for Pleff — by Compromis between the parties different points in contest were submitted to arbitration — The Arbitrs had full power to decide as amiables compositeurs made their award by which Defendt. is condemned in the money now demanded —

Roi for Defendt — There was a condition in the submission, that in case it was proved that the Defend. had purchased the real estate for the benefit of the Estate of late Mr Fromentau — this has never been proved & Pleff not entitled to the benefit she claims — action therefore is not founded — On Incidental demands states that it is established by admissions & by actes sous seing privé —

Rolland. arbit. Pezeau. p. 4. — not necessary that the facts alledged should be true, the allegations on this point is suffit cause of reference — The Defendt. agrees to pay whatever the Arbitrators shall

shall adjudge ag^t him upon the supposition that he had purchased the real Estate in quest^n for the benefit of Fromentau's Succession, a fact however which he denies —

On Incidental demand, the objects thereof have been included in the Submission & award of Arbit^r has pleaded pay^t — Exh. No. 8 — Def^r. rec^d £800 & upwards of q^h he never rendered any acc^t — see answer to 10^e Interrog^y —

Jousse Just Civ. 703. 4 —
1. Rep^re 748
1. Pigeau 4. & 19 —

Roi for Def^r — Def^r has acc^t for all the monies he rec^d from the Sheriff —

Berthelet
v.
Bourg
&
Poirrier sub opp^r —

On opposition afin d'annuller

Rolland for Opp^ts — The effects seized are the property of opp^ts under a Testament, of which Def^r had only the enjoyment —

Binet & ux
Longpin

action on deed of Sale —
Portions for Def^r pleads pay^t — ~~not~~ made out — by answers to faits & articles

Rollin — sale made for 5000^l — of q^t. 3000 p^d before Contract — & Contract passed for 2000^l only —

Duplessis vs Moss & al	Judgt. —
Comfroy vs Lavallée & Econtra	Judgt for Pltff — Incidental demand dismissed —
Beaujeu & Thaumnet	Judgt. preparatory to Reunion, on the certificate of Capt. of Militia & Curé —
Lemoine de Martigny & Beauchamps	Judgt for Pltff —
Thurber & Broussiau & al —	Judgt. —

Thursday 5. Oct. 1826

Thayer
Mr Archand
& Mc Cord appt } Motion for rejecting opposition granted —

Pre Lajeunesse
Antl. Frejo — } On trial by Special Jury for defamation —

obj. Franc. Seguin — dem. a St. Marie — con. les parties en mars ou avril 1819 — il s'est trouvé chez le Def — ayant ete chargé d'un Warrant contre lui — alors le Def. disoit que le Demd. etoit un mauvais hom — qui menoit mauvaise vie, qui tenoit une maison de debauche pour les Jeunes Gens de la paroisse — Qu'il debauchoit les Jeunes gens de deserter le pays & se joindre aux enemies — a encore entendu repeter la même chose le printems dernier par le Defr chez lui — Con. le Pluff depuis 22 ans — n'a rien entendu contre son caractère — Le Defd — est un hom. a son aise —

x

Que c'etoit un nommé Desnoyers qui l'avoit chargé du Warrant — Gaucher etoit present alors quand le Defd. fut arreté — Que le Defd. apres avoir parlé voyant que sa fem. se metoit en colere lui dit de se taire — Que le Defd. dit aussi que le Demand. avoit perdu un de ses garçons & etoit apres perdre un autre —

Antoine Dame, con. les parties depuis 10 à 11 ans — Que le 24 Mai dernier — depuis l'action — rejected

Franc. Ainse — Qu'il y a environ 18 mois, il a entendu dire par le Dépt. que le Demand. étoit en prison que c'étoit lui qui l'avoit fait punir — qu'il tenoit une auberge, il pendoit les Jeunes Gens — en leur donnant à boire —

Franc Gaucher fils — Il y a environ 6 mois, ou un an que le Plff étoit un homme a pas frequenter, comme il ne valoit pas grande chose — Franc Seguin y étoit dans le tems — Connoit rien contre le Demand —

Franc Gaucher pere — dit rien —

Marie Anne Gouin — Il y a environ un an le Dépt. dit plaint au temoin que le Demand gatoit la jeunesse — il ne vouloit pas que ses enfans fussent chez lui —

Antoine Pepin. dit rien —

Pre Gouin dit Dufresne —

ancien marguillier — n'a pas voulu donner un certificat au Demand — parceque le bruit étoit qu'il ne tenoit pas d'ordre dans sa maison —

Franc Pepin — a mal parlé du Demand — mais ne peut specifier quoi — le bruit étoit comme

Que le Demand. jouit d'une mauvaise reputation

reputation dans la paroisse pour gater les Jeunes Gens —

Jn Bte Courtemanche — dit rien —

André Delagrave — Que le Defd. a dit que le Demand. tenoit mauvaise ordre dans sa maison qu'il tenoit une mauvaise vie —

Capt. de Milice — x^d que le bruit commun dans la paroisse n'est pas a son avantage — a vu sortir des gens ivres sortir de chez lui le Dimanche — ne ~~a pas~~ peut dire si le Demand. a été considéré comme un bon sujet de sa majesté —

Seraphim Primault — Que le Defend. lui dit, que le Demand. tenoit mauvaise ordre dans sa maison, et il ne voulut pas que ses Enfans y furent — cela est le bruit commun avant que le Defend. lui en ait parlé —

x^d Que les gens vont boire dans la maison du Demand. le Dimanche — ne croit pas que cela fasse tort à la reputation du Demand —

Louis Gagnier — curé de la paroisse St Jean Bapte — Que le Defend — lui dit que le Demand. tenoit mauvaise ordre dans sa maison & donnoit a boire aux gens —

x^d Que le bruit com. est que le Demand. tenoit mauvaise ordre chez lui, sur tout apres qu'il vendoit sans licence — Que le Defend. s'est addressé au

au Tem. pour savoir quels moyens il pouvoit user pour empecher le Demand. de vendre chez lui —

Defence

Jean Bte Desnoyers — Que la maison du Demand. est mal tenue — donne a boire —

Pre Desnoyers — Que le Demand. donnoit du Rum aux Jeunes gens pour les enyvrer pour rien & ensuite il les faisoit payer pour — Connoit le Demd. pour un mal-hon-homme — il engageoit les garçons du Defend. d'aller boir chez lui, & ils donnoient du grain au Demd. à l'insu du Defend. —

Que le Demand. a engagé le temoin d'aller boire chez lui —

André Brodeur — —

Here the Pliff requested leave to withdraw a Juror, which was done+ & the Jury being called over eleven only appeared —

+ Defend. not objecting.

see entry in this Case. Tidd's Prac. Forms. 231 — and law on case. 2 Tid. Prac. 785 —

Davis v. Snow } The Court dismissed Defd. mo. he having made a mo. for payt. of Costs, qt. Court considered as a waiver of his right of objection to sufficiency of service of process —

Friday 6th October 1820

Domr Rex. — Frs Hyn Seguin } On Habeas Corpus to bring up body of Michel Sanche, detained in Gaol under warrant of Frs H. Seguin, one of His Majesty's Justices of the Peace for the County of Effingham. —

Ross. on behalf of Justice — The party is in execution under the warrant of the Justice on a Judgt —

No. 14

McIntire & Alexander } Walker for Defendr moved to be permitted to take off defaults entered agt him on the 2d & 5th inst. and to enter appearance, on affidavit of circumstances he now offers — which affidavit states, that Defendr was absent and had not a knowledge of the service of the process in time to enter his appr on the 5th inst — and further that he does not owe the sum demanded. —

The application was resisted by Mr Grant for the Pleff, as too late, and circumstances stated were not sufficient to admit Defendr to benefit of his motion

Dessinqué & Harbee & E contra } The court gave Judgt for Pleff on principal demand, & dismissed Mrdr demand, saving to Defendr his further recourse — The Mrdr demand being for right not yet open, as no money had been pd by Defdr nor any demand made agt him

Perrin v Prevost } On Defendt. mo. to be permitted to fyle plea — The Plea was due on 5. inst. and Pliff had this day moved for proceeding ex parte —

McIntire v Alexander } On Defendt. mo. to be permitted to take off 2 defaults entered agt him on circumstances stated in affidavit and to fyle appearance —

Saturday 7th Octr. 1820

Present
Justices Reed Foucher & Pyke

Monday 9th October 1820

Houdlow
v.
Christie } action for ~~goods sold~~ obligation —
Walker for Defd. wife alone sued —
husband ought to be joined. —
Bleury for Pleff. parties separated by Ingt —

Gibb
v.
Bastien } action for goods sold
Plea - prescription —

Johnson
v.
Clarke } action petitoire —
Rolland for Defd. ought not to be condr
to fruits & revenues —

Potts
v.
Burton } action on award —
hears on excess.

Rolland for Defd — compromis is null because no day was fixed for making the award this not inserted on — The statement as to award being made in one month — whereas it is stated that it was rendered 2 months after —

Boston for Pleff — matters of excess — pleaded not suff — parties ought to be admitted to proof —

Gauthier
v
Mallet } On Defendts mo. to reject. P. Verbal rendered by them —

Vigé for Defdt. Ws. not heard — 3d arb. named wt. out authority — that neither parties nor Ws. were heard before the 3d. arbiter — Ws. were not sworn —

Rolland — 3d. arbitr. named by authority of Rule award made is regular in all points —

Gillespie
v
Gray & al
Exrs — } action to recover proxy note in hands of late Mr Ogilvie —

Gale for Pltff — in 1812. settlement of acts between Pltff & late Ogilvie — 6 notes drawn for £400 all pd. but one gt. came due in 1816 — on Pltff leaving country notes to Ogilvie to pay amt. to his agent R. Gillespie — note delivd. to Defnd. on a proposed payt —

Pand. liv. 22. tit. 3 —
1. Alon Lapie
2. Permission to prove contrary —

Menochius —
Poth. obl. No 809 — 813 —
Domat — des preuves & presomptions —
That oath of Debtor could not be taken in this case cites menochius.
The note is before Court, produced by Defdts

Cammerford
Lonsdale } On action of trespass & assault
trial by Special Jury.—

Ross for Defdts — not found among papers of the late Mr O — wt. name torn off, as appears to have been done wr. other of notes qt. had been paid — All persons who have no kn. of facts without distinction have been admitted as Wr — Facts are of a Commercial nature — It is in proof that O. drew out more monies out of hands of Garden & Co than was suffl. to pay this note — 1. Pigeau .229 — Ob. 839 — on presumption of payt — That there has been ~~an~~ two other notes paid by Mr O — since the one qt. is alledged not to have been paid — viz. in 1816. & in 1817 — & demand now made for payt. of note due in 1816. — Strong presumption in favor of Defendt — and if O — were alive the supplementary oath wd have been left to him. —

Gale — the reason of the other 2 notes being subsequently paid, can form no presumption, as accounted for in the testimony — other notes left wr. agent Jamieson —

Duteau
&
Fournier } action petitoire — heard on law

Bourré for Pltff — states his titles to lot of land in question by authentic acts, and contends that paper produced by Defdt. is insufficient to convey the property —

Boston for Defdt — derives his title from Menard the auteur of Pltff — Pltff never had possession

of

of land under his title — had action agt Seller to deliver to him what was sold, but has no action agt Defendt under the deed he produces without possession. —

Burton
Roi — } action en revendication — for certain billots de pin. —

Rolland for Pltff contends that he has traced the property to poss. of Defdt who purchased the billots from another person —

L. M. Vize for Defendt — That billots were seized ~~in pos. of Defdt~~ at dist. of 4 or 5 leagues from ~~Pltffs lands~~ Defendts residence on certain lands conceded, by 2 Individuals who cut them upon lands of Pltff — Conditions of Sale to Defdt were that billots shd be deliv'd to him next Spring, till then he could not be considered to be in possn of them — That Defdt has never claimed any right to this wood and Pltff ought to have made a demand on Defendt before bringing action — That Defendt ought to have his Costs —

Rolland for Pltff — The nature of contest raised by Defendt has compelled Pltff to go to proof, & he must pay the expense — That claim of Defdt appears by marking

wood

wood

Belanger & Lussier — E. & contra } action for Sale of apples to Defdt

Roi for Pleff, asks for Judgt. on evidence adduced — objects to testimony offered by Defdr. as being contrary to law

Rollin for Defdt. pleads that apples were received in payt of a debt due by Pleff to Defdt. for a billet & traite made by Pleff. — the testimony to ascertain this was legal it being a commercial transaction between the parties — and in case this proof should not be suffte — Defdr. has made an Incidental demand for same traite et billet, for which he has made proof

Roi for Pleff the billet was given for the balance of the traite — £98 — and the Saisie-arret was sued out for this Sum — & compensation ought to made of this sum wr. Pleff's demand —

Desprès Beaumont } action for balce of Sale on deed

L. M. Vigé for Defendt — action brot — 15 years after decease of Mr. Curé Beaumont, the original purchaser — on a contract made in 1784 between parties living in the same parish — The Defendt. is sued as heir of his late brother — Defendt.

states payts which appear to have been made by qt a balce of 650. 4s remd due ~~at decease of~~ but were also pd by McBeaumont — as to balce of 650. 4s — Pliff on Interrogs answers to 14. 15, 16 shews payts made — only balce is 84#. 4s — and by evidence adduced it is evident this balance & more was pd to Pliff — and considering the circumstances of parties, there is the strongest presomption in favor of Defdt — whose oath ought ought to be taken by the Court to make up the proof —

That Pliff could not pretend right to a transport of rights from his mother without being specified — That declaration of Robin — could not have a retroactive effect — but it does not contain a transport of a right on qt an action could be brot — That Lisette Dupris was paid, & her rights cannot be prosecuted —

Vigé of Counsel for Defdt — That the acte of Cession set up by Pliff cannot avail, whether à cause de mort, or entre vifs —

Roi in reply — contends that Defdt has not made sufficient proof of his pretended payts — & that balce claimed is due — what Pliff recd from late McBeaumont was merely charitable donations & not given in payt of the debt in question —

Cammerford Lonsdale	Action of Trespass & assault Trial by Special Jury — Verdict for Defendt
Burlingham Clarke	Defendts application for Security for Costs too late, & therefore rejected. —
Monroy Vve Gaudry	Report of arbitrs homologated
Mosher Lampman & Contra	Principal & Incidental demands compensated — Costs compend —
Duncan Spence	Judgt
Loguer & Trudeau	Action dismissed —
McCumming Williams	Action dismissed —

Tuesday 10th October 1820

Babuty v. Hibbard } on Pltffs mo. for hearing instanter on exceptions fyled by Defendt —

Boston for Defdt. The exceptions here filed are not of a nature to be rejected on summary hearing without notice, — as they are to the right of action — at all events, the matters contained in the exception being admitted, it is sufficient to discharge the action — alledged by Defendt — that Pltff is a married woman —

Ogden for Pltff. the allegation contained in the exception is not sufficient —

Cadieux & Morand } action for goods sold & delivered

Roi for Pltff considers evidence sufficient to support action — the acct. & receipt fyled by Defendt. is anterior to that produced by Pltff. —

2. Vigé for Defendt — The Pltff's account is informal and contains nothing specific — Pltff keeps no books of acct — The acct. contains only 2 dates. July & Sept. 1819 — Payments have been made by Defdt particularly one of 58 dollars — a receipt of 30 Octr. 1819 — is produced by Defdt. qt. ought to cover all demands between parties — as to the anciens compte referred to, Defdt has filed a receipt to shew it was paid — The Pltff in his answers to

faits

facts & articles, admits have recd £15 — from Defendt on 10 July. pour d'autres affaires — but shews no other transactions between parties —

Roi in reply — That was no demand made by Defdt on Pltff to produce the prior acts between them,

—

Northedge
v
Parsons

On rule to shew Cause why proceedings should not be quashed for want of notice of filing declaration — and also for insufficiency of affidavit —

Blanchard for Pltff, stated that notice was made and left in usual form — and that a copy of declaration has been received —

—

The King
v
M'Nider

On Information for recovery of certain duties — ag Defendt as assignee of Hugh & Shaw Armour —

Walker for Defdt — The Crown is not entitled to any privilege in bankrupt cases over other Creditors no extent can issue for Crown after a Comn of Bankt issued — 1 V. de la Domaine — Ed. 1669

Ross. cites. Rep. Vo Deniers — Deniers du Roi — Domat —

Low
v
Barber } action for recovery of wages —

Poth. ob. p. 52. Dec. Droit. v^o Mineurs. p. 251. Nouv. Denez^t v^o Estes en Jug^t — extends to Enfans in bas age only

Boston Plea of Excuss. Pleff a minor and cannot maintain an action — 1. Pigeau. 65

Walker for Pleff. 1 Pigeau. p. 67 — minors can maintain an action for his personal earnings —

Rep^re v^o Mineurs p. 526. —

Lecourt
v
Garepy } action for money lent
Draw Judg^t

Ducharme
v
Cicire } action en Reintegrande —

Walker for Def^ds. decl^n insuff^t not stated that Pleff publicly & opened held and possessed publicly the land in question

Ermatinger
v
Ross —
&
Ross & ux op^t } on opp^n to sale of goods seized

Gale for Pleff — The moyens d'opp^n not suff^t. not said in what way the goods in question became propres — by shewing the contract under which the goods became so propres —

Grant for Opp^t — opp^n is sufficient, there was no Comm^ts between parties — & property claimed is sufficiently ascertained to belong to Oppos^t —

Howard
Allen — } action for damages for malicious arrest.
Boston for Pliff — The action is here malicious, as the Defdts oath was untrue, & founded upon claims he could not support over till to morrow

Dixon —
Finchley — } action for rights of peage or passage of boats in River St Lawrence —

Grant for Defdt — demand for a toll or right of passage through mill-dam erected in public River St Lawrence — The Defendts mill is built in the place of public passage — 2 Hawk. p. 144 — This is a nuisance which has been erected by the Pliff, and he can maintain no action agt the Defendt even if the erection were beneficial to the public —

Rolland for Pliff — action for work & labor which was done by Pliff & his men, for the use and benefit of the Defendt — the question of right is not pleaded — the general issue only is pleaded — The right of Pliff is not contested to have such erection — or for any right arising out of such erection —

McGill & al
Burton
King Intro } on Report of Surveyors —
Beaubien for Pliff. The difficult on the lateral line to compensate for

for the deficiency of the Defd's Seigniory — as there was no specific demand for such deficiency before the Court — That by this means the rear line of the Seigniory of Noyan encroaches on the lands of Stanbridge — therefore line B. C. ought to be the line of division of the 3d Seigniory —

Rolland for Defendt — contends that the survey has been regularly made in conformity to the Interlocutory order —

Ross for King — If this survey is supported the Defendt will have more depth than is allowed to him by his title — There ought to be no allowance for water which may be found on the lateral lines of the Seigniory, or which may be found within the limits of his Seigniory — —

Try & Knapp } on ~~rule obtd by~~ Exceptions pleaded by Defdt —

Walker for Defdt — The legal representatives of wife who is dead; are not before the Court — and that the Executorship had expired before action brought —

Ogden. The Ex. did not expire before 5th Augt wrt send out 2d —

Nolan v. Melville } action for board lodging —
Grant for Pleff — The plea of prescription is too generally stated — ought to have alledged payt — Com. 2 vol. p. 535. — Lacombe. vs prescription

2 Gr. Comre p. 534-5 — Glose 1. sur l'art. 127. No. 2.3 Poth. obl. No. 718. No. 727 Repre vo prescrip. p. 347. —

Boston for Defend. contends that it is not necessary to alledge payment in using the plea of prescription, as this would admit the existence of a debt, which he does admit —

Chapman v. Fowke — } action for goods sold.
Hallowell for Pleff Defend. has pleaded a tender, but not sufficiently made —

Brown v. Fleming } same case, as above of Nolan. vs. Melville —

Indians v. Camyré } On action for Exhib. of title —
Grant for Pleff — Pleff. are Seigniors in possession & Defd. liable to exhib. his title.

Sewell for Defd. — action is irregular in name of certain Individual Chiefs, who have no right, but ought to sue as a Communauté —

The Pltff cannot prescribe a right contrary to their title — Exh. No 1. filed by Pltff shews nature of Pltff tenure — no Seigneurial rights were given to them —

Grant for Pltff. Seigniory was granted to Indians to hold as a Seigniory —

Ellice
v.
Dizanard } action of dequerpissement

Rolland for Pltff. The Pltff hold under letters Patent from Crown — The Defendt sets up a claim to a ~~part of a~~ pointe of land on said lands — The Defendt has set up a title of bad faith, it is not even sale of any land, but sale of an uncertain right, without any warranty —

Prop. No 350

That Defendt can be entitled to ameliorations only to the extent of the fruits & revenues by him recd Poth. Prop. No 350 —

The impenses ought to valued not as to their value to Defendt but as to their value in general —

Beaubien for Defdt — The Defendt must be considered as a possessor of good faith and the estimation is made on that principle and ought to be confirmed —

Delinelle
+
Mather } On Interlo's Judgt —

Vizi for Defdt — The amount of the quittance is not specified in Interlocutory and therefore the Court cannot give Judgt. for the specific sum of £15 — as demanded —

Perrault
+
Corning } on Pleff. mo. for contrainte. —

Hart
v
Goodhue } On motion on part of bail to Sheriff, that they be permitted to put in bail to the action —

2 Str. ~~v. Bail bond~~ —
875

Beaubien for Pleff. Bail too late, ought to bring in the body of Defendt — before they admit them to give bail above —

2 Str. ~~875~~ — 876. Bircher & al. v Colson.

1. Sellon's Prac. 137. 167-8

1. Barn. 369 —

Chalifoux
v

Wednesday 11th October 1820

Chalifoux
t
Marotte } on motion of Mr Bedard for Pltff that this Court will direct that the former rapport de practiciens heretofore rendered settling the rights of Pltff under her marriage Contract on a former separation, be held and considered as legal & sufficient evidence of those rights under the present separation — and in this respect that the Interlocutory Judgt. Ross of this Court directing the present practiciens to report upon the matrimonial rights of pltff, be amended —

Ross for Defdt. objects to the former report, as now wholly out of question and set aside by the re-union of the parties — and besides there are gross errors in the first report which renders it improper to be admitted —

Beaumont
t
Breunet dr
Belhumeur } on Pltff's mo. for hearing instanter on exceptions filed by Defdt. and also that Defdt. be held to change his conclusions to the Country —

Roi for Defdt. he ought to have notice of first part motion, & ought to admit what is there stated — that transaction is here mercantile & the trial by Jury proper —

Orkney
v
Scott } action to recover monies rec^d by Def^t on acc^t of Pl^ff

Boston for Def^t — The Def^t was appointed agent of the partners Robt & Jas. Orkney, & the money was to be paid on acc^t of a debt due by James to Robt Orkney —

The Defend^t had no cause to retain the monies, he was liable to acc^t & it was not his business to whom the money ought to be paid

Warwick & Co
v
Yule & Co } action for work & labor
E^t contra —

Grant for Def^t — The malt mill in question was insufficiently made &c as not to answer the end intended — work was sent back to be repaired, & there remains — The damages proved on the incidental demand is proved to amount of £100

Boston for Pl^ff — general issue only pleaded & under this plea an attempt to shew insufficient workmanship — this not proved — fault in Def^ts who ordered what did not answer his establishment

Monk
v
Archambault }

Bacon
Tuttle } action on Prom^y note indorsed to Pl^ff

Grant for Def^d — The indorsement was not made in full at time it was negotiated by the payees to Pl^ff — cites Forrest & Camane.

Bourret for Pl^ff — not necessary that the Indorsment should be made in full at time of transfer, it is enough that a suff^t indorsement appears on the Instrument on q^t the action is brought

Howard
Allen } action for malicious prosecution

Sewell for Def^d — proof not made out ag^t Def^d. The evidence given in the former action filed in this, q^h is irregular, as the Defend^t is deprived of his cross-examination there is only one wit^s giving verbal testimony which does not constitute proof in the Cause —

Gagnon
Payant
& Payant opp^t } on opposition afin d'annuller

O Sullivan for Def^d contends that parties are at issue on matters of fact — & ought to proceed to proof

Rolland for Pl^ff — The Case must be determ^d on

on the proceedings now before it —
Repn. Vo. Opposn. p. 406 — 1 Pigeau. 549 — 576 —
The opposn. not of a kind to be admitted here
but party ought to have gone to appeal + Here
a revision of Judgt. is demanded by a person
who was a party to the Cause +

The art. 2. Tit. 26. Code Civ. states in what manner
notice ought to be given to let him in to revise Judgt. —
1 Pig. 343 — legal notice ought to have been given
to the party prosecuting of the inability to proceed
by a legal signification of the death or interdiction
of the other party — Repn. Reprise. p. 305 —

O Sullivan for Oppt. + none of reasons now
offered are contained in the plea to the Opposn. —
there is no plea of exception to proceed thereon
as now offered — The parties are at issue
on matters of fact —

Thursday 12th October 1820

Hotte. — } action en separation de biens. —
Huneau }

Bourret for Defd — There is no suffte evidence before the Court to grant the separation demanded —

Hart } Hearing on exceptions —
Goodhue }

Beaubien for Pliff — Defendr. Chs. F. H. Goodhue pleads a mis-nomer — but he ought not to be admitted to plead this, inasmuch as by the Contract between the parties the Defdr. has so named himself — That he was resident in the Province of Up. Canada — Pliff denies the fact to be as alledged by Defdr — But stated that he carries on trade at Montreal with his brother under certain name & firm —

Sewell for Defdr — The Defendr. has given the proper name under which he is known and ought to be sued — and he is not the person sued —

Clarke } Action on Obligation —
Robert }

Beaubien for Pliff. moves for Indt. on balance of £25 —

Bourré for Defdr. Defd. sued for £50 — & Indt only for £25. — & defendr. bound to shew payt. of £25. & ought to have his costs —

Cain
v.
Castonguè } on mo. for evidence on 13th —

Kauntz
v.
McBarton
& al. — } On Pltffs. mo. that Defdt. be held to change his conclusions to the Country. —

Cartier
&
Gendron
&
Gervais cpt. } On hearing on oppos.n —
Rolland for Pltff — none of the effects which were comprehend in the Inventory, are seized — the proof as to the other part not at all made out ought to have vache & armoire. —

1 Pijn 97. —

Porteous for Oppt. refers to answers made on oath by oppos.t —

Malcolm
v.
Porteous
&
E contra } On Report of arbitrators —
Porteous for Defendt. — The report makes no mention of Incidental demand

Campbell
v.
Hall — } Hearing on Exceptions. —
Grant for Defdt. — By decl.n it does not appear that any sum is asked by conclusions of it — not alledged to be an offence agt. any particular Stat. 2 East, 341. —

Monk. —
vs
Archambault } action for cutting down wood on Plff's domain. —

Boston for Plff - wood identified from the instrument used in cutting it — damages ought to be exemplary. —

Vigé for Defendt — That 2 of 26 pieces cut were still found on domain — There is a public road made on land of Defd. by the neighbours to get at their wood lands — this road passes through the land where the wood was cut — the instrument does not go to identify only the small end of the tree — no proof that wood cut down was used by Defendt — or was cut by him or any of his people Defendt has proved that during winter he drew out all necessary wood for his barn on his own land & on that of one Labrie —

—

Young & al'. —
vs
John Dickson
& J. M. Mondelet
& al' — T. Saisis
Morton. Intervs } On action on P.N. Note — & attachment in hands of Mondelet & al' —

Rolland for Plff - calls attention of Court to the two declarations made by the magistrate Mondelet particularly as to the 23 pieces of gold which were found in the Prisr. when brot. to the Police Office — as it does not appear that it has ever been paid by him to any one — there is no evidence connected with these 23 pieces of gold to show how the claim of Intervening party applies to it — as to the other parcels of

gold

gold found on Defd^t – other proceedings in the Criminal Court may be considered as applying to it, but still it must be considered as the property of Defend^t – That Mondelet is an interested w^r to discharge himself from the effect of the present action, – The Copy of Judg^t. filed does not shew what were the monies to which that order applies – This is no record of Conviction – & can have no effect –

Ogden for Mondelet – all that is necessary for the Garnishee is to say that the monies attached in his hands were paid under an order of the Court – if there were other monies in the hands of Mondelet not specified in the Indictment, it was Pliff's duty to have shewn it by producing that Indictment – Says that all the monies he rec^d as found on Defend^t – were brought into Court and there produced on the trial –

Ross for Interv^g Party, – states, that the monies have been received by Interv^g Party & has no further interested –

Rolland in reply – the answers of Mondelet as to paying over the monies in his hands, do not go to the monies he declared to have in his hands before the trial –

Taschereau & al^t – } action to destroy a mill erected
Pion^r – } by Defend^t. within Pliff's Seigniory –

Rolland for Pliff, only question now before the Court is what kind of Judg^t is to be

be rendered agt Defendt— In regard of the fruits & revenus, the Defendt admits having received more than £100— which must be paid to the Plaintiffs— the mill must also be destroyed, because Defts can have no mill without Plffs leave— Repon Vo Moulin p. 686— That the taking down the arms of mill as stated by Defendt is not sufficient, the mill must be destroyed and wholly taken to pieces— L.M. Vigé for Defendt— The mill in question was taken down before action— the Plffs had no mill, & were entitled to no fruits & revenus, and whatever Defendt may have been obliged the Plffs are not entitled thereto— If the Defendt was in default in building a mill, the Plffs were much more so, in not having built a mill for the benefit of their tenants— & therefore the mouture made by Defts ought to belong to him, as if he had erected no mill, that mouture would have gone to the neighbour's seigniory— The Defendt has offered to pay 50 dollars damages to Plffs on this action & to pay the Costs up to that time— this the Defts contends is all the Court can adjudge.— The Plffs have proved no damages— The Defts have proved that the Plffs have no mill on the Seigniory— That Defendts have sufficiently defaced the mill so that it can no longer serve as a Mill— The other mills in the Seigniory cannot be considered as banal mills—

Moulin 686

Rolland for Pliff The offer for the damages made by defend^t do not cover the Pliff^s right for the fruits & revenues which he has demanded and to which Pliff^s are entitled, as well as to their damages That the Court must condemn Defd^t either to pay the fruits & revenues according to the usual Stile of such Judgts or that Defd^t be adjudged to pay the full amount of what he has received from the unjust use of a right belonging to Pliff^s. —

Friday 13th Octr 1820 —

Shaw
v^s
Mc Intosh } On Pliff^s motion to be permitted to withdraw from the hands of the Proth^z the monies tendered by Defend^t and deposited with his Plea — The Defd^t opposed motion —

The Court rejected the motion, being of opinion that they had no power over the condition on which the Defend^t had tendered the money, and unless the Pliff agreed to withdraw it upon that condition, or w^t the consent of the Defendant, the Court could not order it —

Hart
v^s
Goodhue } The Court were of opinion, that as the party pleading the plea of abatement or misnomer, admitted that he was one of the
5. Taunt. 652. Defendants in the Cause, his plea was bad and therefore dismissed it — 1 Chitty. 412 — 448 — The Defd^t thus admits himself to be the person sued — 5. Term Rep. 487 — Roberts. v^s Moore — 3. Wilson. 413. —
The court hold a strict hand over delatory pleas — Hixon. v^s Binns. 3 T. Rep. 185 — Roberts. v^s Moore Lon
3

Saturday 14th October 1820.

Witness day.

Monday 16th Oct.

Duquet & Senet — on report of Experts —
Lacroix for Pliff — report only by Pliffs Expert — mo. to set it aside —
Vigé for Defd. Neveu has never refused to act — but not regularly called upon —

Bouthillier & Mathurin — action for house rent —
Ossuth Proof only to amount of £ 9. —
Bender for Defd. the costs of defends in action ought to be pd by Pliff. —

Savary & Meunier & Dupras — on final hearing — as to alimentary allowance to bastard Child —
Bedard for Pliff. an allowance ought to be granted to Pliff, Respn. vo. aliment — & Fornication — It is in proof that Pliff is unable to gain a livlihood for her legitimate Children — concludes for 20/ ₶ month of pension —

Vigé for Defend^t — no Judg^t. on Exception pleaded by Defd^t — That Pltff is unworthy of obtaining any assistance to maintain the child in question, owing to her bad conduct, she having seduced Defd^t. her Servant — That the means of Defend^t are besides insufficient to provide any such maintenance — Had the action been to oblige the Defend^t to take charge of the Child it would have been better founded. —

Bedard for Pltff — all points are regularly determined and the only question before Court is what shall be the allowance to be paid — That Pltff is entitled to claim the maintenance of the Child —

Young & al
Floyd } on Excess
action on obligation
Blanmerhassett for Defd^t — does not appear before what notaries the oblign was passed — Grounds in declaration that money was payable by instalments — of which five are due — this might leave a choice in Defd^t to pay in whole or by instalments — The Exception here is à la forme: Where there is any condition annexed to the payt of the Debt, there must be a special demand proved & laid before institution of Suit —

Rolland for Pltff, contends that declaration is sufficient, and in form — that Excess — is pn. in direct

Warwick
Ermatinger } action of trespass for taking goods —
Boston for Pltff — Sheriff's officer caused the door where effects were, to be broken open — he took away the effects, & did not appoint a

Gardien

gardien to effects seized. — the action of revendication was dismissed — Sheriff therefore bound to deliver up the articles seized —

15 Oct 1817

Poth. Pro. Civ. 179 — Huissier Saisissant is responsible for the things seized —

Rolland for Defend^t — This action is irregular it is for the recovery of debt due to Pliff, by a third person — Pliff has alledged facts q^t he has not proved — Judg^t. in Inferior Court ag^t an unmarried woman, & now contends that it is same person ag^t whom Exon was sold out — no order, on dismissal of action, on Sheriff for the delivery of goods seized, q^t was necessary to bind Sheriff — That by this action the Sheriff is not called upon ~~by this action~~ to deliver up their effects, but to pay a debt — Pliff ought to have looked to the Gardiens, as Sheriff is liable only in case of their insolvability — Surfullon. 624.

624 Surfull

It is complained that Gardiens took away the effects, this they had a right to do for their own security — 1 Pigeau 623 — Judg^t. in Feb. 1819 — & Gardiens discharged from all responsibility as action is brot. only in Sept. 1819 — Pliff ~~does~~ alledges no property in goods & can have no action ~~ag^t~~ Defd^t. nor ag^t. any other person — a Creditor has no property in goods seized at his suit as being that of his debtor — there is no privity here between Defd^t. & Pliff. —

623

Boston for Pliff — Angelique Lafresnier is same person as Marie Boucher — ag^t whom Pliff had obt^d. a Judg^t — Pliff was in the actual

actual poss. of the property — and besides had a special property in goods seized as belonging to his debtor —

Evans — } action to obtain poss. of a house belongs to Pliff, & in poss. of Defdt.
Halfhide }

Ogden for Pliff. Defdt. possd. house under a private understanding that Defdt. should hold the house ~~from~~ at rate of £60 pr an — & to resume the poss. at any time he might see fit — In Novr. 1818 — & retd. until April 1819 — ~~when~~ That Pliff by his letters intimated to Defdt. that he might retain the premises as the 70th Regt. did not move — Pliff had occasion for house & notified same by Notaries to Defdt. — Defendt. contends a right to retain same contrary to Law 1 Pand. Inst. liv. 19 — when Pliff wants house, entitled to it, Domat 1 liv. tit. 4. Sec. 11. — The Defendt. was simply the tenant at will of Pliff — refers to testimony of John Bethune — as to nature of reserve under qr. Defdt. held it — this corroborative also by the letters filed by Defdt. — The condition of the 70. Regt. coming here is wholly inapplicable The Congé here is sufficient, when no lease — and an unusual case — uncertain tenure — Poth. Louage. No 336 — That the qualité du locataire is also a point in the Cause — Defdt. is a military man — see Guy's evidence — The notice here given was 11 March 1820 — & the notice 24 April & 10th. May 1820 — after which the action was brdt. —

The Defend^t. offered to lease a house for Pliff. but would not give up his own — When there is no specific time under 9^t party holds house, a congé of 3 months is not necessary — as to its being a farm, not applicable — Objects to Defd^s. being admitted to reject the answers to 5^t. & 7th. Interrog^s. — as they are connected with the other answers made by Defd^s. — Code Civ. art. 8. Tit. 10e.

2 P. 64

2 Boug. p. 50.

O'Sullivan for Defend^s. — The conclusion in the declaration for damages in this case is irregular —

Rep^r. v^o. bail & other authors shew the necessity of sufficient notice to be given to the tenant — 2 Pig. can: 63 — The Custom of the place must regulate the term of the notice — when there is no particular excep^t. in favor of the State & condition of the tenant to give him a greater delay than the Custom — then the Custom in all cases must apply — refers to case of Rouville v^s. Hardie — where the court of appeals held that 6 months notice was necessary — That when there is no lease, it is particularly necessary to give regular notice Rep^r. v^o. Congé — Pliff has not proved any legal or suff^t. notice, according to the Custom of the Country — Defend^s. has proved this Custom by shewing that 3 months are requisite when tenant is to be put out — That when there is a property with an extensive orchard

orchard and garden ~~more than~~ 3 months notice ought to be given before St. Michel — The letters shew the lease agreed to from May 1819 to May 1820 — & by letter of Febr. 1820 — it was further continued the letter of Pleff of 11 March 1820 — contains no legal notice — If notice had been given 11th March — it was insufficient under the custom — That Pleff's domicile is with his regimt. & his coming to Montreal was for a temporary purpose — If there were an urgent necessity for Pleff's obtaining his house, he ought to have proved it — Moves to desist from using the Pleff's answers to 5th & 7th Interrog —

Gale for Pleff. It is suffct. that it be stated in the decln. that a notice has been given — all the periods of notice referred to by Defdr. cannot apply here, as there was no lease, and as the Circumstances do not apply — the quantum of rent as allowed at Paris ought not to apply here — Same form of allowing Defdr. to take poss. is suffct. to turn him out — The end & object of notice here was attained by Defdr. offering to procure another house for Pleff — Here the Defdr. was sufficiently aware of the intentions of Pleff —

Chalifoux & Marotte } Judgt. on Pleff's motion adjudging conclusions thereof —

Ritchotte & Ratté — } Judgt. of Separation — by reason of Defdrs. absence for 20 years —

Low
Bärber } Defendts exception dismissed

Tuesday 17th Octr. 1820

Young & al
Floyd & al } Exceptions dismissed —

Taschereau
Prion — } Judgt —

Chartier —
Descelles } On Excepn —
Action on deed of sale —
Sullivan for Defdt. not stated in declaration that Defendt ever came into possession of the premises — sale not complete and therefore no action arises —
Rolland for Defendt — not suffct excepn action founded on contract —

Quesse & ux
Quesse & al } On Exceptions —
Bourré for Defdt — action for arrears of Rente & pension — That Quesse fils has been discharged in consequence of Pleff having accepted Chapdelaine & wife as their debtors in lieu of Quesse fils — That the action is agt. Chapdelaine personally & also agt

Gendron in a hypothecary action, which is irregular — two different actions of this kind cannot be joined. Here also the resiliation of the deed of donation is demanded with payt of the arrears — both which cannot be demanded nor granted. —

Rolland for Pliff. An action can be maintained agt. Co-debiteurs — Gendron the person in poss. altho' not original debtor is yet bound by his poss. for the debt — The Detenteur may abandon his poss. & thereby liberate himself from the action, and the conclusions go to this effect — The conclusions as to resiliation may or may not be granted as the Court shall see fit, but the Jugt may go that on Default of Defendrs paying within a certain time on default whereof — that the resiliation be made —

Bourré for Defdr — The actions cannot be united they are different in their nature, & the Jugt cannot regularly be executed — The Defendrs must be sued either as personally or hypothecarily bound, but they cannot be bound both ways

—

Deschamps & al & Turgeon & E contra — action for arrears of rente & pension Hearg on Excepn —

Rolland for Pliff, action founded on deed of donation by father & mother of Pliffs to Defdr — Exception as to want of measure of an emplacement given by sd Deed The Incidental demand. of donation all biens presens & a venir is null — Donation par Turgeon. p. 121 — 1r Vol.

Roi for Defdr — If donation is null, the Pliffs action

fails — Donation must have its effect as well in favor Defd. as of Pltff, the effects given are articles of a certain value, & beyond amount of the sum demanded — That as a consideration was stipulated to be given by Defd. so ought the donors & their heirs be bound to comply w. terms of donation, in regard of the lot of land given, the Donation here is same as a Sale to Defd. — and the emplacement in question is a part of the consideration —

Rolland for Pltff. The garantie cannot extend to the lot in question, no specific measure that the Garantie cannot hold here agt Pltff who does not sue as heir but as a Stranger —

Wilson & al
v
McDonell
&
Millar & Bros
Sp. Bail

on Pltff. mo. to correct entries in register ~~on~~ bail bond & entry of action —

Ogden for Sp. Bail — the error in question is stated to have been made upwards 7 years ago — This is a chose jugée — by rule formerly obtd — & being before other Judges. Cod Civ. tit. 26. art. 5 — Supillon —

Boston for Pltff. the error is such that this Court ~~cannot~~

Platt & al
v
Campbell } Action by Exer's of late ~~Platt~~ Power for goods sold & delivered —

Gale for Pltff — Debt due to Bell, Howard & Bell — goods sold in 1815 payable in 1816 — Proof is complete — John Bell, formerly partner, proves debt to be due to remaining partner, as he had transferred all his right to the remaining partner there is also the testimony of John Porteous who proves the debt, except as to certain over-charges If the first count of Declr were insufficient yet the other Counts are sufficient to maintain the action —

O Sullivan for Defd — action is irregular, the names of the parties who compose a firm must be the substantial parties in Suit — the person in firm of Bell. Howard & Bell in 1815 — were not same persons in 1816 — All the Counts refer to a sale of goods by sd firm of Bell, Howard & Bell that is by Howard alone — whereas it is in evidence that sale was made by Howard & Bell who then composed the partnership — 3 Bos. & Pull. 559 — 6 T. Rep. 363 — 1 T. R 487 —

Gale for Pltffs The Counts in the declaration meet the proof sufficiently — The substantial Pltff before the Court —

Johnson
v
Deshautels } action for Exhib. of title & lods & Ventes — Boston ~~for Pltff~~ only question as fine & costs as deed exhibited, is a deed of donation from father to son —

Vigé for Defd — Only question as to Costs in this Court —

Pickle. & Hunter. & Stevenson opp^t

An mo. of opp^t. to be permitted to fyle a certain bill of sale of goods seized —

Grant for Pleff — The paper in question was in poss. of opp^t. when he filed his moyens, & he cannot now be permitted to fyle the same, after issue & enquête closed —

Foretier. & Morrison

action on a certain deed of cession in consequence of their renonciation to the succession of their mother —

L. Vigé for Defd^t — Act is of 28 March 1818. by which Pleff^s renounce to the future succession of their mother in consideration of a sum of £50 — to be p^d to them by Defd^t — And it is stated that in consequence of the Pleff^s renonciation, made w^t the Consent of their mother, that they claim this sum — such ren^n can be made only by a marriage contract — 1. Bourj^n — p. 909 — Rep^n v^o Renon^n — p. 136 — That even by marriage contract, the males cannot renounce in favor of the females That the sum in question is stipulated to be p^d as well for the suc. of the father who is dead, as of the mother who is still living, and therefore as the distinction as to quantum on the succ. of father cannot be ascertained & therefore null for the whole —

Bourré for Pliff — That the Pliffs could sell their rights in the Succession of their mother upon her consenting thereto and ratifying the Sale — Repn. vo. Droits Successifs. p. 550 — Dec. Droit. vo. Stipulation contre les bonnes mœurs — Poth. Ob. No. 132. — Repn. vo. Renonn. p. 137. —

Vigé in reply — such Ren. may be allowed in a partage anticipé made by parents among their children — that the authors agree sufficiently to establish the principle that such Ren. can be made only by mariage Contract — The authorities cited by Pliff. are partially taken and not followed up to shew their application — Fer. in the Gr. Cout. states principle differently from what he has done in his Dec. de Droit — 4. Vol. Ins. Contractuelles. —

Gibb & Adams } Action by Pliff as Extr. for recovery of £200 due by a Transaction —

Ogden for Defdt. — action is founded more on an acct. Current, than on any particular contract — It was stipulated that a certain debt due by Defdt. to Gronovelly shd be paid in instalments of 30/ $ week — & for qt. the other Defdts. were security — but these other Defendts did not become Security for the other parts of the agreement in taking the debt out in work

There

There is nothing to shew that Defdt refused to work, or that the work he did was insufficient, or that Defdt had notice that it was insufficient — That late D. G. neglected his affairs, & did not furnish work to Defdt as he was bound and as Defdt had a right to liberate himself by work from the whole debt, he ought not to be precluded from so doing by bringing action for money —

Peltier for Pleff — The ~~Pleff~~ late D. G. not bound to furnish work to Defdt, but had the liberty to discharge the debt or such part thereof as he would be entitled to do by the work he might do — the Defdt has been credited for all the work he did & is not entitled to more, ~~as~~

McDowall & al. } Drummond } action for goods sold

Sewell for Defdt no evidence in cause to support action — no proof of the Partnership of Pleffs — The deposition in the Case does not establish a sale to Defendt —

Fournier & Montpellier } action on obligation on moyens de faux

Coutelée & al
vs
Milne — } action en voye de fait
Case submitted. —

Dom. Rex
vs
Boue — } On Certiorari. — on Judgt. rendered by Messrs. McCord & Mondelet, Justices

Rolland for Pr. The plaint was agt the Defendt. for not enforcing the execution of a certain P. Verbal for a road established thereby under the Stat. of 1817 — The Judgt. of hom. of P. Verbal states the period at which the ~~making~~ maintains the road ought to commence, — under the marché of the Entrepreneur That the Defdt. was discharged from the plaint in consequence of a wrong construction of the law — the P. Verbal — marché & Rap. d'Experts was produced to shew road was made in Septr 1819, except the defrichage, which was no material object — this also was cleared before plainte — The Judgt. of the magistrates is founded upon the principle — as the public had not been called to be parties to the act which authorises the said report — the road was to be delivered à dire d'Experts — the only question was to be settled between Commissaire & the Entrepreneur That testimony was ordered to be made by the Justices of the state of the road, when the rapport of the Experts was legal evidence & sufficient —

Grant for Defdt. The case has been heard upon the merits before the magistrates & this Court cannot

cannot interfere — all that has been committed is an error of Judgt — but as this Court is not a Court of Appeals, it cannot be corrected here 2 Doug. 140. King v Mosley & al — 6 Ton R. 375. King v Rees —

That the persons bound to maintain the road could not be bound by the opinion of Experts named by Commissaires & Entrepreneur & to which the persons interested were not parties & could not be bound, it would be contrary to the first principles of Justice —

McDonell v Bellanger & E Contra

Action on obligation —

Roi for Defdt — The Defdt had not the liberty of taking away the apples as a fixed upon — and only at a time when apples had been damaged this has occasioned damage to Defdt — and for which an Incidental demand —

Grant for Pliff — Incidental demand is not proved — before Defdt could set up his Incidental demand Defdt ought to have offered the price of them — there was no demeure on Pliff to deliver apples — Vente. No 49 — That Defendt having recd the apples afterwards precludes the demand for damages, as he should not have recd them if they were damaged. —

Whitycombe
sal vs
Gavin — } action for recovery of debt due by Defd as a Caution —

Grant for Defd. all that Pleff have proved is about £8 — the evidence adduced by Pleff is illegal — being by verbal evidence —

Jones
Hall } action ag Defd for damages done to articles put on board Steamboat

Walker for Pleff. refers to evidence adduced

McDowall
Jeremie } action for goods sold.

Grant for Defd. the wine in question was delivd to Defd. in payt. of a debt at all events Defd. is entitled to compensate this wt debt due to Defd

Chamereau
&
Chamereau
&
Chamereau
mis en Cause } On action of account

L. M. Vigé. Defd. sister of deceased Vincent Chamereau, & in poss. of all the Estate left by him — & particularly of a certain promissory note — the conclusions of the declaration are general as to all the property left by sd. Vincent Chamereau — It appears that an Inventory was made of all the effects of the deceased and a partage thereof made and that Defd. was not in poss. of the effects

of the deceased —

Pg. 475 Vigo for Mis en Cause — there was no person in poss. of the Estate of deceased — all had been divided among the heirs, and no cert. could be rendered, such as that demanded — That it appears by an act of 15 Mar 1819 that the note in question was in existence & in the hands of the Defd — this was known to the Pltff, before the action was brought —

Lacroix for Pltff — the conclusions of the declaration are general, but sufficiently particular as to the note in question, & in regard of which the action is well founded

Wednesday 18th Oct. 1820

Gardiner v McKerkar } action by Tenant agt Landlord to rescind deed of lease from non-execution of the clauses therein contd & particularly the not repairing same—

Grant for Defdt— The Defendt was never put in demeure to repair, but by present action — when Pltff took poss — house in good repair. — damages since done by fault of pltff — Poth. Louag 108 — Pltff authorised to make repairs on default of Defdt so doing — but no right to rescind the Lease—

Moves to reject depositions of certain witnesses intended — persons living in house — & whose effects are seized for rent due to Defdt—

That the damage done to house has arisen since lease to Pltff. & by him & his tenants—

Rossiter for Pltff — Defendt agreed by lease to repair the house, qt is a proof agt Defendt that at that time repairs were requisite — On 29 Augt last there was a demand made by a Notary on Defdt to repair — That Maguire is a disinterested W—

McKerkar v Gardner } action for house-rent

Grant for Pltff — plea is that house is in bad state of repair — but no damages proved — Pltff can be considered en demeure only since 18 Augt last — Pltff made suffe repairs immediately, altho' these repairs were merely locatives—

Rossiter — same evidence in this cause as last

Repr. vo Bail. p. 17-19 –

Cameron et al
vs
Bridge. Tut
and
Cameron
vs
Bridge Tut

on acct. of Tutelle rendered by Defdt –
Sewell for Pltff – contends that there are several deductions to be made from the charges made by Defdt – and that on the balance Interest ought to run since it came to Defdts hands –

Walker for Defdt. contends that evidence not suffc. to charge Defdt – & that interest ought not to be allowed – & costs ought to be allowd Defdt

Scott
vs
Andrews

action on Note –

Lussier for Pltff – no value recd. for the note – but to prove this, Defdt called on faits & articles, but has not ansd –

Boston for Defdt – action is wrong – it is founded on a promissory note, but it is not for value recd. & therefore no promy Note – The Interrogatories can be of no avail, not drawn so as to be made effectual for Pltff – Ref

Lussier. cites Repr. vo billet – it is enough that the billet contain a debt & promise to pay –

Rouleau
et
St Julien

action for work & labor & for certain articles furnished –

Vigé for Defdt. Prescription pleaded, and no sufficient answer thereto – no interruption shewn

nor has Pleff shown by any proof such interruption —

Belanger
&
Belanger } action on Obligation —

Lacroix for Defd. Plea — usury — by Pleffs. answer it appears that Pleff lent only 94 dollars instead of 100. stated in declaration —

Bourré — for Pleff — There is no usury in this case refer to Poth. Usure —

Lawson
&
Huntoon } action on P. Note —

Noth. said

Archambault
Roi
&
Fullum } On opposition afin d'annuller — on Sale —

Bourré for Pleff — The stipulation in the deed of Oblign. by Defd. was that Oppost. should enjoy the rent of certain houses until the amount of Oblign. was paid this not a Cause to stop the sale of the houses, nor can they be sold à la charge of the payt. of this rent.

Case submitted

Galipeau
&
Galipeau fils } action for Voye de fait — hearing on Law —

Bedard for Defdt. objects that in law Pleff has no action — as Defendt. was appd. Curator to Pleff as an absentee in March last, but by error, this act

act of Curatelle was not hom. till 6th of this month — That under this authority the Defendt sold land — That this action will not lie for a voye de fait — the Defendt not in possession — and took poss. as the negotiorum gestor of Pltff

Rolland for Pltff — the matters pleaded by Defdt are not sufficient to bar Pltffs action — Denozt. vo homologation — act of Curatelle can have no effect till the homologation thereof

—

Armour
v.
Main } action on pr. Note as Cashier of Canada Bank —

Rossiter refers to cases of Griffin v. Durand

—

Langevin
v.
Beauchamps } action for money lent

Rolland for Pltff — contends he has proved his demand, as the Defendt has acknowledged having recd the money, but contends that it was on an agreement to build a house for Pltff, which agreement Pltff had always refused to complete — The Defendt must shew his right to retain the money — or the damage arising to him by non-execution of the agreemt —

Bedard for Defdt — denies that Defdt ever borrowed money from Pltff — this is not proved — It is alledged in the 2d Count of Decbr that Defdt recd 1000 of Pltff's money from her Son

The Defend^t admits receipt of this money, but contends he is not bound to return this money, as it was on aut^t of a marché agreed upon between Pltff & Defend^t and the Contract made & signed by Def^d shews this — That Defend^t was not bound to make any Incidental demand in regard of the marché, as the Defend^t was not sued for anything regarding it That the confession of the Defend^t in his place cannot be divided, and Pltff not having made proof to the Contrary, must take the confession of the Defend^t without dividing it & taking his admission of having rec^d the money without the condition on q^h it was received —

Rolland for Pltff — It is enough that pltff shews that Defend^t has got her money — & Defend^t must shew a right to keep it — and even where the money was rec^d on a marché not yet concluded, the Pltff has a right to recover her money & the Defend^t his rights to any damages he may have suffered by the refusal of Pltff to execute this marché —

Lusher
v
Berthelet } action for hire in transporting goods
Parties to draw Statement of bal^ce due to Pltff

Beaujeu
v
Mc Donell
&
Mc Intire
& al — opts } On opposition afin de conserver
Mr Bedard for Pltff — Sheriff returns that the amt of Pltff Judgt was pd

Mr Ross for Opposn states that there was collusion between Pliff & Defendt & Defendt confessed a Judgt in favor of Pliff, who in consequence sued out Exon of the real estate belonging to the Opposn That the Opposn to the Sale having been withdrawn, a writ of Venditioni exponas was sued out and to prevent Sale thereof the opposn put into the Sheriffs hands the amount of the Pliff's Judt and then formed an opposn afin de conserver thereon as if the land had been sold —

Cartier & Hus. & al } On rule to shew Cause why an attachment should not issue agt two persons for having opposed the execution of a writ of Saisie —

Proof ordered 11 Jany —

Pickle Jr & Hunter & Stevenson } On opposition afin d'annuller Quest. touchg regularity of proceedgs —

Campbell & Coté — } On mo. to discharge rule for hearg as no notice — & issue not complete —

McKenzie — } action for recovery of £1000 put
v. Hallowell } into hands of Defend. in trust

Gale for Defend. — the acts in question is a Donation fidecommissaire entre vifs — and is irrevocable — The money was vested in the hands of Defend. by the Pltff the father of the minor Children to whom Pltff is now the Tutor, upon condition of paying the interest to their mother during ~~their~~ her life-time, and to the surviving Children at the time of her death — The Pltff here lives out of the Jurisdiction of Court and there would be no security for these minors in case it be allowed to be taken away — Tr. de Tub. Poth. Sec. 1. art. 1. — cites case of Plenderbath v Burton submits to Judgt for interest on principal —

Poth. — Don. v. Inf p. 67. 8vo

Grant for Pltff — The Pltff is willing to give good & sufficient security for securing the monies to the Children — That according to the terms of the agreement the money was to be paid to the Children on the death of their mother —

Thursday 19th October 1820

Cadieux & Morand	Interlocd. that parties fyle statement of their dealings & transactions prior to the acct. now in suit —
Howard & Allan —	Judgt. £30 damage. malicious arrest
Indians & Camyré	Dismissed — Exhibition of Titles —
Delinelle & Mathe —	Restitution of Rente constitué —
Burton & Roi —	Judgt. for Pleff — but discharging Defendt. from costs, as he disclaimed all right to the billots in question —
Binet & Longtin	Judgt. for Pleff — it appearing that the 3000th. had been recd by Pleff before the passing the deed of sale in question —
Clarke & Robert	Judgt. for £25 — balce. appearg due & costs accordingly to sum adjudged —

Cartier. — Gendron & Gervais oppt. } The oppos^n maint^d in regard of the articles for which oppos^r shewed a letter by receipt for pay^t of the articles purchased and dismissed as to other articles —

Gagnon & St. Ouge & St. Ouge oppt. } The parties admitted to make proof of the facts alledged, without presuming to adjudge upon what the nature of this proof ought or may be —

Young & al. v. Dickson & Mondelet & al. } Action dismissed — The Interv^r party app^d to have received his money — and the Defend^r convicted of a capital felony ag^t whom no action can be maintained —

Bernard Monbrun & Beck — } Judg^t for Pleff — with costs ag^t Defd^r —

Dom^s Rex. — v. Seraphim Bouc } On Certiorari — Judg^t of Justices confirmed

McKerkar v. Gardener — } Interlocu & reference to Experts —

Gillespie vs Gray & al Excts —	Judgt for Pleff —
Beaujeu vs McDonald & McIntire oppr	Opposition dismissed w Costs —
Galipeau vs Galipeau	Exceptions dismissed
Whitycomb & al Gavin —	Judgt for Pleffs —
Chartier vs Descelles	Court held plea insufficient to bar Pleffs action —
Scott vs Andrews	Judgt for Pleff — action founded on an acknowledgement in writing of Deft & not on a promissory note under Stat. — value set out in decln —
Pickle — vs Hunter & Stevenson oppr	Oppts mo. granted under Circumstances stated —
Orkney vs Allison & Opposrs —	The costs of discussion on opposn by Pleff. allowed in Judgt of Distribution but not Costs of Pleff's Judgt —

Ermatinger
Ross –
Ross & wife
oppt –

The Court were of opinion that oppost should have shewn by some separate act in writing or by her mar. Contract, that the articles in question were her separate property at the time of her marriage – the mere stipulation of exclusion of Communauté, not sufficient, as fraud might be practised – Oppn – dismissed

Campbell
Hall

Declaration insufficient in conclusions Quashed –

Archambault
Roi^n –
Fullum oppt –

Opposition dismissed

Warwick
Yule –

Interlocutor –

Friday 20th Oct. 1820.

Aylwin vs Cuvillier	W	~~Rule~~ Nisi discharged & main-levée granted — facts & art — adjudged to be confessed &c
Evans vs Halfhide	W	Action dismissed — notice insuff^t
Dom^s Rex vs Mc Nider	W	Judgt on Information — Interest & Costs refused —
Exparté Wm Mc Crae	W	On motion for warrant of assistants on St. 7. Geo. 3. ch. 46. Sec. 10. Granted
Platt & al vs Campbell	W	Judgt for Pltffs on money Counts —
Belanger vs Lussier & E contra		Judgt
M^c donald vs Belanger & E contra		Judgt on Principal demand & allows damages to Defend^t on Incidental Demand as proved

Dumouchel vs Larian & al } action dismissed as to one of Defendts he being bound only hypothecarily — & Judgt. agt the other — Default case

Armour vs Main — } action on a note indorsed to Pleff as Cashier of Canada Bank — Dismissed. —

Brown vs Fleming } The Court held that plea of prescription was irregularly pleaded — 1st because no particular period, or kind of prescription was alledged — 2d That Plea of prescription was a plea of payt — and cannot be admitted without such payment be alledged — Pleff's demurrer therefore allowed in so far as regarded this part of plea —

Nolan vs Mellville } Same Case — as above

Després — vs Beaumont } Judgt for Pleff w Costs as in Inf Court —

Valin & Degen & Debartchze oppt } Opposition dismissed



Cherrier