Kings Bench Montreal.—

Civil Pleas.—

February Term. 1821.—

April Term — "

June Term — "

October Term — "

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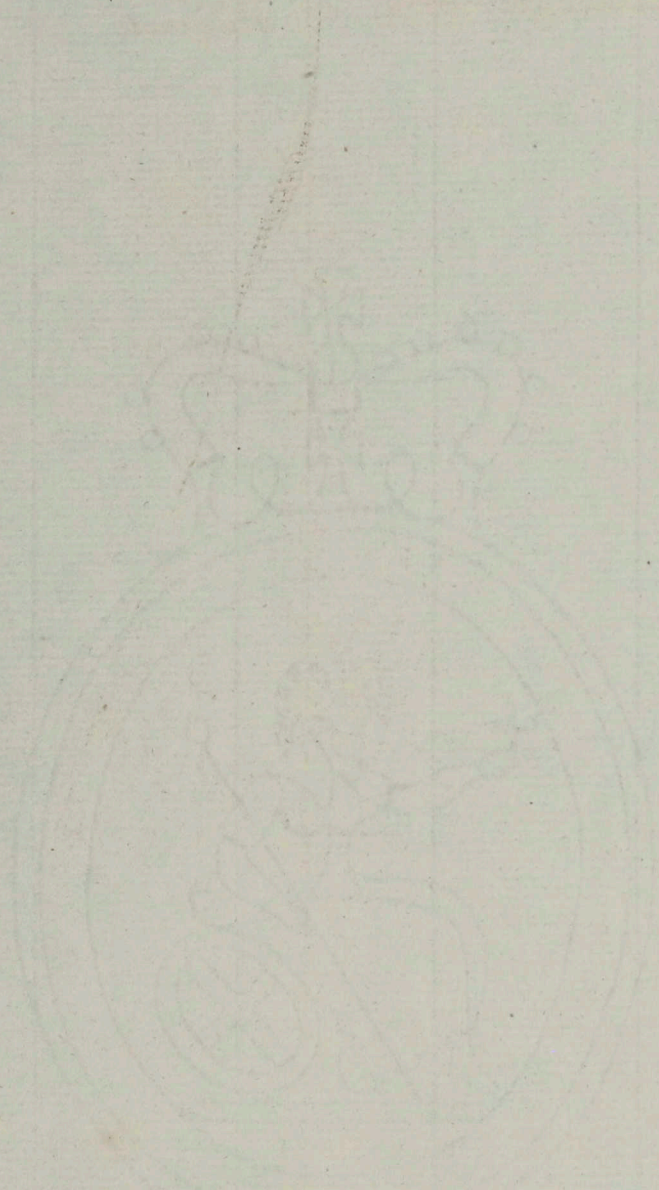

February Term 1821.

Thursday 1st Febry. 1821.

Present
Justices Reid, Foucher & Pyke.

No. 256.
Cameron v. Meers

On Defendrs mo. for security for costs, as Pliff is not a residenter in this Province, and is in Gaol under a Ca. ad resp. in another Cause.—

Mr Walker for Pliff. The Pliff is stated in declre to be resident in this district, and in fact is so, whether in Gaol or not, does not alter the Case.—

Beaumont v. Galloway

On defendrs mo. for a Com. Rogre to examine a witness at Quebec.—

Mr Osullivan for Pliff, contends that the application comes too late, as the application ought to have been made four days after the issue joined — admits however that the rule is strick in this respect and ought to be extended.—

Sleeper v. M'Auley

On Pliff's mo. to examine two Wits about to leave the Province.—

Mr Ogden for Defdr objects, that Pliff bro. the wits. here from U. Canada for the purpose of having them examined in this way, a course never contemplated by the Ordre and cannot be admitted — This would be introductory of a dangerous practice, and ought not to be allowed —

Mr Boston admitted that the Wits were bro. here to be exd as Wts in the Cause, but as they cannot stay till the enquete day, he ought not to be deprived of the benefit of their testimony.

Leger v. Toupin } Judgt. of separation. —

Laque v. Bombardier } Judgt. with costs agt Defendt. personally —

Chamereau dal v. Chamereau } Judgt. that Defendt. render an acct. of the Promt note, not accounted for — costs divided between the parties
The Defendt. filed an Exceps. to Judgt —

No. 70.
Low v. Barber. — } On Defendts. mo. for security for costs, from Pltff. as he has left the Province since institution of action.

Friday 2d. Febry 1821. —
Present
Justices Reid Foucher & Ryke.

No. 1611
Shuter & Wilkins v. Denau de Jeremie — } action by Pltffs. as asignees of for goods sold & delivd. to Defdt. —

Grant for Defdt. The ~~declaration~~ Pltff does not state enough in his declaration to entitle him to his action, not shewn that the right in question was ever transferred to Pltffs. —

No 847.

Joseph
v
S. Davis
&
Davis oppt

On motion of Oppost. to ex. Pliff on faits & art.

Ogden for Pliff resists the motion, and states that Pliff is not within the Province, and proceedings ought not to be delayed, particularly as Pliff had notified to Oppost. in October last that he was then about to leave the Province & offered to answer to any questions he might have to propose — This Oppot. then declined doing, and now makes opposn for delay —

No 772.

Lussier
v
Perrault
&
Perrault
oppn

On Plaintiffs motion for hearg on merits of Opposition. —

Mr Beaubien for Oppt. states, that he has pleaded several matters of fact which tend to shew that this Court cannot take cognizance of the Cause, namely that an appeal has been allowed to the King & Council from the Judgt. in appeal — and therefore if Pliff wishes to proceed it ought to have been by a motion to appoint an enquete in the Cause as the previous step towards a hearing in the Cause —

Bowman
v
Galaway

On Defendts mo. for Com. Rogn grounded on affidavit —

Mr. Osullivan for Pliff — mo. too late — Cause fixed for hearg last Term, & went off from absence of one of Pliff's Wn — Defendt — since then had time to sue out his Com. Rogn — mo. made only for delay —

Mr Blenerhassett for Defdt refers to grounds stated in affidavit as sufficient to entitle him to his motion —

Pre Siccardsburg
Fs Vict. vs Malhiot

On action for malicious prosecution for a felony. —
Trial by Special Jury. —

2. Esp. N. P. Dig. p. 36. 7 § 2. —
Esp. N. P. Evidence. Ch. 11. p. 274. 277. —

The Plaintiffs having failed to prove their discharge from the prosecution in consequence of the Indictment preferred agt them having been ignored by the Grand Jury, The Court on the objection taken by the Defendant, ordered a Non-suit to be entered. —

Saturday. 3d Febv. 1821.

Present

Justices, Reid & Foucher

No 160
Gibb
vs
Gamelin

On defendr mo. to quash writ of Ca. & to be allowd to enter com. appearance —

Beaubien for Defendt The affidavit is insuffe as it states that Plff was only informed that Defendt was about to leave the Province —

Rossiter for Plff, the affidavit is express, and not on hearsay besides there was another Ca.

No. 102.
Cameron
vs
Gamelin

On defendr mo. as above —

Mr Beaubien for Deft No debt stated to be due in the affidavit — action on a Promy note of — was not due at time —

Mr. Mondelet for Plff, contends that the affidavit is sufficient, and shews a Cause of action now existing agt Defendt —

No 1817
Shuter.
vs
Thayer. —

action on award — Hears on Excepo —

Sewell for Defendt — The declr is insuffe — & does not contain sufficient grounds to maintain conclusions, not alledgd that arbitrators heard witness — it ought to have concluded for hom. of the award, it concludes only to payt of money — the hom. of it therefore cannot be grantes, & no Judt given on it — It does not appear that the award was pronounced aicords to Law — not legally intimated to the parties — not so stated in the declaration — N. Dic. Vo arbitrage. — pron. must be made to the parties in person or at their domicile —

Mr Bedard for Defendt counsl — Does not appear that the Sentence arbitrale was ever pronounced to the parties, qe is essential to the validity

validity of the award. Denizt. Vo arbitrage. No 3. — Id. Vo Compromis. Born. sur tit. 26. art 7. ordre 1677 — The depot of the avis arbitrale in a notary's office not suffit. — Fer. Vo Sentence arbitrale — The prononciation alone assures the date of this sentence. — Poth. Proc. Civ. p. 2. ch. 4. art. 2. Repre Vo arbitrage p 548. — Dec. de Jur. & des arrets. Vo arbitr. No 56 — ~~Jousse~~ — par Royer & Riolle — refers to Pigeau 1 Vol. p. 26 —

Rolland for Pliff — cites Repre Vo arbitrage. p. 548. 2d col. Jousse tr. d'arbitrage. p. 711 — 1. Pigeau p. 25.; as to the hom. of the award, it was a thing done ex parte before the Juge Royal Jousse. 714 — & this to ascertain that the rights of the public, or of minors were not implicated — the adverse party was never heard, even if he wished it — 1. Pigeau. p. 26. — Cites case. Masson v. Mabbut 1811. where the same exceptions were pleaded, they were dismissed. — The Decr. suffit — not necessary to alledge that the Arbitrs heard witnesses more than it wd be to state that the pieces justificatives were produced before them. Jousse. 709 — says this is not necessary — not alledged in the Dec. that there was a pronr of Sentence, but alledges what is tantamount upon question put by the Court, as to the difference of course in putting in execution an award made by Rule of Court, & one made out of Court under compromis — argued. that Sentence arbitrale made under compromis is a titre, and cannot be revised, the Judge has authority over the proceedings of the arbitrators when acts under his order or sentence, but not when they act under compromis —

Jousse 709.

No 164
Fournier
&
Montpellier
&
Chenier. Gar.

On action hypothecaire
Hearg on Exceptions —

L. Vigé for Defdr Excep. are 1st to sufficiency of Decr — not alledged that the land upon qh this action is brot — was ever in the poss. of the Defendr — the bare allegation that Racicot sold a land to Defendr without stating that this land was the property of Racicot, upon qh the right of Pliff could attach. — Racicot took lands in exchange from Chenier, and on same day sold one of them to Defendr and on qh the present claim

is

is set up. — There was only a tradition feinte in this case of the property given by Chenier to Racicot, wh. could not create a mortgage in favor of a third person, nor could the subsequent sale made by Racicot to Defendt. bear Lods & Ventes — Poth. Prop. No. 213. — Racicot never had the poss. reelle, & no mortgage could attach upon it — refers to Pyke's Reports — Forbes. & Atkinson decln. must contain all necessary allegations to support conclusions — not alledged that Racicot ever had the possn. qt. was essential —

Lacroix for Pliff. The decln is sufficient, the allegation that Defendt. came into poss. of a lot of land qt. belonged to his Debtor Racicot — the poss. of this property by the Defendt. is sufficient to maintain the action — the authorities cited do not apply. —

Vigor in answer, the poss. so far from being in Racicot when he sold to Defendt., by the sale to Racicot to Chenier, the latter reserved the possn. until the poss. until St. Michel following —

No. 1817.
Baxter
n
Amsden } On mo. to quash process from irregular service —
over to Monday

No. 279
Donegany
n
Pickle } Action is brot. by Indorsee agt. Indorsers.
Quest. whether drawer of note can be brot. up to prove the note having been given on a usurious consideration — objected, that Wn. is interested, as he is to benefit by his evidence a security he gave, — and also to destroy a paper to qt. he has given currency. 2 Esp. N.P. 708. That the Indt. in this case upon such evidence would be in favor of Witn. as destroying the Instrument qt. he himself gave The Wn. is the garant of all the parties, and this shews his interest. Esp. p. 711. — Abrahn. v. Bunn.

Grant for Defdt. The Wn. on voir dire says, he is prosecuted by Pliff in another action pr same debt on this note — but Pliff

could

not avail himself of any Judgt. given in this Case — there is a plea of usury in this case, but not in case agt. Wr —

Monday 5th Febry. 1821.

Present
Justices Reid & Foucher.

No. 132
Lang.
v.
Stevenson.

Action for bread furnished to Defendt —

Boston for Pluff, Defendt. heard on faits & articles — produced a receipt wh. he sd. he had paid to Pluff in discharge of this action — Pluff has shewn that this receipt was left wh. Defendt. by mistake, and that the amount of it was never paid —

Mr Ossullivan for Defendt — There was a Judgt. rendd. in this Cause qt. parties agreed to set aside & hear parties & wits anew — the wits. adduced do not controvert the answers of the Defendt. on faits & articles, he does not speak pointedly to any particular amount —

Young & al.
v.
Floyd & al

Action on Obligation —

Blanchasset for Defendt — Pluff has given no Replicn. and case not regularly at issue — That the delay agreed to by the Pluff. to the Defendt — was not expired when action was brot. 1. Wilson. 141 — Wood v. Newton —

Mr Rolland for Pluff — The Defendt. has pleaded payt. of debt, & the argument now used by him is inapplicable

No. 1727

Armour vs Yarker — } action on Promt. Note —

Boston for Defendt. Indorsement ought to have been made ~~bef~~ full at time of transfer as none of the parties are merchants — here the Indorsemt. was filled up after the negotiation of bill — this appears by the copy of the protest filed by Pltff himself qt. must make proof agt. him —

O Sullivan, the protest is proof as far as it goes, and cannot be considered as proof of the time when Indorsement was made. — In England Indorsement may be filed up at any time. ~~Bur.~~ Ray. Rep. Lambert. v Oakes. 443. Bull. N. P. 278 — The party by putting his name on the Note & delivering it to the Pltff. makes him the propr. of it and enables him to write over it what he pleases — Bur. Rep. 1225 — Chitty on bills. 113. 114 —

Boston in reply — the Prov. St. must necessarily mean that the Indorsement must be complete in all its parts before the signature of Indorser, so held in Case of Forrest. v. Camane. It is of moment to ascertain when Indorsement was made as it might have been done after due —

Ogden cites case. Webster. v. Arnoldi — words wants on Indorsement. of value recd. — pleaded specially — court dismissed action —

McRoss. cites case in 1794. agt. Oldham —

No. 1718.

Malcolm vs Porteous & E Contra. — } On award of Experts —

Mr Grant moves for hom. of award wt. Costs. —

Porteous, for Defdt. only question is in regard of Costs. qh. ought to be as in Inferior Court —

Tuesday 6th Febry. 1821.

Present. Justices Reid & Fletcher

Clarke
Wilson
&
E contra

On report of arbitrators — on 3 suits between parties —

Beaubien for Pltff, first action for rent — second for same & third for acct — on the Report, there is a balce in concludes for hom. of report with Costs —

Boston for Defdt according to Report, the parties appear to have all claims & damages compensated — at most from the terms of the report the greater part of the Pltff's demand was unfounded, and that the two last actions were wholly unfounded — The Pltff ought therefore to pay the Costs which are heavy in this case, and the Defendt has set up claims which have in a great measure been maintained

No 1836.
Carmel
Chisholm

On Pltff mo. to reject Defendts plea as filed too late

No 336
Curtis
Tilton

Action on Obligation —

Sewell for Pltff. Defdt has adduced Wr to contradict Oblign which is irregular & must be disallowed & Judgt for Pltff

Boston for Defendt — Pltff has no right of action agt Defendt — It is for recovery of money due upon a contract with other persons for which Defendt was liable, but qr Defendt settled, as well in payt to Pltff, as to the parties interested. — The evidence adduced by Defendt is admissible agt the Obligation, as he has examd Pltff on faits & articles, & on his answers the testimony is correctly made —

Sewell for Pltff. testimony of Thayer is inadmissible, not stated in deposn that he is not allied to parties —

№ 1153.

The King
vs
Cuvillier

action on Bond. — hears on exceptn —

Beaubien for Defdt — The action is instituted as Kings Counsel, in wch name he has no right to institute any action for King — The declaration is in this Cause is also insufficient — the bond declared upon was made to Daniel Sutherland — and it does not appear what right the King has to an action on a Bond to wch he was not party —

McRoss for Plff — The action is brought in the manner in which actions for the King have been supported — this settled in the Case of The King v. Solomons — The action is sufficiently stated — the bond is given to Mr Sutherland as acting for the Crown in a public capacity, as Deputy post master General

Objects to grants Com. Roz. to England asked for Defdt as it does not appear that the person to whom the money was paid, the Secretary of the Post master General had any right to receive it. —

McBeaubien for Defdt — contends that he shews enough by his affidavit to entitle him to the Com. Roz. as demanded.

—

№ 287.

Dyer
vs
Norton

On defendts motion for quashg writ as affidavit is insuffit — and the writ served on a Jour de fete — d'obligation, 1st Jany last ~~on Thursday~~ —

Bourret for Plff — The affidavit is sufficient — It is no cause of irregularity that process was served on 1st Jany — which was a ~~Thursday~~ fete d'obligation —

Gale for Defdt. contends that process has been irregularly sued out and served —

—

№ 256.

Cameron
&
Mears

On Defendts mo. for Security for Costs
Walton for Defts contends that though Plff is in gaol he is ~~not~~ bound to give the Security —

—

The King v. Gleason } On Defendts mo. to be discharged from Gaol on giving bail —

Rossiter for Pr. states that by the affidavits, he shews that he came innocently & truly by ~~the notes~~ the notes in question. —

Ross on behalf of Crown, stated that circumstances in this case shew that Pr. is not a man to be admitted to bail on the present accusation — 2 East. 924 — Dick's Case — Charge within 2 Geo. 3. ch. 5.

Grant for Pr. The bills here are of no value — there is no sufficient charge in the warrant of commitment —

Hamilton et al v. Martinant } On Defendts mo. for security for costs as one of the Pltffs was resident out of the Province

The Court rejected the motion —

Donegany v. Pickle et al } The Court over-ruled the objection to the competency of the witness adduced by the Defendt.

Rouleau v. St Julien — } The Court dismissed the plea of prescription pleaded by the Defendant as unfounded —

Fournier v. Montpellier } Defendants exception to sufficiency of Pltff. decln dismissed —

Moul v. Haykes } Action for defamation. —

Trial by special Jury —

Verdict £25 — damages & Costs —

Wednesday 7th Febry. 1821.

Present
Justices Reid & Foucher

Carmel v. Chisholm } On ~~Defendants~~ Plaintiffs motion that plea filed by the defendant should be rejected and taken from the Record as having been filed too late +

The Plea was due on the last day of October term last but was not filed before the 31st Jany. last, or first day of this Term, and without replying thereto the Pltff on the 5th instant made his present motion +

The court were of opinion that according to the strict rule of practice the Plaintiff was founded in his motion, but they intimated to the bar that this rigor of practice had been moderated by the Court so far as to allow a Defendt although in default to come in and purge that default, if no proceedings had been previously had to foreclose him — they therefore upon this occasion discharged the motion on the Defendants paying the Costs. —

Cameron v. Meers — } On defendants mo. for security for costs, as Pltff was not a resident or domiciliated person within the Province. —

The Plaintiff was stated in the declaration to be late of Lochiel in the Province of Upper Canada, now of Montreal in the district of Montreal, Trader — To controvert this the Defendt exhibited an affidavit stating that the residence and domicile of the Pltff was at Lochiel in Up. Can. but that he had been arrested on a writ of Ca: Sa: & was now held in Gaol under that writ in Montreal, which shewed that his residence while under restraint could not be considered to be in Montreal — But the Court held that while the Pltff was personally before the Court, or resident in the district, without considering the Cause, he could not be held to give the security required. —

Thursday 8th Febry. 1821.

Witness Day

Friday 9th Febry. 1821

Present
Justices Reid & Foucher

Pinçonneau & Belanger & Burton Gart } On Pliffs mo. for ex. on Judg. in Court of Appeals writ of poss. –

Rolland for Gart. mo. for ex. of Judgt. of 31 July 1802 when no Court could be held, nor was held – Besides court of Appeals revised in England –

Over till to morrow

No. 1801
Lacroix & Major – } Action on obligation –

Vigor for Defendt. The obligation was granted in consideration of a discharge of a mortgage qt Pliff had on Defendts. land as coming from Succession of one Paquet but the existence of this mortgage is doubtful, & the Pliff ought to have shewn the existence of the mortgage upon qt. Pliffs Obligation is founded, otherwise there is no value given for the Defendts obligation –

Lacroix for Pliff. There is nothing before the Court to impugn the Pliffs obligation & he must have Judgt –

No. 797
Bethune & Main & al } Action for breach of Contract –

Beaubien for Clarke one of Defendts. pleads for exception, that declaration does not contain any sufficient Cause of action – The original Contract

contract was with Merkle & Turtiss, and the Pliffs were to pay them a fur & mesure as the work advanced, & for this the Caution were bound, but the Pliffs have advanced monies beyond the work done to the amount demanded, for this the Caution were not bound, but not for monies advanced beyond the work for qt. only an action lies agt the person who recd it. Poth. Ob. No 404 party cannot be bound for any incidental acts beyond the terms of his Contract —

Mr Sewell for Pliff, it could not be ascertained to qt extent the work had been done so as to advance money exactly to that amount, if the advance was reasonable in consideration of the work, the security is as much bound as the principal for such money — the subsequent contract entered into with Clark shews that he entered into the situation of the original debtor, and to complete what he was defficient in — Merkle was bound to do work for the amount of the money he had recd it was not contemplated that the money should

No. 185.

McKerkar v Gardner —

On Report of Experts —

Grant for Pliff. the Exp. have not reported upon all the points submitted to them — ought to be sent back to them — At all events Pliff ought to have his Judgt. as Defendr shews no damage, and the rent is on the second quarter — & the poss. of Defendr must make him liable to the rent —

Rossiter for Defendr contends that Report is sufficient and goes full extent of reference — Pliff not entitled to any rent & action ought to be dismissed — And on the other action the Lease ought to be rescinded —

No. 365
Davis & Beatie } Action for goods &c sold & hearing on exceptions —

Boston for Defendt the declaration refers to exhibits he has filed, which renders it vague and insufficient

No. 184.
Dubord. vs. Eno v Dezy — & al } On action Negatoire. —

Ross for Pliff. Pliff propr. of 5/6 of Isle du Pas on gh is a common, and action agt Defendt for cutting down wood on the Soil & carrying it away — Admits right of pasturage to Defendt. but not of cutts down wood

Vigé for Defdt — upon the Interlocutor rendered in this Cause the Court has admitted the parties to make proof on the plea of exception pleaded by Defendt. The Defendrs by that plea state that there is a common on Isle du Pas in gh the Defend. & his predecessors always used & enjoyed a right of pasture for their cattle, and of cutting wood for their use — by their titles the Defendt & tenants have a droit de Commune gh extends to both claims of pasture & cutting of wood claimed by Defendrs By the evidence adduced it is proved that the rights of the tenants in this common extended by actual enjoyment to both rights in common for at least 45 years back — cites. Denvt vs Usage, Usager — & Comte d'Habitans — Repre vs usage, Communauté d'Habitans — The Habitans here pay a rent to the Pliff as Seignior for their right of Commune — refers to Judgt. in case of Cuthbert v Mailloux for cutting wood in Isle Rondin — but the principle of Judgt. there was because there was a title agt the Tenants —

Ross in reply. the Defendrs ought to shew a title for doing what is complained of by this action — the only title

they

they shew is to a right of Common – but a right of Common does not give a right to cut down wood, for this is a right in the Soil – whereas the right of Com^n is only a right of enjoyment of the Soil – There is continued enjoyment of cutting wood upon the Common proved by Defend^r – this was frequently interrupted by prosecutions on part of Pltff, and submissions on the part of the Tenants. – Rep^re v^o Usage p. 378. 9. also. v^o Paturage. –

Pltff moves to reject the depositions of three witnesses examined – some of them are interested some are relations of the parties –

As to damages – the Pltff submits the point to the Court

Mr Bedard of counsel for Pltff – If Pltff is proprietor of the Common, she has a right to the wood upon it – and the defend^r can claim no right to it without title – There is no Communauté d'habitans here, it is a right of enjoyment of a right upon the property of another under a particular deed of Concession – the authorities therefore cited do not apply as reposing to a Communauté D'Habitans — The right of the particuliers is interpreted more strictly than the droit de Commun. – as the particulier ought to blame himself if he has not had his right well ascertained by his contract – By right of Commune is understood a right only of pasture for Cattle – if more is meant, more ought to have been stated in the Defend^r title — The possession of Defend^r without title can be of no avail – besides that possession is clandestine, interrupted and contrary to the rights claimed by the Pltff. –

Vigier for Defd^r The Defend^r has a right of Commun in the Common, comme les autres habitans, which unites Defd^r to a Communauté and admits him to the privileges of a member of that Com^te This gives right to Defend^r same as others had – this prevents Pltff from selling or conceding this Commune, – refers to case decided in June 1815. Ens – Ruard. & Dubord

The poss. of Defd^r in the enjoyment of right of cutting wood has

has not been contradicted by any evidence on part of Pltff
On the Pltff's mo. to reject the depositions of certain Witss
it is unfounded, as the Witss are all competent —

Dixon vs Finchley } Action dismissed — The Court considered the erection made by the Pltff of dams & locks on the River St Lawrence, as a nuisance, out of which no right of action could accrue to him for the use of those Locks by means of which the navigation of the River had been kept open, although this navign might have been thereby improved. —

Wildsal vs Brook } On Pltffs mo. for publication of a Com. Rogte —

The Com. had been obtained to be executed in Scotland, but a return thereof was filed without any evidence to shew from whence it came, or where it had been executed — On this account the Court rejected the motion —

Duesse — vs Duesse dat } The action in regard of Gendron, at whose the conclusions en declaration d'hypotheque had been taken, dismissed with costs — but the exception pleaded by Chapdaine, also dismissed, the Court considering that he had no right to complain if another, altho not liable, was joined in the action with him —

Monk v. Archambault	Action dismissed with Costs —
Shuter et al. v. Jeremie	Judgt for Pltffs —
Wilson & Robertson v. McDonell	The Rule for the amendment declared absolute —
Legault v. Petit	Interlocutory for Experts —
Lesiege v. Lesiege	Judgt
Gauthier + Mallet	Judgt

Saturday 10th Febry 1821.

Present
Justices Reid & Foucher

~~Langevin~~.
vs
No. 1023
Pr. Cadieux
&
Dizanard

On rule to shew Cause –

No. 1791
Yule & Co
vs
Pardy
&
Econtra

On Report of Arbitrs
Quest as to Costs –

No. 263.
Langevin
&
Beauchamp

On action for money had & recd &c

Rolland for Pltff – Defendt. recd. from Pltff 1000# which Defendt. by his plea admits to have recd upon another contract than that stated in declaration – this may be considered as a plea of payt. or of compensation – 9th obliges defendant to prove what he recd – at all events had Defendt. even proved the agreement he could be entitled only to his damages from the agreemt. not havg been executed but could not retain the sum – The Defendt. appears to have 1000t. belonged to Pltff –

Bedard for Defendt – The action here is ~~for~~ on a certain specific contract – money lent – The Defendt. has denied the fact – & as there is no proof action ought to be dismissed – The exception pleaded by Defendt altho' not proved, does not admit the demand as a plea of payt. or of prescription would have done – the defendt. here does not admit the existence of the debt claimed –

No. 160.

Gibb & al' vs Gamelin } On Pliff's mo. to be permitted to fyle the last will & testament of late Gionovilly, which was not in his possn when he sued out his action —

Sec 14. cut. 3

Beaubien for Defendt — The affidavit not sufficient to support the application — The application too late — the Defde has pleaded & Pliffs replied —

Rossiter for Pliff — the papers —

No. 1890

Burer vs Willard } On rule to shew Cause why pleads filed by Pliff stiled a demurrer & excep. to plea of abatement filed by Defdt —

O Sullivan for Defde — the Pliff has pleaded irregularly, as had Defendt filed an irregular plea, he ought to have moved to reject it —

Blannerhasset, the pleads of Defde ought to have been supported by an affidavit of the truth — the matter of fact pleaded is not matter of substance & not material — the person pleading is the same person who is sued — 5 T. Rep. 487 — this is bad when pleas of abatement not material, not allowed. Murray 1 Bos. & Puller. 645 — after appce 1. B. P. 250 — Cromp. P. 128 Barnes 348 —

Grant of Counsel for Pliff — 7 Earl. p. 383 — when plea is insufft the party may demur to it —

O Sullivan in answer — the demurrer is founded on principle that plea of abatement of Defd does not answer the demand — ought to have moved to reject it — because plea of abatement cannot answer demand — Sec. 10. p. 21 —

No. 609.
Davis
v.
Sanford

action of account —
Hearg on Law

Boston for Defendt. Decln. refers to an exhibit & is not sufficient — it contains nothg to gt. Defdt. can plead

No. 117.
Bowron
v.
Brown

action for balce. of Promy note —
hearg on Law

Boston for Defendt. The Indorsement was made long after note became due near 12 months — & therefore Defendt. entitled to set up same plea agt. Indorser as he could have of the Payee —

Walker. Defendt. not entitled in this case to the plea he has set up. —

No. 1084
Gordon
v.
Jeremie
&
Porteous
par rep. d'Instr.

action on Py note —
over by consent

No. 102.
Cameron
v.
Gamelin

On motion by Defendt. to be permitted to set down Cause & proceed ex parte for want of a Replication —

Pliff. states that parties have settled & in consequence he moves to be permitted to discontinue cause without payt. of Costs —

No. 142
Reid, Cur'
vs
Lang et al

On Defend^rs mo. for hear^g Def^ds on their serment suppletoire —

Beaubien for Pliff — the question whether the smaller note was included in the larger — Pliff as Curator cannot admit it, but submits to Court —

Monday 12^t Febr^y 1821

Present
Justices Reid & Foucher

No. 969.
Peck.
vs
McLean.

On report of arbitrators. —
Sewell for Pliff, asks hom. of P. Verbal —
over till to morrow

No. 281
Burton
vs
Yule

action Petitoire —

Boston for Defend^t — The Defend^t purchased from Samuel Potts who was the agent & att^y of the Pliff — in 1803 Potts was named his att^y & continued such until 1815 — Potts had besides his general power of att^y private instructions in regard of sales of certain lots, & among others of the lot in question — the instructions No. 13 refers to the lot in question, authorising Potts to sell the same — all the lots in question under these private instructions were sold by Potts & the sales ratified, except the sale to Defend^t — but in the revocation of the Power given to Potts makes no mention of the Def^ds lot, as it was looked on by Pliff as sold — Exhibit No. 5 — proposals of purchase by Defend^t — 19 Octr 1812 — his poss. ever since — the answer shews that a power was req^d from Pliff — but as Pliff had notice of

this

this proposition and his silence was acquiescence to the demand. There is a ratification of all the acts of Potts by Exh. No. 3. by Henry the new Atts of Pltff —
Poth. Mandat. No. 99. where mandant allows the mandataire to act knowingly for him & does not contradict act, his silence must be considered as acquiescence & confirmation of the act of the
475 mandataire — Do promesse de Vendre — 1 Bourg. 475 & 488. —
488 cites other authorities. —

But as Defendt is possessr of good faith, all the improve-
343 5 7 ments made on property ought to be reimbursed to him — cites Poth. prop. 343. 5. 7. — There is evidence of the tender made by Defdt of the £100 — the consideration of the ~~[illegible]~~ Sale — it was not necessary to effect the Sale that the money should be paid down, particularly as no question ever was raised on this subject —

Rolland for Pltff. Mr Potts never had no authority to sell the lot in question, and never did sell — The paper called Instructions to Potts in 1801, is not proved, it is merely a copy proved only as having been copied by Mr Potts — but the original is not proved, even by Potts — & 2 Wrk were necessary the power authorising acts done by Potts as agent does not extent but to acts Potts had a power to do — Potts never however sold to Defendt but in the answer to Defendt referred to a power from Pltff. — this power was never given — & the contract therefore not binding — There is no evidence that Pltff ever had any kn. of the conditional sale even of Potts to Defendt —
That Defendt is not entitled to any reimbursement of the improvements — as he knew he had no pretence to the property in the soil — the necessary ameliorations only, as necessary to the Pltff ought to be allowed — The Defendt cannot claim the execution of the Sale without tender of the money —

Boston in reply cites Poth. Ob. No. 801 — Verbal testimony is here admissible to shew the accomplishment of sale — & this from the possn of Defendt & the letter from Potts consenting to a Sale —

No. 746
Campbell
Hall — } Qui tam act. for practising medicine without licence
Grant for Defend^t — Pliff does not shew that he is entitled under any law or Stat. to bring the action — it is defective

No. 1651.
Roussy & al
Roi — } On debats de Compte & soutenemens —
Bedard for Defd^t not bound to act^t for more than he rec^d & not of the fruits & revenus — refers to testament of the v^ve Lecourt on this head — The legatees have no right to the fruits, they are entitled to the soil only accord^s to the will —

Rolland for Pliff. claims as fidei-commissaire — & also as Ex^er — claims a commission of 24,000 for a gestion of 5 years at 5 of Cent p^r an. which amounts to 1/4 of all the Estate — The Defend^t is a mere Ex^er under the will, with power of administration for 5 years in case it became necessary — with power to name one or more Executors under him if it were requisite. — there was no fidei + commis in favor of Defend^t + Ex^er is bound to put out all monies, & ta^t cont^t for interest — Rep^re v^o + Interets — the Curator to an Interdict is bound to do so — That the charge of Ex^er is gratuitous Laiombe. v^o Executeur — Rep^re v^o Ex^on test^n p. 160 — N. Dunz^t v^o Exon Test. Sec. 4. No. 1 — The Defend^t not proprietor on charge of restitution on certain Condition — here a mere gestion was only given — Poth. Subn 499 + J. Furgole Test. 363 —

Bedard in reply. The Defend^t was expressly constituted a fidei-Commissaire under the will — he had power to sell, and he was accountable only to restore the property, but not the fruits — That Defend^t was accountable from the moment he realised the Estate to render act^t & therefore he ought not to account for interest when so liable to be called upon — if Pliff have delayed till now to bring their action it is a proof they were willing that monies shd remain in hands of Defd^t —

No 155
Corning
v
Boan

action for wood sold

Beaubien for Defendt. contends there is no proof of sale or of delivery. +

No. 433
Jary. —
v
Marmier
et al

On action to obtain rescision of deed

Rolland for Defendt. pleads prescription of ten years — action sued out 1 day of 11th year — That one of the parties interested is not sued, one Leonard agt whom no action can now be brot. The action is founded on a lesion d'outre moitié + land sold for 6000# payable in 30 years, without interest — such a long credit presumes no want or necessity in the Seller qt is the only case which the law admits. Poth. Vente. No 252. 253 — The real price stipulated here is 6000# — and the delay of payt does not alter the nature of the value —

Bedard for Pliff — The action was served 18 Augt 1819 on Marmier, which was within the 10 years — not necessary that action should be brot agt the actual possessor of the land it is sufficient if brot. agt the purchaser —

Poth. Vente. No 339. 343 — 347 —

The sum stipulated payable at so long period as 30 years is much below value of land, & therefore action is founded cites case of Courville v. Fischeau — where principle was admitted Poth. Vente No 18 — The Defendt. should have pleaded that by this sale the Pliff meant a gratification to Defendt. of the surplus without this the authorities cited by Defendt. do not apply —

No. 98.
Brackenridge
v
McBarton

action of seduction +

Hearg. on Exception

Grant for Defdt — First count for having got Girl wt Child — not P. she had been brot. to bed — 2 Count promise of marriage —

No. 1635
The King v Vizer —

On certiorari —
On motion to quash sentence of Qr Sess. —

Ogden for Inspector, sued out Writ, as it touches a question how far Inspector has right to make P. V. out of the extent of the City — The P.V. was set aside from want of form. The Judgt rendered only by two magistrates, although heard before three magistrates — and one of Justices who afterwards sat in Case and gave Judgt. —

No. 242
Pickle v Hunter & Stevenson oppr

On opposition —

Bleury for Oppt — contends that he has made proof of the receipt of the bailiff selling the things —
Grant no proof of identity —

No. 1586
Froste & Porter v Christie & Street oppr

No person appd to support oppr — dismissed

No. 1540
Smith v Alger —

Action for work & labor
Hearg on Exapn —
Mondelet for Dfdr — Seller too general

No. 956
Gates & Co v Martinant

on mo. to change conclusions to Country —

No. 681
Hibbard & al
v
Hart & al

Action on promy note ~~for~~
On mo. to change conclusions to Country —

Vizer for Defendt — one of Defdts is a tavernkeeper the other is a trader, & the Pltffs are traders — note is joint & several — Defendts would be liable to contrainte for satisfaction of Debt —

Ogden for Pltff — The Defendts have united in their defence, and one of them not entitled to trial for Jury — both must go before the Court for trial —

No. 385
McCallum
v
Hart & al

Same question —

No. 1073
Delorme
v
Phenix Insurce Company

On Report of arbitrators
Grant for Pltff. asks for hom. of part of award —

Ross for Defendt — a certain quantity of the effects have been saved, & then the Defendts have liberty to return & this they do —

Grant. Poth. assurance No. 115. 117 - 121 - when thing is in a great measure destroyed — that altho' a part of the types have been saved, they make part of a whole, & are no longer of value to the Pltff

No 142
Reid, Cur
Laing et al

The Court reserved to determine upon the defendt motion until after hearg parties on merits. —

No 287
Dyer
vs
Norton

The Court rejected that part of Defendt mo. for quashing process because it was served on 1st Jany as being a holiday — but admitted parties to proof as to the grounds of information upon which Pltff founded his affidavit. — Chorrin on Guy Pape. p. 344 —

No 117
Bowron
vs
Brown

Demurer to Defendt plea was rejected.

No 975.
Perrault
vs
Bonwick

Pltff's motion over-ruled — the exception filed by defendant being in its nature a plea to the action, and not of a dilatory nature, which avoids the question of right or merits of the demand.

No 1083.
Bridge
et al
v
Clarke

Defendt conclusions to Jury, ordered to be changed. a

Henshaw
vs
Tilus
&
Baroness of
Longueuil oppost

The Plaintiff's motion rejected — The Court considering that the Pltff was not injured or delayed by the laches of the Oppost which had been cured before the Pltff made his motion by filing the exhibits. —

No. 809. Davies v. Nichols et al.	Plea of exceptions pleaded by Defend^t dismissed but without costs to Pltff —
No. 551. Stuart v. Forbes & Rogerson et al. Op^ts	The Pltff motion rejected. — Pltff not entitled to move ag^t Opp^t for proceeding on Oppos^n as he is in default. —
No. 102 Cameron et al. v. Gamelin	Pltff all^d to discontinue on pay^t of Costs —
No. 1033. W. & J. Forbes v. R. Kerr —	action dismissed — Evidence not suff^t —
No. 1727. Amour v. Yarker	Judg^t for Pltff — the Court considered that there was no evidence before it to shew at what time the indorsement had been filled up. —
No. 1890. Burer v. Willard	Defend^ts mo. dismissed. —
No. 1817 Shuter v. Thayer —	Judg^t dismissing the plea of Exception to the Plaintiffs declaration. —
No. 1752 Chapman v. Foke —	The Court were of opinion that Def^ts tender was sufficient & dismissed action —

No. 1718 Malcolm vs Porteous & E. Contra	Judgt on award —
No. 834. — McKenzie vs Hallowell	Judgt allowing to pleff only Interest of the principal sum of money in hands of Defdt —
No. 619. Foretier vs Morrison	Action dismissed —
No. 56 Millar vs Curtis	Judgt on Pyhote —
No. 1801. Lacroix & Major	Order for proof. —
No. 1542 & No. 1627 Orkney vs Orkney & Scott	Judgt
Donegani vs Moreau & Audette	Judgt on motion. —
Perrault vs Martinant	On Pleffs. mo. to reject conclusions of Defdt to Country Boston for Defendt — The Defendt altho: stated to be a Tavern Keeper, yet must be considered to be a mercht — the transaction between parties being of a mercantile nature. —

Tuesday 13th Febry 1821.—

Present.

Justices. Reid & Foucher.—

Perrault. & Martinant } Motion to change conclusions of plea granted

Wednesday 15th Febry

Present.

Justices. Reid & Foucher.

Belanger & Lussier.— & Contra } X Mr Roi, the attorney for the Plaintiff moved for a distraction de frais in this case under the following circumstances.—

The Plaintiff obtained Judgment on the principal demand agt the Defendt in October term last for a sum of £77.8.8/2 wt interest and costs afterwards the Defendant obtained a transport to be made to him of a debt due by the Plaintiff to the amount of £25— and subsequently there was a Saisie-arret sued out by one Pickle upon all the monies of the Plaintiff in the hands of the Defendant, to the extent of £500.— under this situation the Attorney contended he was still entitled to his motion as the saisie-arret could not affect his right, and as there

there was sufficient monies in the hands of the Dep^t.
To this motion the Plaintiff present consented. —

On the part of the Defendant it was contended that after the Saisie-arret no such distraction could be allowed, as it tied up the right of the plaintiff over the monies in the hands of the Defend^t. until the merits of that Saisie-arret should be determined. —

The Court however were of opinion that the Saisie arret did not preclude the Attorneys right to his Costs and granted the motion. —

see. Rep^re. v^o. Distraction de depens. p. 731. —
N. Denizt. Eo: Verbo. §. 2. N°. 4. —
1. Pizeau. 419. 420. —
Pothier. Cont. Mandat. N°. 137. on note

Thursday 15th. Febry. 1821. —

Present
Justices Reid & Foucher.

N°. 381.
Chorette & Gravelle } action for false Imprisonment —
on Excep^n.

Lacroix for Defend^t. — the action & proceedings upon which this action is founded, are not yet at an end & therefore action cannot be maintained. —

Bleury for Pliff contends that his action is well founded

No. 1705
Ducharme
et
Cicire } On action en complainte & reintegrande —

Mondelet for Defend.t — The plaintiffs poss.n is not well founded, the action is by a married woman stated to have been separated from her husband, & it is upon the poss. of the wife alone that action is brought —

Grant for Pliff. under 96.e art. of Custom, the Pliff altho. not in poss. for a year & day may maintain this action —

No. 1518
Curtis & al
~
Pomeroy } action for goods sold

Henshaw contends that Pliff has not proved his demand, particularly in regard of wood — there being but one W.s —

No. 5.
Pickle Jr
~
Saucier
&
Bagg & al } On rule to shew Cause why Pliff should not be held to deliver over a raft of wood to Intervs party —

over

No. 1027
Cadieux & al
~
Digânard } On rule to shew Cause why Defend.t should not be discharged from his confinement on Ca: Sa: inasmuchas Pliff has not discussed his real Estate —

Bourret for Pliff the Defend.t does not shew that Defend.t has any property, sin fait has none, as he is ready to prove

No. 1862.
Livernois
v.
Lavigne

On motion of Pltff for hom. of acte de partage
Defend. in default.

No. 776
Froste & Porter
v.
Throop

action on a Promy note —
Excep. dism.

No. 59
Gravelle
v.
Chorette

action on deed of sale. —
Bleury for Defend. The defend. owed nothg to Pltff when wrt of Ca. ad resp. was sued out agt him — That the evidence adduced by Pltff is insufficient to shew any deterioration of the property by the Defend. or that he was about to leave the Country — on the contrary the evidence for Defend. shews that he has made improvements on it since he purchased the land. That the arrest here is illegal, as the debt was not a personal debt of Defend.

No. 380.
Lusignan &c
v.
Belanger

action for arrears of Rente Constituée £65 — and for damages for not having fulfilled his obligations entered into wt Pltff

Ob. 92

Roi for Pltff. The Pltff is entitled to damages on this contract, and ought not to be bound to ask merely a resiliation of the Contract which might be prejudicial to Pltff, & this contract is liable to same interpretation of all other Contracts Poth. Obl. No. 92 —
Grant for Defd. Defd. built a house according to Contract, although not to same extent. — enough however to secure Pltff for payt. of his rente. —

No. 969
Peck
&
McLean

action Petitoire — Damages referred to Arbitrs & hears on report —

Ogden for Defendt. The cause not ripe for Indt. as the report does not finally determine between the parties — this was already complained of by Defendt. and a new reference was made to Arbitrators — As it appears there are matters in dispute between the parties on an action by Defendt. agt. Pliff — before other arbitrators and therefore Court ought to suspend its Jugt. in this Case

Sewell for Pliff — The matters alledged cannot be admitted by Court to suspend in this Cause —

No. 6
Peck
McLean

action on deed of sale —

Ogden for Defdt. — This case was also referred with the others —

No. 1723
Kauntz
v.
McBarton Lal

action on pr. note — agt. Indorsers —

Grant for Defendt. — The Defendt. pleaded that parties were not traders & a blank Indorsement, that Defendts. are not traders —

Bender for Pliff. The maker of note is a trader & that is suffit. but all parties are merchts. & proved so —

No. 985
Houdlow
v.
Christie

action on an Obligation —

Walker for Defend.t the wife altho' separated cannot bind herself or her property by notarial obligation cites. Poth. Com.te No. 15 — parties live together —

Com.t No. 15

Bleury for Pliff. Sep. de biens. is not annulled by parties residing together. cites Rep.n v.e Separation de biens —

No. 232
Taschereau
v.
Piön —

On Report of ~~arbitrators~~. Experts —

Rolland for Pliff prays hom.n of report —

Vigé for Def.d The Experts have proceeded irregularly they have taken up the answers of Def.d on faits & art ick which they were not authorised & had no right to do — and as their report is founded on it — The Experts have not been legally sworn, being sworn before a Justice of Peace —

over

No. 1640
Sanders
v.
Huntoon
&
E contra

On Incidental demand —

Both parties refer to Defend.rs answers on faits & art — Sanders however claims that balance he acknowledges to be should due should be set off at what Huntoon owes him

No. 323
Marchand
v.
Nolet
&
E contra

action on prom.y note —

Boston for Pliff — Pliff demand made out — but Defend.t has set up an Incid.t demand for wood of a bad quality sold him by Pliff —

Bourret for Defdt. The Incidental demand is sufficiently made out by the evidence adduced -

No. 353.
Perkins. v. Lagrange & al.

On mo. to change conclusions of plea - Both parties joined in the Issue to Country

No. 772
Hunter v. Perrault & al.

action for goods sold & delivd

Rolland for Defendt. McKenzie plea - non. assumpt. - and Novation - Pleff having taken a promy note for the goods in question - at all events ~~as~~ action is premature as last installment of note is not yet due - refers to case of Hutchison & Lester & al. Octr. 1815 - That the Pleff cannot at enquete produce the notes, he ought to have shewn by his declaration what had become of the notes - but here the existence of the notes proves the Defendts. plea -

But here there has been a novation of the debt by taking the note on the sale of goods - 1. Evans Poth. 380. No. 557. 5 T. Rep. 513. Cussley & al. v Baldwin - Repre. vo. Novation Denizt. & Lacombe. vo. Novation. The Defendt. gave a letter to Pleff's agent admitting his responsibility for the sale of the goods notwithstanding the arrangement wt. McKenzie, but this letter cannot affect the rights of McK - altho' Perrault here is silent - There was delay given on first contract which cannot be proceeded on till that delay be expired cites. 4 East. 147. - 3 Bus. Pul. 582 Dutton v. Solomons - 1 N. Rep. 330 -

4 East. 147

Grant for Pleff & The Pleff. altho had no authority to make any novation. Obl. No. 557 - no intention of parties to create novation - nor has any been created - The notes here creates no new debt, as they are payable to Alexr. Allison, & do not affect Plaintiffs right, who cannot be bound thereby -

165 The party is at liberty to declare upon the original contract notwithstanding a note being given. cites Bayley on Bills. 165.– 7 T. R. Owenson. vs. Morse – Here the notes have been produced in Court, which shews that no injury can arise from them – The letter given by Perault, was upon the express condition that there should be no novation of the debt, and this was acceded to by McKenzie, as appears by testimony of Allison

Friday 16th Febry 1821

Present
Justices Reid & Foucher

No 908.
Scott & al
Ermatinga

action of Defendt for an illegal Seizure of Pliff effects.–

Rolland for Pliff – the act of Defdt proceeds from a wrong opinion entertained by him touching the tender of satisfaction made by Pliff of the amount of the debt & damages contd in execution – the offer made exceeded even that amount – The money offered was current Coin under St. 48. Geo. ch. 1., being French half Crowns, 9h was worth 2/9 – see also Stat. 1819, which makes French pieces struck since 1793 is equally current for same value. The return of the Defendt upon the writ of Execution states that the pieces of Coin tendered by Defendt were defaced and defficient in weight – The Defendt has attempted to make proof of the defficiency in weight, & many were defaced but none of the pieces were produced to verify them, nor does it appear what has become of them, the piece itself was the best proof, & ought to have been produced by Defdt in whose custody they were & still are supposed to be – The Defendt retained improperly £99 – of 9h he paid £84 to Pliff atts – the difference is retd by Defdt for his costs & poundage – but part of this was on acct of the Seizure having lasted a day longer than it ought – Sheriff not entitled to poundage where money is paid into

into his hands, as this is not to be considered as a levy of money —

Mr Blannerhasset of Counsel for Pltff — It is in proof that the seizure was continued for a length of time after the tender was made of the money — The impression of the Coin carries its value on the face of it — Encyclopedie Methodique Vo Monnoie. great penalties laid by Kings of France for buying up money.

1 B. 277 value of money consists of metal, impression & denomination 1 Bl. Com. 277. 8 — cites case of mixed money. Davis's Rep. 48 — Repr Vo Monnoie — numerical value of money is proof of its value —

Sewell for Defendt — No ground for this action — The Sheriff was in doubt respecting his line of conduct on the monies paid him, this he stated fairly to the Court — there was no falsity, nor no concealement in the return — but this action is for a false return, which the circumstances do not support as malice & falsity must be made appear — The great influx of the french half crowns into Province, occasioned a diminution of their value from their depreciated ~~value~~ & diminished appearance — When money was brot to Defendt he had a right to count it over, & when it was ascertained that there was enough to satisfy the debt, he gave an order to discharge the seizure on 8 April —

A false return, must be untrue, & from this malice is implied Imp. Shff. 287. 1. Bac. Abr. 58.

There is no evidence before the Court in what manner the Sheriff's return has been disposed of, the action brot before this was done —

As to question of poundage it is not before the Court — Com. Dig. tit. Money — 6 circumstances must concur to make current Coin — weight is one of these — impression also is requisite. 1 Hale P.C. 196 — Repr Monnoie. see arret where money gt had not the empreinte on it was forbid to pass current — many of the pieces here had no impression and were defficient in weight — this was a ground for Deptt to act with prudence in regard of this money —

Rolland in reply. The return of Sheriff is tortious and false, he states that he rec^d pieces q^t were not Current & not half Crowns — the fact was otherwise — we must look for the numerical value, not its weight — the Coin of foreign Countries is taken for its apparent or numerical value when introduced The Sheriff admits by his return that the pieces tendered were half Crowns, sufficiently to throw proof on him that they were not half Crowns —

The Defend^t took more money than he was entitled to to the extent of £99 — for which the Pliff^s are entitled to their action, whatever the extent of the damage may be —

No. 404.
Bowlan
Johnson

action for work & labor as a mason. —
Grant for Defend^t The Pliff was taken into Defend^t house for charity — was allowed 15/ ℘ month for his services — has been fully paid for all the work he performed — no evidence to support demand —

No. 1573
Page
Peck
& Contra

on award of arbitrators — bal^ce att^d £4.17.0
Boston for Defd^t — ought to have his Costs —

No. 1759
Raymond
Pickle

action by pothecaire —
Grant for Defd^t moves to discharge, rule for hearing cause on act^t of absence of Defend^t — when service of rule to answer on faits & articles was made on him —
Rolland for Pliff — application too late — default agt Defend^t — service of Rule regular —
Motion over-ruled — party too late & not now before Court to answer. —

Grant for Defd^t there is no evidence in Cause to shew that Defd^t is in poss^n —

No. 435
Brawders
Gerrish

action for balce for work done — & on award —
Rossiter for Defendt partnership between Pliff & another who was indebted to Defendt — & also board due to Defendt from Pliff. qt. remains to be settled by Court —

No. 1771
McMillan
Kerr

action on enticement to obtain certain articles of wearing apparel. —
Boston for Pliff — only question now is in regard of Costs, as articles have been delivered up the goods —
O'Sullivan — Husband was absent — & ought not to be bound for what the wife did. —

No. 446
Curotte
Yule

On action on deed of sale —
Boston for Defendt Deed mis-stated —

No. 109
Northedge
Porteous
& ux

action for inveigling away Pliff's servant on excepn
O'Sullivan for Defendt — The woman is the wife of the Defendt — improper Counts have been joined, two Counts in an action on case, & Wt. 2 for assumpt — 1 Pegeau. p. 37 — 1 Chitty on Pleads. 198 — assumpsit & action on case cannot be joined. —
Blannerhassett for Pliff — action not ex delicto — Counts may be joined. 2 Salk. 772 — misfeasance & trover joined 2 Wilson. 319 — 3 Wilson 348 — Case & assumpsit joined — Hewbo may be sued alone 2 Kl. 722. 3 Wils. 141 —
3. Wils. 422.

No. 656.
Boston
Nord. &c

action on Promy notes.—
O Sullivan for Pltff — asks for Judgt — in consequence of subsequent proceedings now filed.—

Rolland for Defdt — The cause must be maintained on the principle on which the action was brought — the subsequent transactions cannot be received to influence the issue between the parties — ~~at all events~~ the defence of Defdt is founded by the very grounds on qt Pltff asks for Judgt — at all events the Pltff. ought to pay Costs — but this even is not regular — the Pltff ought to have asked leave to plead the new proceedings, to qt if Defdt raised a contest, he might be condemned — Pltff in this case is neither interested in the note, nor the bearer of it — nor has he any knowledge of the suit.—

O Sullivan for Pltff — There is no desaveu in this Cause & Pltff is regularly before Court — he is the agent for Nichols & Sanford & as such entitled to maintain the action — cites case in appeal, Armour. v. Maine — It is evident that Nichols & Sanford are the substantial Pltff — & they shew by clear evidence the connexion between this suit & the Judgt rendered ag them at suit of Defdts & which shews that the bar pleaded to the Pltff's action has been removed —

No. 241.
Davies
Snow

On Pltff — mo. to ~~refer~~ discharge rule for trial on affidavit that parties had agreed to leave all matters in dispute to arbitration — and on Defendts — mo. to dismiss Cause by non-suit; as Pltff did not proceed

Ogden for Defdt the affidavit of Pltff not sufficient here, and by reference to arbitrators, the parties have taken Cause out of this Court —

Mr Sewell for Pltff — the Court will not dismiss action, where parties are in good faith

No. 1795
Dufresne & Poudret } To get Interlocr. to render acct —

No. 227
Steel & Jackson } Pliff. accedes to tender made —

No. 141
Menard & Boushillier & E Contra } action on Obligation —
Vigé for Defdr. has set up an Incidental demand for 1000# — has examd Menard on faits & articles, move now that he be held to answer over to 2d Interrogatory

No. 753
Vincent & Lambert } To name Praticien to draw acct

Saturday 17th Febry. 1821. —
Present
Justices Reid & Foucher. —

No. 1642
Galipeau & Gosselin } action on deed of Sale —
Psullivan for Pliff action for what was left on the land, as represents his Minor Child who is now deceased —

Viger for Defendt — The death of the minor does not entitle the Pliff as her heir at Law to demand the money left in the hands of the Defendt. until that Minor should come of age or being provided for by marriage or otherwise — The age of the minor, being very young at the time of the purchase, was a consideration for the purchase of the Estate, as he contemplated to retain her rights or share of the purchase money for 12 or 13 years

years — The words, ou autrement, could apply only to some necessity of the minor, as in case she were going into a Convent, or for such Similar cause — for any cause for which the revenue or interest was not sufficient — the dot of the minor — but none of these Causes exist — and the Defend^s cannot be bound to pay the money until the time at which the s^d. Minor shall be of age — In the Inferior Court the doctrine is so held ates case Charon. v Charon —

There is part of demand for 400# — & interest for which the Pliff will in any event be entitled to have his Jugt

O Sullivan for Pliff, says he is ready to give security for what is due to the Seigniur on the land, in regard of the 1000# — yt — is enough — As to the sum of 2600# — payable to the Minor, the Pliff, as her heir is now entitled to it, had their been no other term of payt — of money than the majority of the minor, Pliff's action might fail, but there are other terms which were conditional, such as Marriage Dowry, becoming a nun, or extra-expense, and if so, equally the Circumstance which has happened, the death of that Child — because there is no further necessity to preserve that money for the use of the Child — the clause must be interpreted agt. the purchaser, who should have stipulated with more certainty —

No. 1032.
Cadieux & Morand

On action for goods sold. —

Roi for Pliff — only question, is whether the credits set up by the Defend^s should be sett off agt the present demand or other demands & ant. between the parties The evidence not appearg satisfactory to the Court, it ordered a statement of all former transactions between the parties — this however not the most regular, as parties do not keep regular books, but as no statement to the contrary has been produced, that produced by Pliff ought to be received

Vigé for Defend^t — It is no proof of bad faith in Dep^t if she has produced no Statement under the Interlocu^n — the case is, that she has produced all the papers she had There is great irregularity in Pl^ff — act^t — The Dep^t shews by one of her exhib No 1. q^t under a certain date contains 8 articles & is receipted — whereas in the act^t now produced by Pl^ff under same date a great variety of articles besides those in Defend^t act^t & for q^t she holds a receipt —, same thing appears on some other dates in his act^t comparing it with the exhibits of Defend^t — The Pl^ff now produces a Statement wholly inconsistent with his answers on facts & articles, as he avows that he keeps no books of act^t & could not therefore make out this Statement but from memory, or to meet the intention of the Interlocutor —

No. 978.
Perrault & al
vs
Martinent

action for Prom^y Note — Indorsee ag^t Indorser
hear's on exceptions —

Boston for Defend^t — he is stated to be an Inn-keeper and by decision of Court not entitled to a trial by Jury the indorsement here is not filled up, without which Pl^ff cannot maintain their action, as the person making the Indorsement is not a merchant —

Beaubien for Pl^ff, the exception is without found^n as a note made by a merchant to any person whatsoever can be indorsed in blank —

Reid, Cur
vs
Lang & al

action on prom^y Note —
Beaubien for Pl^ff — case made out — asks Jug^t
Grant for Def^t — no value for notes — given as security for another person. —

No. 457.

Deshautels & Trimblay } On award of arbitrators —
Bourré for Defdt — delay too short for proceeding as Rule was returnable 1r next Term — & under this apprehension his client has not appd —

No. 1515.

Duquet & Sérré } On Pliffs rule to shew Cause why rule of reference to arbitrators should not be set aside as arbit. of Defendt refused to act, & thereupon parties be allowed to proceed before the Court —

Mr Vigé for Defendt — the course ought to be to name another arbitrator in the place of Neveu who refuses — but cannot consent to bring cause before the Court, as it is of a nature to be left to arbitrators —

No. 189

Burer & Willard } Action of trespass & assault —
Defendt has pleaded a plea of misnomer to which Pliff has pleaded a demurrer, that Defendts plea ought to answer demand — & conclude to the Jury — to this Pleading the Defendt has demurred — as his plea of abatement ought not to answer action — ought to have taken advantage of it by motion. —
Blanchhasset for Pliff — a demurrer to demurrer is an unheard of proceeding — The plea of misnomer sets up a matter of fact, & ought to conclude to the Country. — The defendt by his appearance cures the defect, if any, & is a bar to this plea — 1 Bos. & Pull. 250 — Defendt has also made defence — which is a waiver 3 Bl. Com. on art. Pleas — quotes Sulk. 217. 2d Raymd
By his demurrer to the Demurrer Defdt admits the identity of his person as Defendt T. Rep. 487. —

Grant of Counsel for Pliff — The pleads of Defdr is irregular — Defendr pleads misnomer first, and is not entitled to plead a plea of Variance — 1 Chitty 439 — 7 E. Rep. 383 —

O Sullivan in reply by rules of prac. sec. 30 — trial by Jury only on merits, but not on Collateral facts — the Defendr has concluded in his demurrer to the Country —

That appearance must be recd before party can make any plea —

That Defendr has not pleaded but in abatement the plea of Variance is no waiver of plea of mis-nomer —

Defendr has pleaded plea correctly, not by admitting his identity, but stating himself to be a different person

No. 1553.
Charland
to
Mathe pers
&
Leroux sal

On distribution of moveables —
Roi for Pliff — is entitled to costs of proceedings 2 Bourg. 684. tit. 8 — No. 50 — costs of sale & those made for effects same are privileged. 4 Vol. Repr
Vo Contribution — 1 Pigeau 682. Fer. art. 177
frais de Justice & all those made to effect sale are preferred

Vigi for Defdr & oppr The costs of Pliff — Judgment cannot be privileged in this case —

No. 245
Quesse
to
Quesse fils
& al —

On motion for Judgt — on evidence before Court

No. 874
Mc Donald
to
Maranda

No. 388.

Atkins v. Curtis et al } On action by Pliff as Indorsee agt. Defendts as makers —

Bourret for Defendts — The ~~action~~ note on which Pliff's action is founded is not a promissory note — it is stated: Bon to such a person, & not, I promise to pay — The note not made by Defendts but by their Clerk, and it is not proved that he had authority from Defendts to sign such notes for them — Here Drawer of notes are not stated to be merchants, Indorsement not sufficient as it states — Pay — without stating what — not the contents of the note — That many of payts made were before the transfer of Note — and if the action can be maintained, it ought to be on deduction of such payments —

Ogden for Pliff — The word — Bon — is always recd as tantamount to a promise to pay — & if the note contains all other essentials, this does not vitiate — Pay — to Pliff — is always recd to apply to the Contents of the note — The payts made by Defendts cannot apply to note when it was out of hands of Payee —

No. 133.

Lussier et al v. Berthelet } action for wheat sold. —
Bedard for Defendt no proof of the partnership of Pliff — as alledged, nor is there any proof of the Plaintiff demand —

No. 847.

Vian et al v. Bouthillier } Action agt Defendt for rights on an acte de partage
Wrazé for Defendt — pleads compensation, by articles furnished by Defendt to Pliff — and as this

this arises out of the very act on which the Pliff's action is brought —

Parties agree to a rule of reference

No. 1531

Archambault
val. Syndics
&
Larochelle

Action agt. Def for insufficiency of workmanship

Bedard for Defdt. This action cannot be brot. by the Pliffs who have no claim to damages by reason of anything in their declaration — that the action belongs to all the parishioners of St Pierre & they ought to be plaintiffs by their Syndics. — Denizt. Vo Comte. d'Hab. No. 33 — Here the parish is not represented & if Defendt. had any Incidental demand to make agt Parish could not exercise it — The Syndics here have no authority to contract for the parish wt. the Defendt. but having done so and pd. the money of the parish, the parish must be bound in so far, but this cannot give any rights to Syndics out of that contract which belong to the parish — That the appointment of Syndics under the Law, is to raise on the parish by an assessment the money necessary to build the Church, but nothing more — when this is done the authority of these Syndics ceases — and the parish ought then to take the necessary steps to erect their buildings — At all events the Plaintiffs ought to be authorised by a special assemblée of the parishioners — Repn. Vo Paroisse —

Vigé for Defendt. This is certainly a right belonging to the parish, & in regard of which the pliffs have no authority and had it been intended to give them the right to institute this action ought to have been given to them by the parish —

Rolland for Pliffs. Hitherto the acts of the Syndics under their appointment has been construed to authorise them to bring actions & to make contracts under their nomination they were considered as a special corporation to superintend

the

the whole object of the Ordr — whether for contracting, as for all other things requisite to put in execution the intention of the act — refers to Case of Commissioners of Internal Communications who are authorised to contract, but not to bring Suits — which was confirmed to them in appeal. One reason why Pliff — must bring action is that they were parties to a Contract with Defendr if Pliff were authorised to make the marché, they must necessarily be authorised to bring a Suit for enforcing the execution of it —

Bedard for Defdr — The Syndics here may be compared to the representatives of the people who are authorised to impose taxes on the people, who although they have this authority, yet are not authorised to levy what they have so imposed — That the Syndics had no authority to contract — nor have they any authority to prosecute the execution of such contract, had they even had the authority to contract — That no Judgt. given in this case can bind the parish — as they are not to be considered as parties to the Suit —

No. 649.
Cabanac dal & Tetro. — On Report of arbitrators. —
over

Northedge & Stanley — Pliff to take Judge

No. 435.
Chamereau & Chamereau — On Rule to shew Cause why Contrainte should not be granted for not rendering acct. ordered —
Debt

No. 1086
Cameron & McGregor — action for Legacy — hearing on Exceptn.
Sewell — Declr. insuffr — ~~Pliff~~ Tafale may yet be alive for anything that appears to contrary —

No. 293

Taylor
v.
Mather
&
E Contra

Action for wages as a Gardner —
Incidental Demand for have abandoned work
Rossiter for Incid. Pliff — contends that Incidental demand is supported to extent of £30 — & prays that demand in chief be dismissed

Mr Henshaw did not appear to support demand —

No. 103 A

Gibb.
&
Allison —

Action for damages for not having paid a certain bill of Exchange indorsed by Defendt — & afterwards indorsed to Pliff —

On Excep. to 4 first Counts —

176 Walker for Defd. The Drawees are stated to have ~~[illegible]~~ lived at Liverpool & the presentment for payt. is said to have been made at London, qt. is not sufficient — Chitty. 176. 180 — 264 —

Grant for Pliff. Bayley. p. 95 — presentment is to be made where the note is payable — this is enough, & parties not bound to go to Liverpool —

No. 279.

Donegany
v.
Pickle & al

Action on Promy Note —
Grant for Defendt. question touching value given for the note & this action must fail if not proved —

Bridgman Digest Vo. Forfeiture.

to this he has proposed to ex. Pliff on facts & article — he has refused to answer

Rolland for Pliff. Plea set up is Usury — Pliff not bound to ans. Repr. p. 486. Vo. Interrogatoire — Lacombe vo. Interrogatoire — 2 Despresses.

Grant for Defd. The question proposed does not affect question of Usury, but the value given for the note, & this Pliff must answer to —

Monday 19th Febv. 1821.

Present

Justices Reid & Foucher.

No 1024.
Ex Parte
M. Claire
Perrault
vs
Jac. Viger

On Certiorari - on Conviction befor Justices on Regulations of Police. - quashed -

No 451.
Ellice.
vs
Digonard

Judgt. homologats award of Experts. -

No 978
Perrault & al
vs
Martinant

Exceptions dismissed. -

No
McKercar
vs
Gardner
& Econtra

Judgt - on both demands. for houserent, and rescinding the Lease -

No 380
Lusignan
vs
Bellanger
& Econtra

Judgt for arrears of rent on Demand in Chief - the demand for damages dismissed - no damages proved and the principle of demand not admissible - Incid demand also dismissed. -

No 940.
Savary
vs
Meunier
& al -

Judgt. allowing aliments to bastard child -

This was ent. on 20th -

No 311.
Belanger
vs
Belanger

Action dismissed, and obligation declared null on plea of usury. -

No. 958. Hondlow v. Christie	Order for proof, of Cohabitation, at time of pass obligation.
No. Young & al. v. Floyd	Judgt. for Pliffs.
No. 263. Langevin v. Beauchamps	Action dismissed.
Curtis & al v. Tilton.	Order that Pliff be heard on his Serment Judiciaire 2d day of next Term.
Delorme v. Phœnix Assce Co	Judgt. on award, wt. liberty to Defendts. to deliver back articles saved.
No. 1771. McMillan v. Ker.	Judgt. for Costs.
No. 1094. Sullivan v. Goodsell & Oppos.	Judgt. of Distribution – Costs allowed to the King on his demand for Seigneurial rights.
No. 1890. Burer v. Willard	Judgt. on Demurrer. – 4g This Judgt. was entd. on 20th –
No. 385. McCallum v. Hart & al.	Order for changing conclusions of plea – granted

No. 381. Chorette v. Gravelle	W	Action dismissed.—
No. 160 Gibb & al' v. Gamelin	W	Motion granted — on payment of 40/ Costs, to be paid by the advocate — & leave to Defend^r. to plead anew.
No. 797. Bethune & al v. Main & al		Action dismissed.—
The King v. Cuvillier	W	Mr Ross on behalf of Pros^r — gave in the following authorities in support of the action — Poth. Obl. No. 74. 82. 447. 8.—

Tuesday 20th Febry. 1821.

Present

Justices Reid & Foucher.

No 59. Gravelle & Chorette		Judgt for Plff on ground that Plff had made out proof that Defdt was about to leave the Province.
No 172 Hunter & al vs Perrault & al	X	Action dismissed.
No 109 Northedge vs Porteous	X	Action dismissed.
No 279. Donegany vs Pickle.	X	Motion over-ruled.
No 1571 Deschamps & Turgeon & Contra	X	Incidental demand dismissed
No 1890 Burer vs Willard.	X	Plea of abatement dismissed
No 940 Savary vs Meunier	X	Judgt
No 1553. The King vs Cuvillier	X	Plea of Exception dismissed
No 388. Atkyns vs Curtis & al		Judgt on note for sum demanded.

April Term. 1821.

Monday 2d April 1821.

Present

Justices Reid, Foucher & Pyke.

No. 1643.

Henshaw
vs
Titus.
&
Le Longueuil
Oppt

On Pltffs motion to discharge mo. for enquête as Oppt had not filed a replication, and also that the Opposition be dismissed —

Mr Sewell for Oppt course pursued not regular, & cannot be granted, Pltff may proceed ex parte agt Oppt if the parties are not at issue, the mo. ought to be dismissed, as the parties are at issue. —

Tuesday 3d April 1821.

Present
as above.

Henshaw
vs
Titus.
&
De Longueuil
Oppt

The court were of opinion that as there appeared to be an issued raised between the parties by the moyens d'opposition and plea, this was sufficient without any replication, and therefore rejected Pltffs motion.

Colt
vs
Perrault

On quest: qt confession wt out producing title is suffit.
Poth. No. 830. 831. Tr. Ob. —
Repre vo confession + Denozt. Eo. Verb. —
Dec. du Digeste. Vo Eo.

No. 1630
Hall, Tute
v.
Lacroix —

Action for medical attendce &c
Pelton for Pliff. Defendt has pleaded non assumpsit and also plea of prescription — this is inadmissible inasmuch as the plea of prescription is too late & contradictory to plea first plead. 1. Pigeau 199.
Beaubien for Defendt has pleaded two pleadings of which he is entitled to take advantage of them — The Defendt has pleaded first payment, & 2dly prescription — these pleas are consistent with each other, as both admit the existence of a demand, but go to destroy it —

No. 1539
Fournier
v.
Duteau & al

Action of trespass for entering Pliff house & dispossessing him — damages £1000.

Bourret for Defdrs evidence goes only agt Duteau, but not against the others — at all events the damage is trifling the parties are all poor and damages to a small amount only is proved —
Vigé for Barrieu pere & Barrieu fils, two of Defendrs no proof agt them, only that their cattle were found in the land of Pliff, but this was after the voie de fait — & also there were no sufficient fences on the land — There is a wits who says that one of Defdrs s'd he was present when one of the other defendrs put out the Pliffs wife out of the house, but this does not shew that Defendt participated in the act —

Boston for Pliff contends that proof is sufficient agt all the parties, and the trespass the most violent —

No. 1022
Lepailleur
v.
Turgeon. —
& Contra —

Judgt. —

No. 1651.
Roussy & al
v.
Roi —

Interlocutor. —

No. 1078.
Hitchcock vs Johnson & Dewitt, T. S.

Judgt. see Judgt. in regard of payt. of amt. of a promy note given by T. Saisi to Defendt.

No. 323
Marchand & Nollet & E contra

Judgt. – Incidt. demand dismissed, the Court being of opinion that after Defendt. had recd the boards & worked them up, he could not claim damages from Pliff as being of bad quality

No. 1032.
Cadieux & Morand

Judgt.

No. 161.
Gauthier & ux vs Forbes

Action dismissed

No. 1531.
Archambault & al. vs Boutonne

Exceptions dismissed – the Court considering the contract entered into by Defendt. wt. Pliffs – as binding on them in the Capacity in qt. Pliffs acted.

Wednesday 4th April 1821.

Present
Justices Reid Foucher & pyke.

No. 141.
Menard vs Bouthillier & E contra

On Contract for sale of wood

Lacroix for Pliff. asks Judgt. for his demand, except as to about £6 – qt. Pliff admits by his answers on faits & articles to have recd.

L. M. Vézé for Defendt. states that Defdt. advanced at different times

sums of money to Pltff. beyond the demand of Pltff. & for which he has made an Incidental demand, the receipt filed by Defendt. for 1000th. rec.d by Pltff. he states to have been a present made to him by Defendt. he gives no sufficient account of this money, does not state on what consideration it was paid to him – in his answers to faits & articles he acknowledges that this money was p.d on an exchange of lands, in wh. this sum was not ment.d in order that Seign.r might know nothing of it – The deed of exchange now filed, shews that this money was given four days before the date of this deed – & Defendt. ought to be admitted to shew that this was not the Case & that the lands exchanged were of equal value – The principal demand is not wholly proved, part only being proved by one Witness –

Lacroix for Pltff. Defend.t on 3d Oct. consented an Obligation to Pltff when on 30 Sept.r preced.s he wd. have more than p.d Pltff. as he now states, & this shews that the 1000th. were paid on a distinct account –

No 353
Perkins
vs
Lagrange

On rule to shew Cause why Prothy. should not be authorised & required to amend a copy of proceedings filed in Cause, as proceedings from the Inferior Court. –

Bowman
vs
Galloway

On trial of action for Trespass & assault
Verdict £100 – damages & Costs. –

The Defend.t entered exception to the opinion of the Court for rejecting his motion for a non-suit, on ground that the issue was not regularly joined by Replication on the plea of Justification pleaded by Defendant –

Donegani
vs
Pickle

On Defend.t mo. for a Com. Roz. to ex. Barlow a wit. as Ohio – objected as too late – after Cause set down for hearing –

Thursday 5th April 1821.

Present
Justices Reid, Foucher, & Pyke.

No. 753
Vincent
Lambert

On Pliffs. mo. for a contrainte par corps agt Defendt for not having accounted before praticiens as ordered by the Court. —

Mr Rolland moves that Mr Baron be joined wr Mr Cadieux agt whom Defendt. has put reasons of recusation —

No. 1499
Stevenson
Griffin
Davis opt

Mr Sewell for Oppost. moves to be permitted to fyle a correct Judgt in the Cause wherein Oppost. was Pliff and Defendt in this Cause Defendt. — by changing name of Defendt to Giffin, instead of Griffin as it now stands.

No. 1537
Gibb
Bastien

Action on promrs Note —
Vigé for Defdt. Defendt. has pleaded prescription, and Pliff has not proved any new undertaking by Defendt — the evidence made by Pliff in this respect is not positive

No. 474.
Deshautels
Terrien

Action on deed of Sale. — ⊃ to ascertain whether Cause has been discontd —
Contd. —

No. 43.
Mc Gillivray
Lal
Wilcocke
Lewis oppt

In opposition à fin d'annuller —
Rolland for Pliff — The Oppost. has taken personal conclusions agt Pliffs in the Cause, qt are irregular & to qt Pliffs. have excepted —

Bleury for Oppost. contends that his conclusions are regular, and ought to be granted —

No. 1580
Scott & al'
v
Perrault

action on indorsed note ag Defdt as Indorser
Grant for Defendt. note declared on not given in evidence — Defendt. is a Carpenter as well as Auclair the maker —

No. 1023
Cadieux & al
v
Dizanard

On Defendts mo that he be liberated from Gaol under writ of Ca. Sa. sued out in this cause —

Bourré for Pliffs. states that Defendt. has been discharged since 16 March last, & therefore has nothing to ask on this rule

No. 254.
Pearson
v
Vandersluys

On action for a malicious prosn —
pears on Exceptions —
Rolland for Defdt. there are several counts in the declaration, and it does not appear on which of them the damages of the Pliff are founded — That Pliff joins several counts in same declaration which cannot be joined — The facts charged in declaration stated different and unconnected causes; which ought not to be joined —

No. 1817
Shuter.
v
Thayer.

On question touch's evidence reserved from Vacation
Rolland for Pliff, contends that Pliff cannot be ~~admitted~~ held to answer on facts & art. in this case — action founded on award — the compromis is similar to a transaction between the parties, it is conclusive as to all their pretentions under such compromis; whether they become lost, abandoned or otherwise — they cannot become an object of Enquête — the Interrogatories proposed by the

the defend^r in regard of the mode of taking the deposition of the witnesses heard before the arbitrators cannot be gone into in this way, as it does not tend to affect the award, nor the regularity of the proceedings of the arbitrators. —

Jousse. p. 720 — the nullities of award q^e Def^d may allege are stated, but the mal. jugé is not among them —

It is also attempted to bring up the arbitrators as witnesses of their own award — a man cannot be allowed to destroy the act he has made —

Sewell for Def^d arbitrators are often the only witnesses to the facts to be enquired into — and if witnesses can be ex^d in this Case the arbitrators seem to be the best — They cannot be considered like Jurors they are not sworn to render Justice — It is alledged in the compromis that certain books and papers in the poss. of Pliff. were to be produced to the arbitrators, which Def^d contends was not done, but fabricated papers, different & very imperfect —

There is less reason still that Pliff should not be ex^d on faits & articles, Defend^r has a right to draw from him any matter which may be material to support the plea —

Award. not final. 1 Pigeau 252, shews cases where arbitrators may have been deceived, q^e the parties may shew — Com. Dig. V^o Chancery. p. 376. when award shall be avoided — 1 Atk. Rep. p. 63. 64. where award was set aside, where an arbitrator was heard as a witness. —

Bedard for Def^d — arbitrators are not vested with any public character q^e ought to exclude them from being witnesses —

Rolland in reply, the merits of the Cause judged by arbitrators cannot be enquired into by this Court — it is final as a transaction between the parties. — The authority from Pigeau 252 — does not apply, it refers to a renvoi by a Court of Justice to arbitrators —

—

No 1714.

Robert — }
Nixon — }

On Report of Arbitrators. —

Grant for Def^d — arbitrators had no evidence before them the Defend^r books only evidence, q^e shewed a debt due by Pliff to Defend^r — the arbitrators have awarded more than is demanded & cannot be homologated —

No. 1890
Burer
v.
Willard

On action of Trespass —
hear's on exception —

Sewell for the Defend.t — in all actions of tort, it is necessary to state the particular act in positive words, without reference to any Circumstances — The decl.n here states, That whereas the Defend.t &c — referring to certain acts tending to shew only inducem.t to the fact complained of, but this is no positive declaration
1 Chitty. 374 — 2 do. 367. Note (2)

No. 754.
Lavoie. —
v.
De Longueuil

On Pleff.s mo. to name a new Surveyor &c —

No. 102.
Whyte
v.
Vaughan

On rule to shew cause why Ca. should not be quashed. —

Bourret for Defd.t Pleff does not alledge enough in his affidavit to entitle him to his Ca. ad resp. — it is not a Cause, that Defend.t is secreting his property — & doth intend to leave the Province — he must state that he is immediately about to leave the Province —

No. 358
Audette
v.
Provost

On action to rescind a certain deed of Sale made to Def.r by the person to whom Pleff is Curator —

Vigé for Defend.t — action is founded on lesion d'outre moitié the decl.n states a sale of a land of 2 arp. by 40 — whereas by deed it is only his right & share in a land of that description — The Replication is also variant from the Declaration — The evidence adduced does not correspond with either — one Jos. Provost has been adduced as a W.s — to whom he has objected —

Monday 9th April 1821.

Present
Justices Reid Foucher & Pyke.

No. 1582.
Joannette & Marmier

Action for Prox de vente – Plea rescision ~~of Contract of sale for~~ Lesion d'outre moitié.

Vigé for Pleff. cites the authority from the Code, & admitted into the french law, where there is a lesion d'outre moitié, to demand the rescision – The seller is always presumed to sell from necessity.

Quesnel for Defendr. has excepted to the action, 1st on aut. of dol, and 2d. on aut. of Lesion d'outre moitié – this is a good plea refers to case of Herizault v. Gibb – Poth. Vente. No. 372. No. 330. Obl. No. 33. – Vente 372 refers to contrary authorities, but there ought not to leave any weight on the doctrine stated by Pothier.

Vigé for Pleff. The principle of lesion d'outre moitié cannot be invoked by the buyer – the parties not upon same footing. The action is for the price, a chose mobiliaire – to qt. according to Automne, the plea of Lesion cannot be set up. – cites also

2. Argou. 376. –
3. Cujas. liv. 16. ch. 18. p. 506 – arret du 10 Juillet 1675. Jour. Palais
2. Bacquet. ch. 22. p. 68. No. 23 –
1. Despeisses. – Des Contrats. Sec. 4. No. 8. p. 11 –
De l'Hommeau – maximes – liv. 3. p. 164.
Bouchel. Bib: Dr. Fr. Vo Lesion –
Chenu – en ses Question 75 –
Montholon – arretées – 77 –
Domat. Sec. 9. Contr. Vente.
2 Bourjon – tit. 7. art. 124. p. 606 –
Lange. p. 506 – Restitn. des majeurs –
Denizart. Vo Lesion. –
Repn. Vo Lesion. p. 466. –
Ferrière. Vo Lesion –

Lacombe. v. Restitution. –
1. Pigeau. Proc. Civ. p. 14. –
Regles de Droit d'Antoine. p. 86 – Loix 16e –
Loüet – v. rescision –
1 Cochin. 511 –
De la porte – Pandectes Françoises. –

Quesnel for Defendt – contends that the doctrine laid down by Pothier ought to prevail as consistent wt right and the egalité at ought to submit in all Contracts. – It may be as much a speculation in the seller as in the buyer – the lesion if allowed in the one case must be allowed in the other –

Vigé in answer – The opinion of Pothier cannot prevail agt the Authors who have written on this subject, and also the Arrets rendered –

No. 1691
Bernard
t
Aubertin

On report of arbitrators –

Quesnel for Pltff. states report of arbitrator who refused to hear verbal testimony – and submits that Court should enjoin him to receive proof. & Demzt. v. preuve – No. 18.

Bourré for Defdr. The Court cannot here determine what kind of proof ought to be made without knows the facts and circumstances to be proved, & which do not appear. –

No. 1729
Doms. Rex
Doucet & al

On motion by Mr Ross. to confirm Indt. of Justices and Mr Grant's mo. to quash it –

Grant for Pr. authority given to Justices only in certain limited cases, beyond gt they have no authority – by the return of the Justice it does not appear for gt the action was brought before him – he must shew he had jurisdiction over the demand – gt is not done –

Bedard & Ross for Terrien – the Justice had Jurisdiction, the

demand

demand being for money pd. by him on acct. of Defendt. Roi. the amount demanded was specified in the exploit, the want of the Cause of action is not so material as to annul this exploit, and particularly as Defendt. had an opportunity of knowing what the Cause of action was, when he appd. before the Justice — The Defdt. waived all right to plead to the Jurisdiction, by pleading after amendment. —

Ex parte Jean Terrien } On motion for a Mandamus. —

Bedard for Terrien, states that on exon sued out on a Judgt. before the Justices, to which an opposition was made by Poutré the Defendt. who shut up his house & prevented the exon being carried into effect — the Justice having in consequence refused a Ca. ap. the body of Defendt. the present motion is made for a Mandamus enjoining the Justice to sue out such Ca. ap. Defendt. in same manner as a Judge in the Inferior Court — refers to case of where it was held that a Guardian who refused to deliver up the effects committed to his charge was lawfully committed to Gaol by the Justice under Order of 1785 —, and the principle will apply more strongly to a defendant who opposes the execution of a Judgmt. —

McRoss for the Justice, states that the Jurisprudence on this point not being settled, it became necessary to submit this point to the Judge of this Court. —

Mr Grant on behalf of Poutré having been allowed to be heard, stated, that the Court ought not to grant the writ demanded until the see the whole proceedings before the Justice, to see that he had jurisdiction over the matter in question before him. —

No. 110 Beaubien Brower } On motion of Defendt. that the Ca. be discharged as there is no positive allegation of the Defendt. being about to leave the province —

No. 1842 Moody McCrae } on Pltf's mo. to be permitted to file a detailed statement of his demand —

Ogden for Defdt. too late, parties have gone to proof

No. 113
Bowman
Galway

On mo. for new trial —
Blannerhasset for Defdt. 1st. Verdict contrary to evidence — in regard of title of Defdt. to box in question and also as to the possession of the Defendt. under it —
2. Damages excessive — considering the exculpatory matter set out by the evidence —

over till to morrow

No. 274
Foster
Rideal

On action for separation —
Hearing on law

Blannerhasset for Defdt. not stated that the crime of adultery complained of was committed at any time or place
2d. or that she abandoned & left her husband & lived in adultery wn any person — 3d. No legal right to this action —

1 Pigeon 269. 70. Fer. vs. Negative Preuve —

On 1st. Convenient certainty of time, person & place in declaration ought to be always narrated in the declon — particularly in this case — cites case of Forbes vs. Atkinson. Pykes rep. p.
2d. Marriage celebrated in England, where the rights are different from those in this Country — 3 Pn. Wms. Sidney. vs Sidney — the mere act of adultery does not preclude wife from her right of Dower
Sewell for Pliff. Declaration is sufficient

No. 1836
Carmel
Chisholm

Action on an accepted draft —
~~on law~~

Ogden for Defendt. mo. for Com. Rogn. to ex. Sillow

Bender for Pliff. Sillow is an interested Ws. as he gave the draft in question — Ws. also ought to have exd. Ws. before he left the Province & is now too late — In law matters pleaded are no discharge of action there is no novation here —

Poth. Change p. 74. 75. 4th —
Obl. p. 241. art. 4. Sa. 2.

Ogden for Defdt. The Pliff by taking a new bill from Drawers discharged the Defendt. the acceptor —

No. 281.
Burton vs Yule — Judgt for Pltff, and order for nomination of experts to value improvements made by Defendt

No. 141.
Menard & Bouttuthier — Judgt for Pltff.

No. 1539.
Fournier & Duteau & al — Judgt for Pltff £200 damages

No. 351.
Audette & Provost — Action dismissed

No. 279.
Donegani & Pickle — Defendrs motion dismissed

No. 1630.
Hall & Lacroix — Pltffs plea of demurrer maintd

No. 43.
McGillivray & Wilcocke & Lewis opps — Plaintiffs plea of Exceptn maintd

No. 1537
Gibb & Bastien — Plea of prescriptn maintd & order that Defendr appear to answer on oath

No. 1714 Robert & Nixon.	Award of the two arbitrators homolog.d & Inst.
No. 656 Boston v. Noro &c.	Action dismissed
Dubord vo. Eno. & Dezy.	Action dismissed.
Same. & Crepeau.	Same Judgt.
Same & Rivard	Same Judgt.
No. 102 White. & Vaughan	Defend.rs motion granted, Cap. quashed
No. 254 Pearson. & Vandersluys	Defend.rs exceptions dismissed
No. 714 Colt. & Perrault	Judgt. for pliff. on Defend.rs Confession without producing obligation on which the action was founded.

Sed. Vidé - Dec. des arrets - Vo. Sentence. p. 119. -

Tuesday 10th April 1821.

Present

Justices Reid Foucher & Pyke —

Letourneur
Terrien } On Pleff mo. to change conclusions

Lebrun.
Charles } On defendr mo. to suspend enquete until June next to hear wits — about to arrive from England —

Rosseter for Defendr. does not mean to retard Pleff, who has not yet closed her enquete —

Bowman
Galloway } On mo. for a new trial —

O'Sullivan for Pleff — no new trial for excess of damages in cases of tort can be granted, unless the damages were outrageous — Sayer's law of damages — 1 Bur. p. 709 —

Blannerhasset for Defendr — there is no apparent damage here — but damages may be excessive in this Case, as in any other and must be considered — agt. public feeling, as an unrighteous verdict —

No. 14

Descelles
&
Chuman } On Defendrs mo. to discharge Ca. from insuffy of affidavit.

Grant for Pleff — affidavit is positive & suffit —

No. 1059.

The King v. Charles } action negatoire for having fished in the River St Lawrence —

Ogden for Defdt. The King shews no title as Seigr. of the seigniory of Sorel, his poss. of 30 years does not give a title to the Fishery — the action is founded on possn. alone, and if under this poss. such right is found to be in the Seigr. it must extend also to his tenants — The Defendt. is a stranger, and not bound by deeds of Seigniory of Sorel — 2. Vol. Inst. book. 2d tit 1. art. 2 — The public rivers are of public right & enjoyment, & belonged to the people at large & the Kings holds them only for the public benefit — cites Judgt. of 30 June 1804 in qh. present Defendt. recovered Judgt. for having been disturbed in his enjoyment of fishery. — 1 Domat p. 60 — 61 — No. 11 — Not proved that river St L — is a navigable River — No legal notice given to Defendt. that he was disturbing King in his right —

Ross for Pltff — There is a particular reglement made in 1750. by the Intendant Bezon prohibiting all the tenants from fishing in the river without Licence — The King holds title in his name & right and is bound to shew no title to his tenant or Subject — The evidence is complete —

No. 60

Day v. McMillan } action on pry Note —

Bourré for Defendt. there has been a tender made by Defdt. for the balce. due on note. — the Pltffs. recd. a note the property of Defdts. as a security for their debt, qh. they promised to keep, and to return to Defdts. when they paid their note qh. they made to Pltffs. The Pltffs. refused to deliver up this note when Defdts. went to pay their note to Pltffs. — this note of Auldjo & Co. was a gage in the hands of Pltff. they could not negotiate it, nor receive the amt. — The Defendts. offered the balce. they owed with the Costs, but the Pltff refused to receive it, unless Defdts. also delivd. up the receipt they Pltffs had

had given for Auldjn & Garden's note — this condition they had no right to impose, and if the tender was suff^t it must discharge the Defd^s now from the Costs —

No. 356.
Seguin & ux
v
Turgeon
& ux.

On defend^r mo. that Pliff do shew cause why they should not be permitted to inscrire en faux as the act produced by Pliff —

Ogden for Pliff — The mo. is irregular, & premature, as first motion ought to be whether the Pliff mean to make use of the piece in question, and then if Pliff's mean to make use of it, then this mo. ought to be made —

No. 143.
Jurreau
&
Garcepy

Action on deed of Sale —

Rolland for Defd^r excepts to Pliff's action, that Pliff has never delivered to Defd the title deeds duly acquitted as he was bound, also because there are mortgages on the land not acquitted — this excep^n is founded on the particular contract in the deed, & Pliff cannot have the execution of the Contract until he complies with his part of it — altho' there is no trouble, yet where there is a peril of eviction, it is enough Denis' v^e Eviction. No. 36 — Domat — Vente. liv. 1. tit. Sec. 10 Som. 3 — peril d'eviction cause suffis^t pour intenter action en garantie —

Lacroix for Pliff — contends that excep. is no bar to his action, & that there are no mortgages due on land, & besides Defd^r has more money in his hands than req^d to pay the mortgage —

No. 891.
Guertin.
&
v^ve Guertin

over till to morrow —

Wednesday 11th April 1821.

Present
Justices Reid Foucher & Pyke.

Roi & Maine — } Pliffs. mo. over-ruled

No 356
Seguin & ux vs Turgeon & ux } Defendrs mo. for Inscrip. en faux granted

No 294.
Letourneau & Terrien. — } On Pliffs. mo. that Defd. change his conclusions in place to the Court — Pliff. chartered his Schooner to go to Chaleurs Bay, there take on a Cargo & bring it to Montreal for Defd. a mercht — in consideration of £30 ℔ month. —

No. 891
Guertin. — & Vandandaigen } On action of account —

Bedard for Pliff, action by child for his rights in the Succession of his late father, the Defendt produces a will by wh her late husband bequeathed all his estate to her but the Pliff is entitled to a continuation of a Communauté in case the Defendt has not made an Inventory, by qh only that Comte is dissolved —

Ross for Defendt. The deceased disposed of the whole Community to the Defendt. the shewing this will answers all the purpose of the Inventory —

Bedard — in reply — The Children are entitled in their own right & not as heirs of their father to the Continuation of the Comte —

№1080

The King
vs
Solomons

Action to recover duties upon importation of snuff & tobacco into this Province under Stat. 41. Geo. 3. ch. 14 –

Mr Ross, Informt – action brot on the act of importation of the snuff & tobacco, and not on the bond, asks Judt on the evidence, at rate of 4s. on snuff & 3s. on tobacco.

Mr Gale for Defendt – The St. of 41st Geo. imposed a duty of 4s. & 3s. – there was a subsequt stat. made authorising Govr & Council to make regulations touching import trade of 55 Geo. 3. under wch an order of 28 May 1815 was made of 1/ ℔ on snuff & 7d ℔ on tobacco, this order contd no suspension of Stat of 41 Geo. 3. as it ought, but it refers to other stat. wch it did suspend – so that the duty under the St. and under the order of Council were left open to be demanded and on this acct the Custom Officer exacted bonds for both duties – the duty stated in the bonds is that due by act of the Legislature & nothg 3d about duty under orders in Council. The amount of one of these bonds on each importation was paid by Defendt – namely the higher sum on duty under orders in Council – the duties now under Stat. is demanded

The orders in Council, were not valid,

1. The Provl Parlt has no authy to delegate to others the right of imposing taxes or Duties – The impos. of taxes & duties is one of the highest acts of Legislation & cannot be delegated to third persons – this right is vested in the people by their representatives, & is personal to them & they cannot divest themselves of it, nor be divested of it –

2. The Parlt has not delegated this power to the Govr in Council, and it must require the strongest terms to shew such intention – the power given to the Govr & Council, was to make regulations respecting the duties, but this cannot be extended to mean the right to impose or create duties, but only to regulate cases where the existing duties should apply.

3d. But there was a certain condition or pre-requisite to give power to the Govr & Council even to make regulations touchs these duties — the only suspension, is that of a Stat. of 53d Geo. but the St. of 41. has not been suspended, and by reason of which it became nugatory for Govr. & Council to make reg. touchs & subject already regulated —

The Plea here is payment, & set off, as having paid more than was really due —

But if the Orders in Council are in force they must be considered as incorporated wt Stat. 41 Geo: & embracing the provisions of it, particularly when we consider the great increased rate of duties made by the orders in Council — the words of the orders in Council seem to imply a tacit revocation of the Stat. 41 Geo. — The latter part of the wording of these orders, when it refers to the words "over & above, the duties therein specified, as to certain articles of produce of the United States, these words ought also to have been made as to the general tarif, as over & above what is imposed by Stat. 41 Geo — which is not stated in the outset —

Ross in reply. The Defendrs having paid the duties under the orders in Council cannot now come forward and object to the sufficiency of his own act — Obl. No. 195 — nor can a debtor recover back a debt he in conscience owed. The set off cannot be allowed agt the King. Hughes on Extent 221 — the plea here therefore does not well meet the Case before the Court, as he sets up a payt made by him for a debt he owed under a bond to a debt now demanded under the Statute — There was no condition precedent in the Stat. of 55. in the power given by the Legislature to the Govr. in Council, no necessity that the former acts should be suspended before he made any regulations touchs the duties in question — That the Stat of 41. was not suspended by the orders in Council, nor meant so to be — some Stat. were suspended, but this Stat. was not —

The

The orders of Council cannot be considered as imposing taxes on the Subject, but merely to regulate a trade which was necessary for the welfare of the Country — and it was optional in the Defend^r to import or not as he pleased the Snuff & tobacco in question, in the face of the duties imposed on these articles — The last act imposing a duty on any articles cannot be supposed as embracing all former duties imposed on them or abrogating all former acts imposing other duties —

N° 837.
Laberge
v
Doucet

Action for work done. —

Rolland for Defend^r — has objected to Verb. testimony and contends it ought not to be admitted in any cases for work done — the quantum meruit cannot be admitted in proof, but in the Cases of quasi-Contrat — here is a Contrat de louage d'ouvrage; which is matter of Contrat Tyn allagmatique and there can be no quantum meruit admitted, where the parties are in law presumed to have contracted — Poth. Contrat de Louage. N° 397. — the price is part of the consideration of this contrat — Danty p. 89. ch. 2. N° 3. — the Contract is presumed, and if there was no Contrat there can be no payment for what has been done, as the law will presume it was done gratuitously — To be admitted to prove quantum meruit — the contrat must appear to have been that the work done should be paid by the estimation of quantum meruit. He who does work for another without a Contrat is presumed to have been paid by the day — at all events it is not legal proof the opinion of Witnesses, the rapport d'Experts ought to be read, & can constitute legal evidence of the value of the work. —

Lacroix for Plff — There is no contrat stated here, but the value of work done by Plff for Defr —

—

N° 893.
Charles
Cote
—
Cote
&
Lebrun. Gar^t

Action for recovery of house rent —
on Exception pleaded by Gar^t —

Bourne for Gar^t — not bound to take part of Lease for the

the defendt — as his garant, although heir of the late Madt. Lebrun — The Defendt — has possessed house and owes the rent, and Gart. has never prohibited Defdt from paying that rent to Pltffs

Rolland for Defendt — The action is founded on a Contract between the parties, as Gart. has leased to Defendt — & Defendt has paid rent to her under that lease, but other persons have claimed the rent, the Defendt. is entitled to have a security for the payt. of it, & Gart. has forbid Defendt — to pay rent to Pltffs

No. 442
Henry
n
Simmons

On ~~defendts~~ mo. that Defendt be held to change his conclusions from Country to the Court —

Boston for Defdt — action on promy note — Pltff is a mercht. and Defendt stated to be a yeoman — but Defendt is a trader as well as a yeoman —

No. 443.
Izon
n
Clark

same motion — same point. —

No 396
Quenneville
n
Chorette & ux

Action on deed of Sale —
on Excess

Lacroix for Defdt — the payt. demanded not due at time of action — the term of payt. demanded did not expire till the present month of April — and not in March —

No. 588
Lebeau & al
n
Thibaut —

Action of aut — on aut. rendered.

Peltier for Pltff accepts the aut — & only question now is Defendt ought to pay Costs, gt. he now claims — the offer made by Defendt that he was always ready to aut. & not giving in aut. at same time is enough to condemn him in Costs —

Lacroix for Defendt no demand made by Pltff, before this action

No. 1499
Stevenson vs. Giffin & Davis op.t

Bleury for Pliff, states that parties have arranged all their differences since last proceedings —

over till to morrow

No. 525
Bagg & al. vs. Pickle

On Pliff mo. that Defend.t change his conclusions & make them to the Court

Grant for Defd.t both parties are merch.s and on a contract of sale —

No. 326
Hureau & al. vs. Hotte —

On action on deed of ~~sale~~ Donation —

Lacroix for Defend.t The sum demanded is for a propre of the wife, and the Defend.t is justifiable to demand sufficient surety for the pay.t of the same, particly as the wife of Pliff has obt.d a Judg.t of separation with him since action was instituted —

No. 1781.
Sutherland & Pasteur —

action by Indorsee ag.t maker of the note —

Gale for Pliff — The indorsement was filled up by atts after indorsement made in blank —

Lussier for Defend.t — The Indorsement having been made in blank the Pliff can have no action, as the maker was not a merchant, and Pliff could not fill up the Indorsement after it was given by the payee, as the payee alone can by his act give that authority gh. vests Pliff w.t the right of action —

Thursday 12th April 1821.

Present

Justices Reid & Pyke.

No. 279
Donegany
v.
Pickle

action by the Indorsee agt the Indorsers on Pry Note

Rolland for Pliff, plea in this Case is Usury — on this plea the proof is imperfect, the only Wt is one Lang the drawer of the Note who speaks to the point — This Wt must be so far interested as to consider his evidence ought not to be received — because his evidence here would be beneficial to him, as the Judgt. rendered in this Cause wd be evidence for him in a Suit brought agt him as maker of the Note — and in this case also the Defendt in this Cause might be a Wt for Lang in that Case — The Wts can be recd only where the debt is paid — Esp. N. P. 708. 11. No. 6. 7. — Shank. v Payne 1 St. 633 — as long as the debt is not paid, the debtor cannot be the Witn to prove the usury — But taking the deposn of this Wt as given it does not establish the fact of Usury — The Witn recd — £679 from Pliff, and gave his note for £700. — but there was no bargain in regard of the money made between Pliff & Wt — that bargain was arranged between Pliff, and one Barlow — The fact of Usury, altho' in a commercial case, yet is not a fact of a com. nature, & recourse may be had to the Laws of France in proof of it — cites. Lacombe. vo Usure —

Grant for Defdt — The action founded on a note ~~of debt~~ as negotiable, — that proved is not a negotiable note — & therefore action must fail — — Pliff moved to amend

No. 810.
Hubert
v.
Cartier

action to obtain a Compte & partage of a continuation of Comte between late Jac. Cartier & wife —

Bedard for Pliff. in 1772 Cartier mard in 1783, wife died leaves 2 minor children — no Inventy made — the Comty was continued — on 7 Jany. 1809 Cartier acquired rights of his

said

said children — but this act is defective, being an act of Sale, rather than a transaction as stiled between the parties. In 1814. Cartier died without having made any Inventory, and the action is to obtain compte & partage of the Comtg so continued. The Defendt has pleaded several exceptions, first the deed of transaction between Cartier & his children, of Jany 1809 — also that Cartier has disposed of all his property by Will, of 13 July 1811. ex hb. No 1 cotté A. produced by Mr Latour — and divers Codicils of subsequent dates — This testamt. of 13 July 1811. is not last will of Mr Cartier — is a holograph will and ought to have been proved to be all in the hand writing of Mr Cartier — Poth. Don. Test. ch. 1. p. 298. Here there are a number of words surcharges which cannot be proved to be the hand writing of Mr C — the Wits have not been able to say so — if however there should be any doubt on that subject the Court may order a verification by Experts — To shew this is not last will of Mr. C. produces 2 codicils — on 28 Mars 1813 — and 17 & 18 Jany 1814 — In 3d. page of codicil of 17 & 18 Jany 1814 — j'approuve & approuvé la clause 16ment page 4e refers to page treoziement — which shews that these references do not apply to testament of 13 July 1811 in qt there are only eight pages — The codicil of 28 March 1813 refers to words in the will of 13 July 1811, which are not to be found in the will produced, and evidently not the same, not the will he referred to, & not will of Mr Cartier — It would appear there is a will of 21 Mars 1813. as appears by reference to it in this Codicil of 17 & 18 Jany. 1814

Mr Ross for Defendt — The objections taken by Pltff agt will are not sufficient — the very will produced was found in an enveloppe qt was brot. & deposed in a Notary's office under seal, and was opened by the Notary after his death this will and all the codicils found in the enveloppe are brot. up by the notary into Court and identified — The handwd of Cartier to this will is proved sufficiently — The only objection raised by Pltff can be accounted for only as being an error in the testator, but this will not vitiate

— the

the will which has been produced. ~

Bedard in reply – contends the surcharges in the will have not been proved – The notary who opened the seals of the enveloppe ought to have made a P. Verbal of the State of the papers – – insists on his other objections. –

No. 241
Davis
v.
Snow } On report of arbitrators. –

Sewell for Defd. no suff.t award before the Court, the reference was to three, and only two sign the award –

sed. vid. – see N. Deniz.t Vo arbitrage. §. 3. No. 2.

Ogden for Defend. all the arbitrators were present and exam.d the wt. & heard the parties, but only two of the arbitrs agreed in opinion. –

Friday 13th & Saturday 14th – Wts. Days

Monday 16th April 1821. ~

Present
Justices Reid & Pyke. ~

No. 279
Donegany
v.
Pickle } On Pliff. mo. to be allowed to amend –

Grant for Defend. resists application – it will be a new action wholly, if the amendment be permitted if granted, it ought to be upon payt. of all costs from return of writ to the present moment, & upon allows parties to plead over to the action so amended –

Rolland for Pliff – mere clerical error in the declr. & no condition ought to be attached to his being allowed to amend –

Bowman
v.
Galway } Rule for New Trial discharged –

No. 950
Trudelle
&
R. Jones
&
E Contra.

Action on Promy Note —
Vigé for Defdr. has set up an Incidental demand to qt. Pltff has set up a Counter Incidental demand founded on certain bons, the value of wh. is not proved no date to them, and the presumption is they were included in the general settlement of acts. between the parties —

Berthelet
&
Boing
&
Poirrier

On Report of Experts —
over

No. 809
Davis.
&
Nichols &al

Action for proceeds of sale of certain peltries —
Boston for Defdrs. pleads payt. & shews Pltffs receipts for amount demanded. —

No. 65
Rea
&
Chisholm

Action for house rent — for 1/4 rent due & also that Saisie Gagerie be declared valid
Bedard for Pltff — is entitled to have the Saisie-arret declared valid & to hold during remainder of the lease — Poth. Louage. No. 276 — The order of 1787 has changed noths of right of Propr for house — Poth. Pro. Civ. p. 202 shews that simple arret is merely to prevent the effects being disposed of — p. 203 — simple arret is allowed ~~even~~ where party had no right to saisie, Exon. for a debt due —

No. 213.
Lafleur
&
Labelle
&
E contra

Action for price of horse & other articles sold —
Peltier for Defdr. pleads compensation — produces a note signed by Pltff to Defdr. for a larger sum, & Incidl. demand for balce. — The Pltff contends that this note ought to be set off agt. a debt due to Pltff by Defdr. on a deed of sale of a certain lot of land made by Pltff to Defdr.

but Pliff not having complied with conditions stipulated in the deed of Sale in regard of the arrears due on the land, the debt claimed by Pliff cannot be considered as due — the Certificate of Mr Parent the agent of the Seigneurs proves nothing —

Lavroix for Pliff — The note in question was given for a particular object and ought to be applied only to that object —

No. 230
Marmier
Major

On action founded on a transaction between parties
Quest. whether Defd. was interdicted at time of the last quittance of 28 Mai 1817 —

No. 332
Taschereau & al
Pion —

On report of Experts —
Rolland for Pliffs moves for hom. of P. V. —
Vigé for Defd. — The parties never consented that ~~parties~~ Exp. should be sworn before a Magistrate. — there is a Stat. of 48th of King ch. 22. made perpetual by 52. of King authorising Court to commission Magistrates & others to receive the oath of witnesses & experts — but no Com. was here issued. — The report is dated 26 Feby. 1821 — altho' it appears filed 1 Feby in Court, altho' this is an error, yet it is questionable how far it can change it — The Experts ground their report upon the answers of the Defend. to faits & articles, which was not referred to them by this Court by its Interlocutor —

Rolland for Pliff — The nomination by the Court, is tantamount to a Com. to the Magistrate to swear Experts — The date of report is evidently wrong & is corrected by the words of report itself — There was a fact to be enquired of by the Experts, & they could not have recourse to any better evidence than that given in the Cause by Defdt. himself

No 264
Fournier
to
Monpellier
&
Chenier. Gar^t

On action hypothecaire. —

Vigé for Defd^t — It is a question whether a Sale without tradition can create a mortgage —

Chenier was in poss. of land pos. by land now poss^d by Defd^t same day Chenier changed w^t Racicot 17 Mars 1818 — and sold to Defend^t — but was never in poss^n of land so sold to Defd^t — Racicot created mortgage in 1812 — Fer. V^o hypotheque — shews that hyp. is a real right & can be created only by the person who is proprietor — Poth. hyp. p. 427. 4to — Here Racicot never had poss. of the land he sold to Chenier — deed of sale without tradition does not convey the property — the seller must be in the actual poss. of the thing he sells — & must abandon that poss. to the purchaser — Poth. Vente. No. ~~213~~ 221. 222. 245. — Denisart. V^o Vente No 49. — The right here sold by Racicot was only the right he had in the thing, but not the thing itself — Poth. Vente No 247. Ant: 98. rule — Rep^re V^o Tradition. p. 221 — That Chenier has a preferable right on the land as his gage, to the Pleff — and also this might tend to defraud Chenier of his right of mortgage on the particular estate q^h is pledge —

Lacroix for Pleff. The property sold to Defd^t by his Debtor must be mortgaged to him — by exch. Chenier reserved poss. until St Michel — by deed of ex. w^t Racicot — this poss. was in the name of Racicot as represents him — Poth. prop^te No 210 — retention d'usufruit is tantamount to a delivery — Venté. No 313 & 318 — same principle is laid down — & 321 shews the tradition such as here stated w^d operate transfer of the property — Rep^re V^o Tradition. — Here the jouissance of Chenier must be considered as the jouissance of Racicot & held in his name & right & was tantamount to a tradition to Chenier. Poth. Hypoth. p. 428. 429. — Lacombe. V^o Hypotheque —

Vigé in reply — between parties to the contract the tradition feinte may be admitted, but it cannot extend to affect rights of third persons —

No. 6.
Monk. –
Beauchamp
& al. —

action to obtain a reunion of a lot of land
noths said

No. 989.
Shuter
Forbes & al
& Forbes, Cur

noths said

No. 1842
Moody.
McCrae. –

action for work & labour as Journeyman –
Grant for Pliff – The credits given by Defdt – are comprised in particular account now offered by Pliff
Ogden for Defdt – work was done by Pliff for Copartnership of Cars & McCrae, this action is brot. agt. Defendt. on a contract as in his own private name, and not as a partner – That at all events noths is due to Pliff, who on contrary is indebted to Defendt –
Grant for Pliff it does not appear that the work here was done for the partnership –

No. 537
Scott & al
Odell. –

On Excep. that Defdt – has joined debt & assumpsit in same action

No. 1841
Robertson
McCrae

action for work done –
Ogden for Defdt. makes same objection as in case of Moody v. McCrae –
Grant for Pliff contends proof is suffit. –

No 1843.
Row
v.
McCrae } same point -

No 117
Bowron
v.
Brown } Action on P.y note -

Boston for Defd. - note was given on condition that it should be paid by his services as a bailiff -

No 78.
Grant
v.
Cameron
&
E contra } action on prom.y note. —

Walker for Defend. - note given for smuggling consideration - this fact is proved - but no proof of law of Up. Canada - The Tobacco agreed was not delivered by means of which Defd. has suffered a damage, for qt. he has made an Incidental demand - The non-delivery appears - the damages also from non-delivery of tobacco is made out. refers to evidence of Ph. Munro.

Grant for Pliff - Pliff is entitled to his Judgt. - at least for one half of the note -

— —

Forster
v.
Riddle } On motion for attachment against Pliff for ill-treating a Wr. summoned for Defd. -

Blannerhasset for Defd. - cites. 4 Bl. Com. 283 -.

Ogden for mo. the Pliff had a kn. of the fact that Wr. Prime had been subponed for Defend. - & was prevented by Pliffs. -

Sewell for Pliff. nothing stated in the affidavit or motion to warrant the granting of it - nothing to shew that he meant to prevent the Wr. from coming to give evidence - Wr. on contrary appears to have gone to house of Pliff to seek him out - no abuse of process - a copy of Sub. qt. had been in poss. of Wr. for some time - was his property - refers to Hawk 3. vol. p. 283 -

Tuesday 17th April 1821.

Present Justices Reid & Pyke

No. 904
Forbes - Doucet, Cur' & Jacob. Opt

On hearing on oppn. afin de conserver
O'Sullivan for Oppt. claim for usufruct of 1/3 of her husbands estate during her life under her marriage wt. her late husband in the State of Vermont -
This was a personal right qt. she acquired under that law & goes wt. her wherever she goes - Poth. Comtr. No. 12. p. 10 -

Beaubien for Pliff - The Laws of Vermont cannot avail in this Country - the parties married in ~~Montreal~~ Vermont. & afterwards came to Lr. Canada - by Laws of Vermont the wife has enjoyt. of 1/3 for her right of Dower - by Laws of this Country dower does not attach on property acquired by the husband after marriage - Dower as affecting the realty, is a real right and laws of a foreign Country in regard of Dower cannot attach on the real Estate in this Country -

O'Sullivan for Oppt. Frolin & Boulenois have fully treated on this point. Frolin p. 340. to 345. Boulenois dissert. on 19h quest. which are decisive on point. -

No. 109
Morley
Beaubien

Action of Separation by husband agt. Wife -
Rolland for Defendt. - The Defendt. not authorised to ester en Jugement - and further that there are no sufficient grounds stated in the Declaration. -
The authority to the wife to ester en Jugt. is necessary art. 224. - The present action cannot be considered as such authority - the authority must be expressly given either by husband or by Court - may assimilate case to a Don mutuel - No. 42 Pruss. du mari - where husband must authorise his wife - That there can be no action for Sep. by husband, but for cause of Adultery. Danzt. v. Separation. No. Poth. ~~Comtr.~~ Manage No. 525 - 2. Pigeau 235. is of a different opinion - refers to arrets, which do not apply,

Mondelet for Pliff - 1 Pigeau p. 163 - the wife cannot avail herself of this defect in this action where she is sued by her husband or if she reqd. the autorisation she ought to demand it - the very writ sued out agt her is in itself an authority - where they are both in the same suit such autorisation not necessary. Nouv. Denzl vo autorisation §3. No 5 - Dec. de Brillon. vo autorisation p. 382. - art. 224 Cont. Comm. tom 3. p. 170. - Repn vo autorisation 2 Pigeau 241 - form of assignation in this case, where noths p. of authority from husband - On 2d. excep - the facts alledged are of such a grievous kind that the action ought to be maintained. see 2. Pigeau 235 - where similar proceedings are maintd. by husband agt the wife - Pigeau also remarks many cases where wife can demand the separation, and which he says will apply also in favor of the husband -

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Forster & Reddle } On motion agt Pliff for a contempt by assaults one Prime a Wss for Defdr. & prevents his appears in the Cause -

Blannerhasset for Defdr - The affidavit of Prime shews circumstances of Case, and the cause of the assault was with a view to prevent his attendance as a Witn - this is sufficient - cite Hands Crown Prac. -

Ogden of counsel for Defdr - It is evident from facts in the affidavit that the Wss was by violence prevented from doing what he was reqd. - speaks contemptuously of Subpoena is enough. 1 Bacon. tit. attachment - 3 Atk. 219. for words 2 Str. 1068 - 2 Bl. Rep. 1110 - 2 Str. 1094 -

Sewell for Pliff - The intention alone forms the crime - and unless there is ~~not~~ enough apparent on the affidavit no attachment nor even a rule to shew cause will be granted - The latter part of deposn contradicts the first, in qh he says he would give no evidence in the Cause - It was the Wss who went to the house of Pliff and this is a presumption in favor of the Pliff. case 2 Str. 1068 is a much stronger case than the present - fact of speaks positively sworn to, & yet 2 Witns were required - a power of Atty ought to be produced to warrant this application -

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O'Sullivan for Pleff – Copy of Subpœna not entitled to same respect as the original –

No. 886.
Legault
Petit –

On action for Lesion d'outre moitié –
Grant for Defendt. demands hom. of P. V. of Experts and that action be dismissed. –

Mondelet for Pleff – The report is defective – third Experts not sworn – 1 Pg. 306 – besides if the amount of value as reported were payable in 10 years it wd. amount to more than double value of Sum. –

Grant in reply all three Exp. unite in the report – which is sufficient –

No. 20
Smith & Co
Sexton –

Action for price of a Steam Engine. –
Gale for Pleff – Engine sold Guy Warwick & Co who gave Defdt. as a joint & Sev. security for Debt –
Objected that St. Eng. shd. be delivd. 1st June – but this was the contract between Warwick & Co – & Defdt – but facts show that right of Pleff cannot be affected by this delivery being made a few days latter than 1st June, as this was owing in some measure to the arrangements proposed by Defdts themselves – Objected that it did not arrive in good state & condition – but all that is proved is that some of the machinery had only become rusty – but Pleffs had nothg to do wt. machine after it left Engd –

Grant for Defdt – Pleffs have not fulfilled their contract – The Engine did not arrive in time agreed on – & was so rusty as not to answer the intended purpose – That 5 or 6 weeks after the arrival of the Engine were employed in re-polishing it and preparing it for use – The evidence of Mr Porter ought not to be relied on, as he is interested, & an agent for Pleffs –

Ogden for Defdt – action is irregular – Defendt – undertook only on behalf of other persons – who were his partners –
and

and this action is brot. agt him in his own name and not on a partnership Contract. — The Defendt. must stand in the same rights of Warwick & Co with regard to Pltffs. & exact from them the same obligations as Pltffs. were bound to Warwick & Co. — Engine not deliv.d in time — It was badly packed, & shipped on board a vessel wt. Salt, which has corroded the machinery very much — there was time lost at Quebec after it arrived there — when it arrived at Montreal it was thrown on the beach & left exposed there —

No 63
Caldwell
vs
Hilton —

On Excep.s —

On Excep.s that Defdt. is not domiciliated at Montreal, but at Boston — action is irregular —

Bleury for Pltff — Evidence not suff.t

No. 1481
Stevenson
vs
McCrae

On action of account of certain partnership Grant for Defdt. action without foundation — no right of action agt Defdt as Commune en biens, but ought to have instituted it agt the heirs of her late husband Poth. Soc. No. 134. — There is no evidence to support facts stated in declaration — It does not appear that Pltff contributed anything towards the partnership — Poth. Soc. No. 8.

Maitland & al
vs
Doucet Cur
&
Hodgson & al

art 170. Som 3. art. 8.

On order of distribution of proceeds of real Estate in hands of Curator —

Gale for Creditors who have obtd. Judgs. after death of Park, & contends they ought to be preferred to Creditors who have obtd. no Judgs. — altho' Estate was at time insolvent Poth. hyp. ch 1. art. 2. Judgs. agt Curators carry mortgage &c

Rolland for Creditors without Jugt — contends the principle does not apply when Estate was insolvent —

No. 999. & 27
Maitland & al
vs
Forbes & al
+
Gerrard & al
oppr

On Pltff mo. to be permitted to re-examine S. Gerrard one of the Garnishees &c

Ogden for Pltff — one of the issues in this case, is the Insolvency of the late D. Forbes, at time the Garnishee recd. a sum of £4000 from him & appld. to his own debt and ~~also~~ mo. is to examine a witness James Fraser

Ross for Garnishees — no question in Cause about insolvency reasons affidavit was reqd. are that we may see to what point the Wt. is to be re-examd. but a Wt. cannot be re-examd. after his deposn. is closed — if he can be brot. up twice he may be examd. any number of times — Mr Gerrard consents to his being re-examined upon facts & articles, should it be necessary —

No. 105.
Dunning
vs
Chamberlin & al

Action for wages as Clerk on board the Schooner Lively. —

Rossetter for Defdt — no proof of wages beyond £25 — for which only Jugt ought to be given

No. 1735
Lusignan
+
Seasdale

Action for goods sold —

Roi for Pltff admits Defdts acct except £1. 15 What Jugt ought to be for Pltff £11. 12. 9 —

Grant for Defdt — This is not a Commercial transaction & Pltff's son cannot be a Witn —

No. 1545
Demers
+
Rivard

On Report of arbitrators —
Quest. as to the difference of opinion between arbitrators
Vigé for Pltff demands hom. of Doucet's opinion as more conformable to the spirit of the acts of Donation between father & Child

Beaubien contends that Defdt ought to be discharged from obligation of furnishs servant —

No. 15
Sleeper
vs
McCurley

On Pltffs motion to amend his declaration —
Ogden for Defdt. Pltff cannot be allowed to amend in this stage of the Cause, and more especially in a cause of this kind, which is of a hard kind, damages for arresting a raft of Pltff —

No. 1910
Holmes.
&
McConnel

Action for deceit
Walker for Defendt. excepts to the sufficiency of the Pltffs declaration — variance between writ and declaration — altho' put in wr. three day plea, ought yet to have its effect —

Wednesday 18th April 1821.
Present
Justices Reid & Pyke

No. 369.
The Seminary of Montreal
vs
Wm. Fleming

Defendts Exceptions dismissed wr. Costs

Smith
vs
Aylwin & Co
&
Cuvillier Oppt
&
Aylwin Intevs

Interlocr admitting Intervention & granting mo. for a Com. Rogre

Ben: Gibb & al
vs
Jn. Adams & al

Judgt for Pltffs —

No. 808. Eri Lusher vs A. Berthelet & E Contra	Judgt
No. 1059 The King vs John Charles	Judgt
John Scott sal vs F. W. Ermatinger	Judgt
No. 1784 Ouimet & Tetro & Dancereau	Interlocr ordering an avis de parens
No. 1781 Sutherland & Pasteur	Judgt for Pltff
No. 241 Davis & Snow	Judgt hom3 Award
No. 891 Guertin & Vandandagier	Action dismissed
No. 143 Juneau & Latulippe & Gariepy	Interlocs ordering proof, reserves excepn which Court however thot not suffit to discharge the action

No. 809
Davies vs Nichols & al } Judgt. to acct.

Maitland & Forbes & Gerrard & al } Pleff. motion granted

Forster vs Rideal } Rule granted on Pleff. to shew Cause —

Thursday 19th April 1821.
Present
Justices Reid & Pyke.

Laberge & Doucet } Judgt. for Pleff. — on quantm. meruit

No. 6
Monk vs Beauchamp } Judgt. dismissing action as to Bowirt from insufficient service of process. & Judgt. agt. Beauchamp as to the servitude. —

No. 1910
Holmes & McConnel } Exceptions dismissed

The King vs Doucet & al } Judgment quashed.

Francis, Smith & Co
Sexton. } Judgment for Ptiffs

Friday 20th being Good Friday
the Court did not meet

June Term. 1821.

Friday 1st June 1821.

Present.

Justices, Reid, Foucher & Pyke

Saturday 2d June 1821.

Present
Justices Reid Foucher & Pyke.

Thain
Dillon Jr
Dillon Sr. oppr.

on merits of Opposn. afin d'annuller — The parties refer to the testimony adduced

No. 15.
Sleeper
Mc Auley

on rule to shew Cause why cause should not be argued on 5. on merits — & why the amended declaration should not be rejected from the fyles —

Ogden for Defendt. the declr. amended without tendering any amount of costs, according to the Interlocr. order of the Court — Mulling & al. vs. assignees of White — 3 Silvoyer 153 — no new Process can be sued out until the costs on former suit be paid — here all costs from commencement of action ought to be paid —

Boston for Pliff — The error not material — and only in the ~~Copy of the~~ original Decr. the Copy being right — The Defdt. ought to have had his Costs taxed, as Pliff cannot compel him to that taxation — here no tender of a taxed bill —

No. 909
Roi
Main

action for House rent — and also for a rescision of Lease from want of moveables to furnish the house and 3d — for subsequent rent in case of rescision of Lease

Roi. for Pliff cites. 2 Pigeon. 54 — where form of demande
Repr. vo. Boil. p. 20 — same form of demande in this Case — for quartier courant & quartier ensuivt. —

Mr

Mr Grant for Defend^t — No evidence to shew that there was a defect of effects to answer for Rent — action can subsist only for quarter rent —

No. 244
Robillard & Dumont

action on Davis & Marché —
On Report of Experts —

Roi for Pleff says the report is in favor of Pleff. and upon this demands Judgt —

Rolland for Defd^t — contends that there is a defect in the work, particularly in the Chimnies, & on this aut. report ought not to be hom^d — The Experts were sworn, but it does not appear that they gave any avenir to the parties, they only say that they heard the parties, but their allegation to this effect not sufficient, where this formality is requisite —

No. 247.
Martel & ux v Paquet & al & Dufresne Intv^r

upon Exceptions to the Intervention of Dufresne —
Peltier for Interv^r party — The Pleff^s procured a Judgt to be rendered to hereby a land of Defd^t was ordered to be sold à la charge of a rente & pension viagère, to the prejudice of the right of Mortgage of the Interv^r party —

Lacroix for Pleff^s. The Pleff^s have priority of mortgage under the marriage contract of Defd^ts — "Here ~~the~~ no Oppos^n was made within the 15 days, the only mode of recourse which the Interv^r party could have had under St. 41. Geo. 3. 1 Pigeau 734. — That the wife is bound to the Pleff, whose rights amount to date of her marriage contract. Lacombe v^e Hypothèque. Renusson. Comt^e partie 2. ch. 6. No. 20. 21. 1. Bourg. p. 664 — 2 Bourg. 521 — Gr. Com^n art. 237. Sec. 26 —

Gr. Cont. art 237 Sec. 26.

Peltier for Int^r Party — No mention made in the gazette the

of the condition of the sale subject to the rente viagère the rights of party ought not therefore to be precluded any more than if question were now agitated under an appn. afin de conserver — That the rights of the Crdtr of the wife going up to date of her marriage Contract is granted only in case where the wife bro. property to the Comte — Poth. — here the wife of Defdt. bro. noths to her husband, as appears by her m. Contract filed — Here also the rights of the woman have not been ascertained under the marriage Contract — in consequence of the Indt. of Separation —

No. 1817
Shuter
v.
Thayer —

Hearing on Law — action on Award —

Rolland for Pltff — action founded on award of arbitrators named under an act of Compromis by the parties — to this action several questions of law have been raised, some to the form of the declaration which have been dismissed — others to the merits, ~~of~~ qt Pltff contends are not suffte — and therefore proof of them ought not to be admitted — 1° That arbitrators did not require the Pltff to produce certain papers & documents before them — this not necessary as arbitrators did not think it requisite — 2° That arbitrators recd. depositions of witn. instead of hearing wn themselves — Not appear what faith was attached to these depositions — nor that their rehist was founded on these depositions — 3 No signification of sentence arbitrale — this inadmissible — 4 — a general defense in droit to the action — 5 — Non debit — 6 — facts not true —

Sewell for Defdt — Courts must have an authority over awards — as in Chancery in England — and also in Courts in France — 1 Pigeau. 252 — where arbitrator may be deceived — awards are not conclusive between the parties, and they are not precluded from shewing that arbitrators gave Indt. without evidence —

Repn v. arbitrage. p. 553 – Com. Dig. 2 vol. Tit. Award p. 376. If arbitrators mistook, either the fact or the law it is a cause to set aside the award –

The ~~Pliff~~ parties entitled to ex. arbitrators on oath – they are not like Judges of a Court, & there is no other means of ascertd the facts which passed before them, by from the mouth of the arbitrators, they are not interested persons, and may be called on to explain the evidence they recd & the facts which passed before them – At all events the Defdt. has the right to examine the Pliff on facts & art. touchs what passed before the arbitrators –

Rolland in reply – a Compromis is a transaction, at. qt none of the parties can come unless there be some nullity in their proceedings – There is a difference between a reference under a rule of Court, and under a compromis – & the opinion cited from Pigeau, refers to just case – Arbitr cannot be exd as wits when they have signed their award, they are bound by it, & cannot by being tampered with or otherwise, by their oath destroy an act they have formally made – so they even admit their having committed an error, the parties must be bound by it, as much as by the opinion or Judgt of a Court –

—

No. 742
Donegany
Therien

action on a Promy note –
Grant for Defdt – note came to hands of Mr Guerand who protested it after Pliff had note, & does not appear how Pliff became propr of –

Henshaw
vs
Titus
&
De Longueuille

On opposition afin de conserver –
Sewell for Oppt – the Land of Defdt being sold the oppt has a right to obtain the principal of the Rente Constituée –

No. 746
Campbell q. t.
v
Hale —

On action on St. for penalty for practising surgery & medicine without Licence —

Grant for Defd. — Defd. is an Apothecary, and no proof that he acted either as Surgeon or Apothecary

No. 653
Lacroix
&
Lacroix
&
Salaberry
Hervieux & al oppe
&
McKenzie & al Interv3

On rule to shew Cause why Opposts should not be held to bring back certain monies pd to them, or to give Security for same —

Beaubien for D. David one of Opposts — The mo. premature, as the Intervention of St. McKenzie & others have not been admitted to intervene, and cannot therefore make any motion in the Cause — — It does not appear that Defds have recd the monies in question —

Ogden for Interv3 Party — When the Intervention was presented the Court reserved to determine as well on the Intervention as on the present motion —

No. 52
Lafresniere
&
Rochelau

action for board & lodging —
Rossiter for Pltff — only resource of Pltff was to take oath of Defds by qt — it appears that £9. 4 — only are admitted to be due —

Grant for Defds. Pltff ought to be condemned to pay Costs of prosecuting in this Court —

No. 95
Peck
v.
Martin
&
E Contra

action for house rent —
Henshaw for Defd — shews by receipts filed the payt. of rent, & also establishes his incidental demand

No. 102
White
v.
Vaughan

action on an award
Bourré for Defd — It appears that there is no evidence of the award —

No. 113
Bowman
v.
Galway

On motion in arrest of Judgt —
M Blannerhasset for Defd — The writ on gt Defendt. was held to bail in this Cause issued being a Capias —

2d There was no issue in the Cause, as Pliff by his replication does not avoid or deny the fact of the right set up in justification by the Defd — there was therefore no issue between parties — Bull. N. P. p. 19. — When a collateral point in pleading is traversed modo & forma, it is material & must be proved — Esp. 791 —

Grant for Pliff — the plea in justification contains no particular fact upon which a particular traverse could be raised, the general answer was suffl

No. 366.
Whitycombe
v.
Teasdale

on Defds mo. to quash writ, as not being served in time —

Monday 4th June. 1821.

Present
Justices Reid Foucher & Pyke.

No. 714.
Cormier
v.
Henry
&
De Longueuil
oppt.

On opposn. for Lods & Ventes.

Rolland for Pleff, admits that one Lod & Ventes is due on sale from Bouthillier to Pleff — The second Lod & Vente not due, as the sale was null, the property was given up under an action hypothecaire — The person who held the property had no sufficient title —

Sewell for Oppost. two objections raised by Pleff to the 2d Lod & Vente — but even where there is a nullity in the title, until that nullity has been declared, the Seigr. is entitled to his Lods & Ventes — the sale by a minor is not always null, he may confirm the act when of age — The Pleff himself has confirmed the sale made by the Tutrix, as he prosecuted the Detenteur and obt. a Seigr. against them in an action hypothn. —

Repn. vo. Mineur. p. 519. 521 —

~~Do~~ Lods & Ventes. p. 694. 5.

Rolland in reply — the sale here, not by the minor, but by the tutor selling without authority — Repn. vo. Mineur — Meslé Tr. Min. — The hypothy action lies agt. the Detenteur without considering the property — see Denizt. vo. Detenteur — The action hypoth. instituted agt. Defdt. by Pleff does not affect the Case — & where party obliged to quit property by degueerpissement there are no dues of Lods & Ventes to Seigr. —

Livonière — ch. liv. 3. Sec. 4. Sec 2

1 Meslé 145 — sale between minors property by himself & by Tutor —
2 do — 35
1 Bourjon 586 — do —

№ 320

Plamondon & French } On Cliffs motion to examine Defendr on supplementary faits & articles —

Rolland for Cliff — the Defendr has not answered clearly so as to distinguish between two different appeals

—

№ 258.

Bourret. } On trial by Special Jury for Seduction.
vs
Grandpré } Verdict £125 — damages & Costs, & further that Defendr is father of the Child.

—

№ 1481
Stevenson } action dismissed, evidence insuffr
McCrae }

—

№ 15
Sleeper } The 2 motions of the parties over ruled, and
McCauley } ordered that all proceedings be staid until Plff shall have paid two guineas for the Costs of the amendment — and this on the principle that the amendment appeared to be only matter of form. — otherwise Defendr would have been entitled to plead over to the action, and to have his full costs in consequence —

—

Hubert & Cartier. } Parties ordered to proceed to the further hearing of the cause, as the Court was of opinion that the will produced and proved as the last will & Testamt of Mr Cartier appeared sufficiently made out before them.

No. 332.

Taschereau oal' v. Pion. — The Report of the Experts set aside, as the Court were of opinion they could not delegate their authority to another to receive the oath of the Experts. —

Donegani v. Pickle — The Plaintiffs motion dismissed in so far as regards the evidence heretofore adduced prior to the amendment of the declaration. —

Tuesday 5th June 1821

Present

Justices Reid Foucher & Pyke

No. 788.

Metzler v. Filgiano. — Action for goods sold & delivd. —

Vigé for Defendt. — several exceptions are pleaded to the action — proof of demand is not made — a great part of the demand is for money lent to a minor — this contrary to his duty as a master — & action not being of a mercantile nature, the proof by one witness is insufficient — The admission of the Defendt. to prove interruption of prescription, does not shew what was due to Pltff of his demand — & his answers on faits & art. shews that a very small balance only could be due to Pltff — 2. Bourjon. tit. 7. 590 —

Bleury for Pltff — The interruption of prescription is clearly made out — No minority proved — demand proved to extent of £12. —

No. 1743.

Boucher
v.
Perodeau

Action for money paid and advanced

Vigé for Defd. action brd. by Pliff as in the rights of one Dessaules, for Seigr. rights due to him ~~for Seigneural rights~~ by the Defendant — this right Pliff cannot maintain —

No. 274

Forster
v.
Riddal

On Rule to shew Cause why an attachment should not issue agt. Pliff for a contempt —

H. Pr. 62

Mr Blannerhasset for Defd. — states that in consequ. of the rule, the Pliff has filed several affidavits, none of which go to contradict the allegations contained in the affidavit of Mr Prime — the bare denegation that Pliff meant no disrespect to the Court, without meeting the whole of the allegations in the charge, is not sufficient. Hands Prac. 62 Bull. N. P. Baker. 1r Morley — confession of wife no evidence in case of Crim. Con.

No. 319.

Babuly
v.
Monk

Action of Separation —

Default Case —

Blannerhasset for Pliff — states evidence adduced & demands Judgt.

Roussy &c.
v.
Roi.

action en reddition de Compte —

Rolland for Pliff — The Defd. has rendered an aut. on which an Interlocr. has been rendered, directg. Defend. ~~to aut.~~ for rent & interest by him received — But Defend. has rendered no aut. for interest on the monies by him received, as well as on the price of the property he purchased from the heirs of the deceased — The Defend. as Exter. was bound to put out the money

he

he receives, or to pay the interest thereof himself — The Defend. ought to be held to declare whether he has employed those monies so in his hands to any purpose for which he has derives any benefit, the same as a Tutor or any other administrator — if the Defend. sold a property which produced interest, he ought to put the money he rec. in a situation to produce same interest — otherwise he were doing an injury to the Estate — Here there are minors who are entitled to interest, and the person holding their property, whether, as Tutor or otherwise, is bound to pay that interest

1 Desp. p. 3

Bedard for Defend. The present application is in contradiction to the Interlocs Judgt. already rendered & claims more than it has determined was due to the pltff. An Exr is not bound to put out monies at interest as a Tutor

Rolland — Defend. at least must be considered as a mandataire, he must render acct. to his mandant of all the advantages arising from his property. Poth. Mand. 51.

Wednesday 6th June 1821.

No. 1783

Hardie v. McDonald } On hearg on excep.
quest. touchg suffy of decln

No. 1525.

Potts. — v. Burton } On Pliff motion to amend his declaration; on payt. of such costs as the Court shall adjudge. —

Rolland for Defdt — Defdt has made an exception to the suffy. of the declaration, on same point — qt was reserved by the Court.

Pearson v. Vandersluys } On action of Trespass on the Case for causing Pliff to be arrested, imprisoned, and held to bail as Accessary to a felony committed by one Saml Hull Wilcocke.

Trial by Special Jury — Grant & Ossullivan for Pliff — Rolland & Blannerhasset for Defdt.

The Plaintiff produced evidence to shew the affidavit made by the Defendant before the magistrate, the warrant issued thereon, the arrest of Pliff — his imprisonment & discharge on bail — he also proved some circumstances from which a want of probable Cause might be inferred — he proved also that a bill of Indictment had been presented qt Wilcocke at the Court of Oyer & Terminer held in Novr last for felony in stealing a certain Silver watch the property of Wm McGillivray, which was returned, ignored — and after proving the general character and conduct of the Pliff

and

and the circumstances and means of the Defendant, closed his Case. ~~[illegible]~~

The Counsel for the Defendant objected, that there was a defect of evidence on the part of the Pltff, and moved for a non-suit. — in this that the watch stated to have been stolen, in the affidavit of Defendt and in the declaration of Pltff, was a watch belonging to the Estate of the late Benjamin Frobisher — the watch laid in the Indictment which had been given in evidence as ignored, was for a watch belonging to Wm McGillivray and therefore not the same watch — That had it even been the same watch, yet the Indictment being proved to be ignored, was no proof of an acquittal or discharge, or that the proceedings were at an end. — cites Case of Siccard v. Malhiot, 2d febr 1821. (p. 4) — where it was so held by this Court —

The Pltff on the contrary contended, that the ignoramus on the Indictment was a discharge of the principal and consequently of the accessaries — that as one of the Counts in the declaration stated the property to be that of the late Benjamin Frobisher, and another that of Wm McGillivray this was sufficient to cover the charge in either shape — and the acquittal could apply to either — That there was also +

+ a count in the declaration that Defendt charged Pltff with being accessary to the 2d felony, but did not afterwards further prosecute their 2d accusation to which Pltff had given bail to answer

The Court were of opinion that no sufficient evidence had been given to shew in what manner the proceedings instituted against the Pltff had determined ~~terminated~~ ⊖ That in regard of the charge in the ~~Indictment~~ affidavit of the Pltffs and in the declaration, that the stolen watch was the property of the Estate of Benjamin Frobisher

⊖ or that the Pltff had been discharged from the Recognizance entered into by him to answer to the 2d Complaint

nothing

nothing had been shewn ~~the~~ evidence to prove that any Indictment had been presented or prosecuted in regard thereof, or that the proceedings touching the same were at an end in any manner — That as to the Court laid in the Indictment that the watch stolen was the property of Wm. McG — which Indictment had been ignored, there was a variance between that and the fact given in evidence as founded on the affidavit of the Defendt — where it was alledged that a watch the property of Benjamin Frobisher had been stolen, without averring or shewing that both watches were the same,* which could not be presumed but in either case it did not appear that the Pltff had been discharged from the Recognizance he had entered into, either by Proclamation, order of the Court, or by the ~~de~~termination of the Court of Oyer & Terminer before which he was bound to appear & answer & not to depart without leave — ~~which sd. Court might still exist & retain cognizance of the sd. Complaint.~~

Esp. N.P. Evid. p. 274. 277. — 1. Chitty Cr. P. 837 —

The Pltff declining to be non-suited, the Court therefore directed the Jury to find a verdict for the Defendt — which they did —

Incledon. vr Berry. & al — 1 Camp. N.P.C. 203. note (a) The Pltff produced the record of acquittal, and proved that the Defdts had abandoned the prosecution —

Wallis. vr Alpine. Id. p. 204. (note) Pltff proved, that at the Sessions to gt. he was bound to appear, no Indictment was preferred; and that the Pltff was therefore discharged from his Recognizance. —

Bristow. v Haywood. 4 Camp. N.P. Rep. 213. — 4 Even in an action for a malicious arrest in a Civil Case — the Suit must be shewn to be at an end —

sed vid. Morgan. v Hughes. 2. T. Rep. 232. pr Butler — It indeed it had been alledged, that he was discharged, by the Grand Jury's not finding the bill, that would have shewn a legal end to the prosecution. —

Thursday 7th June 1821.

Present.

Justices Reid, Foucher & Pyke.

Witness day.

Friday 8th June 1821.

Present.

Justices Reid Foucher & Pyke.

Wm. McGillivray & al. v. R. McKenzie & J. C. McTavish Intrs

Interlocr. suspend Judgt. on motion for facts & articles until hears on merits.

Saturday 9th June 1821.

Present.

Justices Reid & Pyke.

Pothier & Foucher & Henry & al Intervs

Action to carry into execution — last will & Testament of late P. Foucher.

Bedard for Pliff — The Cause is of a simple nature, although many obstacles in the way, the execution of a testament ought to be ordered provisionement — Parties ought to be considered in same situation as when cause was instituted 1 Pigeon 170 — Repr. v. Demande. p. 375. — The only rights in question can be considered only to by Mr & Mrs Vigé, & they ought not to contest as they do with the Pliff, who is Executor — That the Court ought so to adjudge & leave Vigé & wife to contest their rights with those interested

To shew that such summary decision ought to be given in favor of Pleff – Ricard. Don. p. 2. ch. 2 p. 378 – No 79 see also 368 to which he refers No 43 – Lacombe Vo Exon Testn No 8 –
F. died in Decr. 1815. same day his will was opened – Mr Henry, one of the Executors renounced to that office – The depot of the will was made 15 Decr. the heirs were notified to attend at office of Mr Guy to acknowledge the will – qt was done on the 20e of same month – Pleff then demanded execution of Test. – here some propositions of arrangement were made qt prolonged the matter to Jany. 1817 – The Pleff refused to renounce to the execution of the will unless the heirs consented to assume that execution – and notified his intention to proceed to make an Inventory of the Estate on 20 Jany & as he did not accept the propositions made to him – this notice was renewed for the 23d – but the heirs had in the mean time called a Notary and made an Inventory without participation of Pleff. saying they would execute the will by paying debts & legacies – but as there were not the only dispos. in will qt intended Pleff as Exr, he could not acquiesce in the right claimed by the heirs – as heirs refused to allow Pleff to make the Invy withdrew In april after seeing the effects notified for sale, he obtained the Scellé, which was afterwards set aside – thereupon, and after the Cause was in Court, the heirs proceeded to the Sale of the effects of the Testator – The conclusions of the declaration demand the execution of the will, qt ought to be granted in all the other parts except in regard of the Scellé which has been adjudged all the dispositions of the Testator are set forth in the Declaration in so far as necessary to obtain the exon thereof – The Pleff concludes that such of the heirs as shall contest the will should be deprived of their share in the Succession, which was part of the dispositions of the will of the deceased – these conclusions were right & necessary – 1. Gr. C. art 97. No 6. Desurt. Vo Ex. Test. No 29. 2 Lange 419 – where Judgt is stated as usually rendered in such cases – an Inventory ought to be made by Pleff to enable him to execute the will – that made by the heirs cannot be recd – this ought to be done, & the heirs obliged to bring back the effects and property they may have taken possession thereof

Mr

Mr Vizé for Defendt. Had Pltff proceeded immediately after the death of F. to put on the Scellé the cause might have assumed the simple form stated by Pltff & obtain the temporary poss. of the property — but the fact is otherwise — the Pltff has no poss. either real or Civil — The Testator's Succ. consisted of 3 different parts the Succ. of his first wife — of his second wife — and of his own — of all qt. Pltff demands the control and administration — There are two objects in the will, the execution of the will & the administration of his property — & the directions of the Testator in this respect are not addressed to his Executors, but to his heirs. — The will pretends that the Pltff is seized of all the property — whereas the fact is otherwise — the Exr. can have no saisine, but that of the real and actual saisine, and not a fictitious saisine, nor could the saisine of property be given to Pltff qt. Test. had not himself.

1st Excess — Pltff cannot alone institute the present action. his authy was given to him jointly with another person —

2. The Pltff ought to have alledged that the other Exr. had renounced —

3. That Pltff could not assume the title of Adr. of all the property left by Mr F — as a great part of it did not belong to him —

It is one thing to execute a Test. and to manage the administration of the Estate — altho' Henry renounced to the execution of the will, he did not renounce to the administration of the property in qt. he was interested — Fer. vo. Renonciation — a general ren. is no renonc. — and the general renr. of Henry to the execution of F's will cannot be considered to what he has not expressed —

That Et. Maynard & wife are not parties to the Cause. & they are interested for 1/5 of the Succession, & Pltff cannot be vested with their rights without being heard — 1 Pigeau 339. — this the more especially as Maynard & wife are referred to in the declaration, and in the accord made

by

by the heirs, Mayrand is a party — ~~Exh. No. 18.~~ See Def^d Ex^{18} 19. 22. 23. 24 & 25 —

2 P.S. 261. 287. Poth. P. p. 5 p. 89. 93. When heir not present at Inventory he is represented by a Curator or Proc^r du Roi — this is a Summary proceeding when done immediately after the decease of the Test^r — Poth. Ex^r Test^r p. 365 — it is only by making the Inventory that the Exer is seized of the Succession —

5. The Pleff has no legal Saisine of the Succession — and

6. That depot of the will is null ——

The action is not brot. to compel the heirs to acknowledge the will; but is founded on a will as if acknowledged & the conclusions therefore unfounded — copies have been produced which cannot be considered as authentic — The Pleff as Exer has no Saisine but on making an Inventory — but action is brot. as if Pleff had such Saisine — The Saisine of the heirs must prevail over that of Exer as to real property — the St. 74. does not affect this right of the heir — nor could an Exer have any action touching the realty — Poth. Laws do not abrogate former Laws without special provision the St. 1774 cannot be construed to destroy a right which the heir held under the law of the Country — the art. 318 — le mort saisit le vif — must prevail — Poth. Succ. p. 126. 128 — 4 Fer. Gr. Cont p. 680 — The heir cannot be held to demand delivrance of a legacy of which he is in possession — and as to realty the heir is by force of law considered in poss. even without any actual act of poss^n — But even if heir had no possess it is certain the Pleff had none, q^t can be had only by a real & not a fictitious possess^n — 4 Fer. Gr. Com^n art. 297 — p. 277 — No. 29. p. 289.

The depot is null — the will ought to have been deposed at the Greffe & the heirs called to see its verification — 4 Fer. p. 289. the depot of the will is of no avail — a proof of the will has been attempted — but this is insufficient

7. That the offers made by the heirs destroyed all right of action

action which the Pleff as Exer could have — wh. could only extend to the payt. of debts & Legacies & funeral expences — all the Saisine the Pleff could have could extend only to these objects — Repn. vo Executeur Testr. p. 160 — 1 Argou. ch. 10. p 390 Denizt. vo Exer. No. 20. 2 Bouy. 376 — Fer. ~~278~~ Gr. Conar. 278. 279 — Poth. Tr. Don. Test. p. 362. art. 3. — Here the heirs have done more, they have paid all the debts & legacies under the will — qt. is in so far executed — Denizt. vo Testamt. No. 17 — this authority admitted, but Pleff has not used his right in the way the law requires. — Id. No. 93. vo Inventaire — Id No. 21. vo Exer — nothing certain established — Nouv. Denizt. vo Executeur. Testamt. de Bazon Cour. Repn. vo Legataire — 2. Pigeau 292 when legacies pd —

Fer. Gr. Cout. p. 284. No. 16. 17. 18 — Dup. p 593 — Exers do not pay the debts as a thing belong' to their charge, but as being in possn. of the moveables — nor unless they are enjoined to do so by the will — here the Exer was not charged to pay the debts —

That Legacies being paid there remains no ground to the present action — refers to exhibits — to shew the arrangements made by the heirs on this subject —

By the 297. art. of Custom, the Exer is bound to make the Inventory as soon as the will came to his knowledge — the Pleff neglected & it became necessary for the heirs to do it. —

Fer. vo Scellé Gaunt. in tit. 17. ordr. 1667

If Pleff had no right to the Scellé in order to make the Inventory, neither has a right to demand an Inventory on acct. of the lapse of time — Poth. P. Civ. (Pigeau) p. 249. 4to — (Pigeau) p. 271 — 2 Rg. 271. 254. 287. 289. 299. 315. 316 — Proc Civ. p. 89. 93 Denizt. vo Scellé No. 31 — The Scellé & Inventaire form but one and same act —

That there is no action whatever regularly before the Court — The conclusions form the principal part of a demand here much is stated in the body of the declaration, but wholly omitted in the conclusions —

1. Pizeau p. 139. Repr. Vo conclure. Encyclop. Meth. Vo Conclusion — The only conclusions in the declaration, are to demand the execution of the testament; and the heirs who contest deprived of their rights — this is no specific conclusion, nothing certain —

cont.d to Monday. —

Monday 11e June 1821. —

Pothier
Foucher et al } Mr Vigé for Defdt cites authy touchg the Scellé & Inventory being same thing. 2 Pizeau 249 - 50. to 70 That parties interested ought to be made by the heirs or in their presence — Poth. p. 618. 4t. Tr. des personnes.

The Testator has not specially appointed any fidei-commis in favor of the Exers, it is questionable how far this can be inferred from the ~~words~~ intentions of the will —

The testament is null on the ground of the administration granted to the extent of all the property ment.d in the will. — Lacombe. Vo Legs — when a testator bequeathes what he conceives to be his own, yet such legacy is void — here Testator was in
342 poss. of the property of 2 communities & could not bequeath what in them did not belong to him — see Poth. Don. Test. 343 — Domat. 2 liv. 4. — p. 472 — The testator by his second codicile made in 1813, seemed to be aware of this — as he notices the fact but does not correct it — 2. Bourg. 5 partie. liv. 2. Riccard No 1545 — des Donations — Poth. Don Test. 320. 321. The Testator could not add a clause of exheredation of the heirs contesting his will, when he was giving away what did not belong to him but to his heirs — nor can Pleff ask for the execution of the will without ascertaining the rights of the heirs —

Fingle ch. 7 Sec.2 No 85. p. 59. tom. 2. Riccard. loco cit.o 1545 — Domat. p. 425. tit. 1. Sec Lacomb. Vo Testament. sec 4. No 2. 4. Poth. Subn p. 540, an heir cannot be charged beyond what he recd — Domat 518 —

The word, bien, can be meant to apply only to what can be

be considered only as his own biens, not such as he held belonging to other persons —

199 It is S. that a man cannot leave his property partly by testament & partly without testament — but see Aushy cited. art. 299 — Gr Comr —

There are certain dispositions in the will which cannot be carried into effect, as they are null — particularly in regard of Mr Foucher & Mr Vizé — inasmuchas having married the heirs of the late Madame Foretier, they were entitled to claim their rights — Foucher also was tutor to his daughter who was heir to her mother, & as such had a right to administer her estate in that capacity — . —

On Defendts mo. for rejects sundry papers & depos.

1. Mr Guy's depn ~~19 Quest.~~ on 29. quest. where he produces three papers — there he had no right to produce in this manner as they were in pos. of Pltff & ought to have been filed wt proceedt — That the testimony of Mr G. cannot be recd to prove handwd of Mr Foretier —

As to depn of Franchere & Beaubien — were taken after Mr Heney was married, & after notice given to Pltff — That verbal testimony upon the subject of the authentic acts spoken to Mr Guy, is inadmissible —

The papers A. B. C. have been irregularly brot forward — if of any value, they ought to have been filed wt exhibits — they were in possessn of Pltff & not left wt Notary who produced them —

Notaries cannot be examined touching acts they have made vr ~~Notaire. Ne~~ Science des Notres — Devoirs des Notaires — Pigeau. p 276. — 282 reproches — see also ansn to Quest 51. 2. 3. 5. 67 9. 62 & 82 — was intimate friend of Pltff — Bourier — was in dispute formerly wt some of Defds — He is the only Wt — who speaks to a great many facts — Poth. Proc. Civ. — Domat — It is attempted to be proved that Defds acknowledged to act as Exer in the diffe commun — he had with him —

That all other Depositions except that of Mr Guy. were taken

taken at a time they could not be admitted, after Mr Henry was married — & after notice given — cites Repn. vo Reprise d'Instn and Instruction.

On the Interrogatories proposed by Pleff. to Defdr

Mr Rolland for Mr Barron one of Defdr

By Stat. 1774. full liberty is given to give by will in the most ample manner — and the Exer under such an act, is not an Exer under the Custom of Paris, but under the authority given to him by the will — it is not necessary to call him in the will an Admin. — if he has the authority of one given him — the term of admin. is not known in law, but Admin. is known — The will of Testator here gives poss. of all his property until division and to hold certain parts coming to some of the Devisees during the life time of their husbands — The Saisine of the heir is not inconsistent with the Saisine of the Exer. — Cites case of will of Mr Lavish, where Exon of will was judged to extend beyond the year & day — Nouv. Deniz. vo Exer Testn — This Cause must be considered in the same situation as when the Cause was instituted and a summary proceeding only is necessary — if the will carries on the face of it legal dispositions, it is all that is requisite to order the execution of it — The clause of disinheritance can be made to apply to the Succession of the Testator, & not to the Succn of the succession of his wife — It is in the power of the Court to order the exon of the will in part or in toto, or leave the heirs to bring their action agt the Exer — the clauses respect legacies to the Commtes may be considered as null; but this has not been called in question, nor does it affect the validity of the other dispositions — This action is nature of a demande provisoire — It is no nullity in the testament that it comprehends several successions — as the Exer ought to be put in the place of the Testator, & leaving parties to their rights if they wish to renounce to the dispositions of the will. The Exer here is entitled to the possession of the real Estate as well as moveables under the present Law — Exer under former law was entitled to the revenues of the Realty dens year & day — cite Lacombe vo Execution — Deniz. vo Exon —

Pelf is sole Exer of the Will — where one renounces the other is of course Exer alone, 1. Despeisses — 169. the renn. of Henry to the execution of the will necessarily contains renn. to the administration as that is part of the execution of it — If the Testator has made a mass of all his property wh. what he held under the rights of others — this does not vitiate the will, as the Defds. may accept or not as they shall see fit to this will — The Inventory ought to have been made by the Exer who is the true representative of testator, & as to 2 Succ. qh can only appear by this Inventory — & it was not the duty of the heirs to make the Inventory in the way suited to their claims & to oppose the execution of the Will —

2. As to Mr & Madr. Maysand, being parties to the Cause, this not necessy — as there is no question touchd the rights of the heirs, it is only agt those who have impeded the exon of the Will — it is an action in factum, & in France might be ordered provisoirement they live besides out of the Jurisdiction of the Court — no remedy — This action lies agt the heir who prevents Exer to execute the Will — there can be no Judgt. given in this Cause to affect the rights of the heirs —

As to the Scellé & Inventory — to say they are the same thing this not the Case — The Inventory is not the consequence of the Scellé, although it generally follows — there is no occasion for the Scellé where there is no risk of damage or spoliation — If Scellé had never demanded, it did not prevent demand of Inventory — nor does the refusal of Scellé reject the demand of the Inventory — The Saisine of the Inventory arises from the Inventory, it is a Saisine de fait, but there is a Saisine de droit qt arises from decease of testator — the Inventory is only a proof the Saisine de fait — Poth. Don. Test. ch. 5 - art. 2. p. 360 4to —

The Inventory here made is made only by a part of the heirs —

As to proof of Testament — from moment it was recognised the exon ought to follow — Poth. loc. cit. p. 300 — 2 Bourg 379 — it became thereby an authentic act — The first act of the Exer ought to be to make the Inventory — but months may

elapse

elapse before this is done, where there is no risk, without depriving the Exer of the right to do so —

On depot of testament — It was not necessary to depose it at the Greffe, if the authenticity of it is recognized it matters not where it was deposed —

The offers of the heirs — this could apply only under the Custom of Paris — but here the Exer is entitled to hold and possess the real Estate and certain other rights which could not be realized by the offers made — there was more to be done than to pay debts & legacies. Poth. Don. Test. 362 even where this partial duty is imposed, the Exer is entitled to the possn of the moveables — But in no case can the Exer be prevented from making the Inventory — 2 Bourg Sec. 2. art. 4. Exer Testn

2 2 art. 4
Sec. 11 art. 2

As to the right of Testator to make a division of his property among his heirs, and imposing the penalty of disinheritance agt. such of the heirs as should object thereto — this is undoubtedly the right of the Testator — the objn of several succ. being united can be no objection — when legacy of property of another, is made it does not vitiate the will — Poth. Don. Test. 349 — here the Testator had a perfect Kn. that the property was not his own — in regard particularly of the fief Closse — Lacombe. Vo Leg. No 4. Sec. 2.

Dec. Fer. Vo Partage — as to favor of Testamentary partition — 2 Bourg. 343. 367. — Domat. tit. 1. Sec. 8. No 24. — 1 Argou. Partage & Rapport — 48. —

As to the peine — Repn Vo Peine Testamentaire — where it is a condition of the legacy — & not to punish the heirs —

The further argument contd till to morrow

No 274.
Forster
vs
Ridcal

Rule for attachment discharged w Costs —

No. 886.
Legauet & Petit — } W Judgt rescinding Deed of Sale

No. 109.
Morley vs Beaubien } W Action dismissed

No. 65
Fraser vs Chisholm } Quest. touching right to obtain benefit of Saisie Gagerie on all the property seized, in case of a bankruptcy for the unexpired Term of the Lease — so Held — Default Case —

No. 1080
The King ~~Chisholm~~ vs Solomons } W Judgt for demand, but without Costs — as action was grounded on the Stat. and not on any bond or Specialty —

No. 950
Trudel & Jones & E contra } Judgt

No. 113.
Bowman & Galaway } Mo. in arrest of Judgt dismd

No. 1651
Roussy & Roi — } Pltff mo. dismd

Tuesday 12th June 1821.

Present

Justices Reid, Foucher & Pyke

No. 629
Clarke
French
&
E contra

action on note –

Grant for Defdt – set up an Incidental demand by which it appears demand in chief was wholly satisfied – a new Incidental demand set up by Pliff upon which a balce will appear to be due to Pliff of about £48 – – but this ought to be allowed without Costs, as these costs are occasioned by Pliff not stating the whole of his demands at once –

Beaubien for Pliff, contends there was a balce still due to Pliff on the principal demand

No. 1691
Benard
&
Aubertin

On report of arbitrators –

Quesnel for Pliff, asks for Indgt on the evidence before the arbitrator – & also the acknowledgment of the deceased that he owed 800# to Pliff – offers the oath of Pliff to complete the evidence should Court consider it as defective –

Bourré for Defdt contends that verbal testimony ought not to be recd and on this principle the arbitrator has allowed more than he ought –

No. 467
Converse
v
Pierce } case submitted

No. 541
Francis Smith & Co
v
Warwick & Co } case submitted

No. 422
Rossita
v
Davis
&
E contra } action for attornies bill — bal^a. due £13. 10 —
Binder for Defend^t — Pliff by his letter demands only £15 from Defd^t — as this Defend^t has produced an aut for £6. 7. 6 which is admitted, and Pliff ought to have Judg^t — only for balance but ought to pay costs to Defd^t

No. 106
Hildreth
v
Mitchell } action of separation — hears on law.
Henshaw for Defend^t — pleads that all matters between the parties were submitted to arbitration

No. 838
Orkney
v
McClure
&
E contra } on Report of arbitrators —
Gale for Defd^t prays hom. of award.
Grant for Pliff — The arbitrators are interested as the bail of Defd^t — and by the Report of Mr Badgley one of the arbitrators, he shews by the reasons he has given that the Judg^t ought to be in favor of Pliff —

No. 951
Delorme
v
Pickle } Noths 1^d

No. 653.
Lacroix
v.
Lacroix
&
McKenzie
&al. Intervs
&
Hervieux &al
Opps

On mo. of Opps to reject from the record the Intervention of Henry McKenzie &al. as not having been filed in time, refers to case of Bell. v Fraser & Young Oppt Febr. 1815 — 4 Ap. 1815 — the second Oppn was dismissed — The Intervention here is an Opposition afin de conserver

Ogden for Interv. party — the rule does not apply to Interventions — nor can the merits of an Intervention be tried on a motion — The case here different from that cited, as there the monies returned into the hands of the Defendrs of whom the Oppnt could have his action

No. 455
Fisher
v.
Lacasse

action on Promy Note — hearg on excepl
Boston for Pliff — excep. contains no ground upon which it can be maintained —

Sewell for Defdt this is general demurrer to the action and is not one of the preliminary pleas on gt only the Rules of prac. apply —

No. 392
Lussier
v.
Duchenois

action on promy Note — hearg excep
L. M. Vigé for Defendt — the exception here filed goes to the merits of the Case — The excepn here will be a temporary bar to the action, as he complains and states as a ground that neither the date nor the place where the note was made is sufficiently stated

Lussier for Pliff by Rules of practice. art 3. of Sec. 11 — such excepn ought to be dismissed

No. 1513

McKenzie & McCrae & McCrae & al opps

On merits of the opposition & distribution of the monies levied —

To ex. projet de distribution —

No. 95.

Peck & Martin & E. Contra

On action for house rent —

Parties heard —

No. 43.

McGillivray & al & Wilcocke —

On action for monies had & rec'd —

Grant for Defd. states that Pltff have not given him credit for £300 — for 2 year services as Clerk to the Company —

No. 809.

Davis & Sanford

On acct. rendered —

Boston for Defend. — goods sold on credit —

No. 189.

Glassford & McArthur & Black oppt

On opposition afin de conserver & privilege of the Oppost — as tradesman who did the carpenter & Joiner work. —

Grant for one of Opposts there is no proof before the Court that oppt. did the work — the answers of the Defend. cannot be admitted as evidence of third persons —

No. 15.

Sleeper } action of trespass for the illegal seizure of certain
Mc Auley } rafts of staves. —

Ogden for Defendt. — There is no affidavit of the Plaintiff in this Cause claiming any damages — nothing to shew in what manner the attachment issued — does not shew the affidavit made by Defendt. in suing out his attacht. Defendt. made an objection to the admissibility of certain Wz brot. to this Province by Pltff, (Burton Phillips & Edmond T. Stone) from U. Canada, & exd. on the principle they were about to leave the Province — But these Wz swear to general lumping sums of damages without any reason shewn by them. — The Defendt. witn on the Contrary shew, that the very staves were purchased and delevd. to Defdt. by one White — these staves came afterwards into the poss. of the Pltff, but this could not alter the property — and some of the Wz recognized the Defendt's marks on some of the staves while in the poss. of Pltff —

Boston for Pltff — action is well founded — the proceedings of Defendant were malicious, as appears by the evidence

—

No. 186

Labelle } action on deed of Sale and transport to Pltff
& Bellanger }

Bedard for Defdt. The acception on behalf of the Pltff, while minor, was null — the ratification or acceptation by Pltff since he came of age is not valid — the art. 133 of Ordn. of 1539 — permitted such acceptn. — but ordn. of Feb. 1549. changed this — Poth. Don Vif. p 458 — states that the ~~acceptation~~ Donation should be inserted & make a part of the ~~donation~~ acceptation — The acceptation

here

here was made 4 years after the donation, and cannot have a retroactive effect —

Lacroix for Pliff — The acceptation at the foot at the act is sufficient — refers to Repn vo acceptation, and Lacombe Vo Eod.

No. 978.
McClintock
v
Martin &ae

On defendt mo. for security for Costs —
Bourré for Pliff. the Defendt shews nothing to entitle him to motion —

No. 633
Perrault
v
Moreau

action for freight of Staves
Beaubien for Defdt — there is no proof of the demand — the Staves belonged to one Wm Anderson and were put on board of the Pliff's Schooner on his acct —

No. 807
Carmel
v
Hunter

action on promy note —

Bender for Pliff. action agt Indorsers of note, the maker of the note brot. up to prove the note indorsed by Defendts without consideration — he is an incompetent witd — as being interested

Borton for Defdt. Declaration not well drawn it ought to have contained a count for monies paid & expended — The Note was an accommodation note & signed by the Defdts to accommodate Pliff & enable him to get the note discounted at Bank

No. 143.
Juneau & ux
~
Gariepy
&
Miron. Gd

Action on Deed of sale –

Rolland for Defdt – The Pliff was bound to deliver the titles to the land sold, quittance's – but it appears that neither miron, nor Pliff have pd their Lods. to the Seigr. – and by a certain deed of sale of land there appears to be due a sum of 1000t. to one Minot as bailleur de fond –

Lacroix for Pliff – There are no hypotheques on land for 1000t. nor for any other sum to Minot – The clause in the Contract to deliver antient deeds of land must refer to the titles under qt. he held the land & there he has delivered – That there is a quittance for all Lods & Ventes except about 500t for the Lods & Ventes due by the Pliffs Seller –

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No. 435.
Chamereau
&
Chamereau
&
Chamereau.
mise en Cause

On acct. rendered –

L. Vigé for Defdt – objects to 5. 17. 18 – Interrogs proposed to Pliffs which have not been sufficiently answered – and moves they be held to answer over

In consequence of the Intly Judgt the Defendt has filed a certain note, which she alledges never belonged to the Succn of her late brother, as in his life time he had given it to the Defendt for Services rendered. – The question put to Pliff is whether he had any conversation with the late Chamereau touching the note in question – the Pliff does not answer positively, but says, not to his knowledge – this not suffct –

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No. 1633
Cleland
&
Warwick

action for wages. –

Boston for Defendt denies that any thing is due to Pliff

No. 508.
Laroque
Laroque

action on a Pry Note —

Vigé for Pliff — Pliff obliged to submit Interrogt — to Defdt — to establish the making of the Note — in his answers he endeavours to set up certain payments made on acct. of the Note — this ought not to be recd. as it does not regard the making of the Note — there was also a reglement de compte between the parties, ~~subsequent~~ which constitutes the Note — and Defdt. wishes to set off certain payts — prior to this reglement qh ought not to be admitted — Pliff ought to have his Ingt. except 22#. 10s. qt — Pliff acknowledges to have received from Defdt. since the reglement.

Roi for Defdt — Pliff entitled to Ingt. deducts 130#. 10s qh Defendt. says he pd. on acct —

No. 274
Forster
Rideal

action for Separation —

Blannerhassel for Defdt — Wits are brot up to prove confessions of Defdt — but as they do not appear to have been made in the presence of the husband they ought not to be received — There is much testimony adduced not credible — particularly that of one Towers and one Ball — and also one Nickless — That if a Judgment of Separation should be granted, yet the Court will not determine that she shall be deprived of all her matrimonial rights, as many of them arise under the laws of another Country — Poth Mar. & Comte — Proof ought to be direct & Repr — Vo — adultere — or several Strong presumptions — Confession of wife no Evidence. Bull. N. P. 28 —

Sewell for Pliff – Evidence suff^t – Defend^t is not entitled to any alimony in this Case & nothing in the Plea or on the record by which she can be entitled to any as to the Judge of the Court it ought to be in general terms as it can extend only to such rights as Defd^t can be entitled to in this Country –

No 20 –
Northedge
v
Stanley
&
Levequeaul

action of Saisie arret on Judg^t –
Defend^t in person – the Pliff not entitled to seize his fees & emoluments – nor to a seizure in hands of Levequee & Monk, as Prothys as Reid Levequee & Monk only, are the Prothys. –

No 345
Ruiter &al
v
May &al

On Pliff mo. that Defend^ts be held to declare if they intend using in the Cause as evidence a certain pretended will of the late Ph. Ruiter

Gale for Defend^t It is here of no moment whether the will be valid or not; as under the s^d will they took poss. of the property in question and therefore sufficient warrant for Defd^t in the present action of Trespass – and where the Saisine was given to them by order of the Judges under that will – besides there are many persons interested in this Cause who are no parties thereto – Rep^r Inscrip: de faux. p. 256 –

No. 873
Crump
&
Fuzere

On Report of Experts –

Vigé for Pltff, contends that report is irregularly made and not in conformity wt. the Interlocutory order of the Court – No power was given to the Experts to examine witnesses to prove any agreement not in writing between the parties –

Peltier for Defendt. the Experts have proceeded regularly and have established the value of work as reqd. –

Wednesday 13th June 1821.

Pothier
v.
Foucher & al
&
Henry & al Intervs

Bedard for Pltff – in answer to observn. made by Mr Rolland as to the term, Administrateur, assumed by the Pltff in this case – the words of the will authorise it, qt. is the law to be followed – refers to Ecy colpr. vo. Administr. but the term is indifferent, where the authority is precise –

The St. 1774 gives the most unbounded authority to give by will – except to persons in mortmain – not however agreed as to the effect of this stat. – The law of testaments is derived from law of nature – that of Succ. from laws of Civil Society – the power to will is therefore more extensive than that of Succn. The rules of law regulating wills have recognised this right – and the St. 74 have removed in a great measure the prior restriction – 2 Instit. 260 – Faculté de tester est de droit public – Dec. du Dig: vo. Testament – Repn. vo. Substitution p 470 – la faculté de substituer est de droit naturel &c. – Le droit naturel ne reconnoit point d'heritier. Repn. vo. Heritier. – Grotius de Jure lib. 2. ch. 6. par. 14 – les formes des test. peuvent être reglés par la loi, mais le pouvoir de tester vient du droit naturel –

Thursday 14th June 1821.

Present
Justices Reid & Pyke.

Pothier. + Foucher & al & Henry & al Mts

La succ. tire son origine du droit civil & des conjectures de la volonté du Defunt. Gr. liv. 2. ch. 7. § 3 – Hence the succ. testamentaire ought to be preferred to the succ. legitime. Domat. des Test. p. 425. tit. 1 sec 2. art. 7 Les test. ont l'autorité de la loi qui les a permises – Le test. fait en vertu de l'acte de '74 doit avoir le même effet, que la Loi elle même elle met au neant la legitime, la Saisine de l'heritier & autres reserves Coutumières –

The execution of a will ought to be ordered summarily, without reference to the contest to arise on the interests of the heirs – and here none of the heirs have any interest to contest the will – the only person is Mad. Vigé –

The St. 74. gives the most unlimited power to will – only one exception as to mortmain – this liberty greater than was given by the Law of the 12 tables – which admits that whatever the testator wills shall be law 7 Vol. Instit. p. 48. this from the changes that law underwent The consequence is that ~~the~~ wills ought to be interpreted with greater latitude than wills in france under the Droit Ecrit as the Roman Law in that part of France – Another consequence is, that if the Saisine of the heritier Testamentaire, is less favorable than the Saisine of the heritier Legitime in the pays de Droit Ecrit, a fortiori this ought to hold in this Country – The St. 74 abrogating all Laws to the Contrary has necessarily abrogated all law in regard of reserves Coutumiers as well in regard of Saisine of heir as other – This Stat. is a Stat. reel – 1. La Jeunesse – p. 61 – it has abrogated all the Statuts réels to the Contrary, such as those regarding the Saisine de l'heritier – same as to the Statut which establishes the legitime it also revokes the law in regard of the execution of testaments as being a Stat. reel – Prevot de Jannes. 69. 79 – It may then be asked if Saisine exists no longer? until it is ascertained that there is no will it does ~~not~~ not – when the will exists, that must regulate the Saisine – and all Customary reserves then cease –

4

Repr Peines Test 75.—

4. From the unlimited power given to the Testator by this Stat — he therefore owes no acct. to any one for his dispositions — Repr vo Peines Testamentaires. p. 75 — the will of Testator makes the law whatever it may be if not agt good morals — Domat. p. 425 art. 7. — Dic. Digeste. vo Test. p. 459. No 3 — Domat. p. 451. art. 5 — 2 Ricd. 423. No 797 — Repr vo Legs. p. 419. — Repr Peines Test. p. 75 — Cette volonté doit etre execute & suivie exactement. Ricc. des Don. entre vif. p. 392. No 129 — Repr vo Legs. p. 405 — Les legs ne demandent aucune forme particuliere —

5. La volonté du Testateur fait preferer les heritiers Testamentaires aux her. Legitimes. Fer. Gr. Com. on art 299. Glose unique par 1. no 2. Domat des Succ. p. 347. art. 2 — two kinds of heirs. Legitimes & Testre — Repr vo heritier p. 447 — Les heritiers Institués excluent les heritiers legitimes &c — Repr 452 Eo. verb. Id. vo Succn p. 548 first col. on ne con. dans le droit Rom. que 2 sortes de Succn &c — Domat des Suc. p. 349. art. 19. Quand il faut savoir a qui un defunt a laissé sa succession il faut savoir, s'il y a un Testament &c — D'Antoine. p. 252. § 89. Fer. on 299e art. No 6. glose unique — Dic. du Digeste. p. 355. vo Heredité

6. Si l'Heritier Legitimes acceptent la succ. il devient heritier Testamentaire — et ne peut pretendre la Saisine de la Loi, c'est la Saisine du Test. Domat. des Test. tit. 1. Sec. 1. art 5 — Quoique le Testateur ne nomme pas d'autres heritiers que l'Heritier legitime, il sera heritier Testamentaire &c — here from the moment the will was recognized the will of Testator became known — Dic. du Dig p. 355. vo Heredité — hence the children institués cannot pretend a greater right than Strangers — nor can they pretend other Saisine or possession than Stranger — Fer. Gr. C. art 318 — Glose. 1. Sec. 1. No 6 — the rule — le mort saisit le vif — does not apply to the Heritier Testamentaire — Id. Sec. 2. No 21. si l'Her. test. est saisi — In this Country where Succ Testre is admitted the Saisine of the heir cannot be admitted as that of heritier Test. 1. Prev. de la Jannes — p. 54. — From moment it was known the Succ. of the Teritier was a Succ. Testamentaire, the apprehension of the heir, would be a Saisine only under that will — the saisine as heirs could not exist — Id. 78. No 62 mais le l'heritier &c — Repr vo Heritier. p. 449. It therefore the Heirs cease to be heritiers legitimes, and can act only as heritiers Testre

Testrs — their acts here can be considered only as heritiers Testrs — had Mr F. sold his property in contest, the heirt. Tests by accepts his will were bound by his acts — & the same where he wills the property both being acts of ownership over the property — the heirs can have no other Saisine than a Stranger — Here Mr F. directed that his heirs should not be seized of his property before a certain time — If there be anything defective in the form of the will, when the intention is clear, the Court ought to supply the defficiency of form 2 Ricc. p. 383. No 628 — Id. p. 528 — Id. 146. No 204 — although the condition of the will is not expressly mentd that the heirs should not have the property until after the partage, yet this is clearly the intention & ought to be supplied by the Court.

The Testator can impose any Condition he chuses in his will upon his legacies — if these conditions are legal, the Legataire must submit thereto — or renounce to his legacy — Repre vo Legataire. p. 56. 57. — ~~p. 102~~. Id vo Legs — p. 450. 451 — The Test. leaves the poss. of ~~her~~ Mrs. Vigis share but not the property till after the death of her husband — this was a legal & just ground of which no one can complain — the motives of Testator cannot be enquired into — Repre vo Peines Testrs p. 76 — Domat des Test. 425. art. 5 — The heirt. test. bound to acquit all legacies & Test ~~and~~ attaches such conditions as he sees fit — Ricc. des Don. p. 123 from moment heir accepts the legacy made to him, he must be bound by charges & conditions of the will. — Fer. Dec. Droit vo Legs Penales — Lacombe vo Test. Sec. 4. dist. 3. No 3. — 1 Jannes. p. 143. No 124. — Domat des Succ. 368 — art. 4. Repre vo Substitution p. 170 — The condition must be ~~accepted~~ executed as being an essential part of the will — must command or prohibit something — in the power of party to execute — Repre vo Clause Penale. p 554 — Clause penales in a Testament are not Comminatory as in matters of Contract — Id. Clauses privatives — Id. 558 — Repre vo Condition. p. 406. — 414 — Fer. Dec. Dr. vo Legs Conditionnel — Repre vo Peines Testrs — Les mots, si, en cas, are conditional expressions — Lacombe. vo Dispositions Conditionelles — Dec. Deg. vo Testament p 436. No 19 — 2 Riccard. Tr. 2. No 18 — Poth. Sub. 518. 519. — The defence d'aliener is here a condition of the legacy — Fer. Dec. Droit. vo Leg. Penale — Legs Conditionnel Fer. vo Condition — Id. Clause Penale, ajoutée à une disposition de

disposition de dernier Volonté — 1. Argou. p 326 —
2 Ricc. p. 200. No 440 — such conditions may be affixed to will as Testator sees fit & must be executed — Id. p. 146 — No 204 — Legacy cannot subsist without condition being executed — Id. p 138. No 170

The Testator can substitute what belongs to his heir, or what he holds in Common with heir, Would unite the 2 Successions and make a partage of the whole — Repr. vo Heritier p 501 — Ricc. des Don. — Repr. vo Legs — p. 416 — Domats — Des Legs — p 512. art. 7 — Id. Des Substitutions p 563 — art. 2. — Le Test. peut charger son heritier d'un fidei-commis particulier &c — Repr. vo Fidei-commis — p. 360 — Poth. Don. Test. 4e — 342. — 343 — 344 — 355 — ~~540~~ Traité des Subnts. p. 540. — Riccard des Don. entre vifs 466 — No 291 — No 292 — 293. — Id. 572. No 817. — Id. des Dispositions conditionelles. p. 124. No 110 — Instit. Fr. p. 413 liv. 2. tit. 24. — Fer. Dec. Droit — vo Partage faits par pere & mere — art. 295. Gr. Com. glose 1. No 22. — 1 Argou p. 365 — if heir will not accept the charge of Legacy must renounce Id. p 506. 507 — Lacombe. vo Leg. part 3. Sec. 2. No 4 — 1 Jannes. p 141. No 121 —

Tit. 3. Sec. 2 art. 2.

The Testator had right to deprive Mad. Vigé & Julie of the administration of their shares — Repr. vo Peines Testam. p 76 — fin — Domat des Test. p. 460 art. 24 — every condition in a will not contrary to the spirit of the Law is valid — 2 Ricc. p. 156. No 243. — Had Mad. Vigé not liked the disposition of the will she could have renounced thereto — The Legacy to Mad. Vigé was conditional. Repr. vo Legs. p. 450. 451 — Les legs de fideicommis ne sont assujetis a aucune forme. Repr. vo Legs — p. 405 — ought to be executed without difficulty Riccard des Sub. p. 311. No 299 — where intention of Testator was to make a fidei-commis — this intention should be supplied if any words are wanting to complete it — Lacombe vo ~~Condition~~ Substitution p. 2 Sec. 1 No 1 Simple conjecture may show fidei-commis — Domat — Repr. vo Legs. p. 415 — Rep. vo Fidei-commis p. 360

p. 360 – in whatever way the intentions of Testator are manifested the fidei-commis is valid – Poth. Sub. p. 497. same point – p. 499. – even when not expressed, if it can be drawn from the intention of Test. – Id. 508 – intentions to be looked for. Ricc. des Don. vers p. 297. No 1377 – Id. Des Substit p. 311. No 300 – Fr. Die Droit vo Fidei-commis. – ~~Gr. Com. art 297. Glossa No 5~~ 1 argou. p. 363. 1 Jannes 159. –

On the principle on ne peut charger l'heritier grevé au delà de ce qu'il recoit – is not always held – it is to be distinguished and holds only where quantity for quantity is in question – if he receives only £100 – he cannot be held to restore more – Repn vo Substitution. p. 476 – Id. p. 480 – Here it ought not to be considered the succ. of the mother was more advantageous than that of the father – 2 Riccard. Des disp. cond. p 124. No 109. – No 110 – Lacombe vo Dispositions Conditionelles Sec. 5. No 4 – when the succ. has not a certain value, the heir is bound to execute the will whatever the amount may be –

continued till tomorrow

Friday 15th June 1821

Present
Justices Reid, Foucher,

Labelle & Labelle } On question whether Defendt can be admitted to prove by Verbal testimony that Pliff agreed to give delay for payment –

Rollin for Defendt contends he has proved enough from answers of Pliff on facts & articles to admit this proof –

Amiotte & Gratton & Gratton } on oppn to making title by Pliff

No. 463

Armour v. Pickel et al

action on a Prom't notes & on obligation —

Vigé for Defend^e the Pliff has no right of action as he acts only as Treasurer of the Bank, to which the property of the note belongs — If the action can be brot. for a third, the names of such third persons ought to be mentioned — It appears that there are two demands for the same object — for notes & for an obligation — that Defend^e pleads that the oblig^n was given for the notes, and the action can be maintained on this alone — altho' many securities may be taken for a debt, yet they cannot all be enforced in a Court of Justice — a sum of £500 has been p^d. on acct —

O Sullivan for Pliff — There is no novation here — as the debt has become extinct by the acceptance of a new security — the intention of the parties here was that both securities should subsist at the same time — Paleys P^r & agent —

Mad L. Rep. 488. 3^d Vol

No. 258

Bourret & Grandpré

On motion for a new trial —

Rolland for Pliff states the grounds of motion
1 Verdict without evidence —
2. Jury mis-directed —
3 Verdict age Law
4 Damages excessive. —

Rep^r v^o grossesse p. 338 — Pliff of age there could be no seduction — 2 Dareau, p 187. even when a minor get damages it is upon the principle that she had hopes of marriage which could not be the case here. — The Pliff was a Servant in the house — Id. 189 — and it is more from commiseration than strict Justice that damages are granted — Deniz^t v^o Grossesse.. no proof age Dep^r

to be taken by presumption of him. Dareau. p 199. 200 — Dareau 195 — The damages ought to be less in case of a married man The damages excessive & ruinous to the parties — Morgan's Essay. Ducken. vs Wood — 1 T. Rep. 277 — 5 T. Rep. Jones & Sparrow 267. — The law here points out the verdict as excessive — 2 Morgans Essays. action for words — former verdict may stand as security —

Boston for Plff — Demand for new trial not favorable in this Case — paternity is in question, which has been established — 1 Bur. 609. Wilfott v. Berkley — Court cannot estimate damages in a case of this kind

—

N° 1531
archambault
&
Larochelle

on Report of Experts

Rolland for Plff asks Judt on report — but contends that the money yet due to Defendrs ought not to be paid to them, or deducted from the damages, as directed by the Experts — if this the Experts were no Judges — having estimated the damages their task is fulfilled —

Bedard for Defdrs. the Experts have not followed the directions of the Interlocutory order — The Experts ought to have proceeded to make an enquete and return it to the Court — this is not done — The Report however states that the work ought to be received, except the part which ought to be demolished, because the wall was not uni — at all events the report ought to be homologated such as it is — except as to damages in future, in regard of which the parties ought to be declared quit & discharged — but the damages are not seperately estimated as required by the rule — they are in bloc and the parties cannot distinguish on what account the damages are given — The Defendrs ought to have the advantage of completing what is defective in the work —

№263.

Bouthillier & Allard

On action Petitoire –

Bourret for Defts – Pltff has no right of action there is a contract between the parties, for the sale of the land in question, and Pltff cannot have an action petitoire, only reasons alledged that Defend. has sold part of the land this he had a right to do –

Rolland for Pltff – the paper produced by Defendt – is of no value, it was in poss. of Defendt – and action could not be binding on Pltff – not being double & Defendt – could make use of it or not as he should see fit –

—

Burer. Willard

Action of trespass & assault – Trial by Sp. Jury –

The trial having gone off upon a former day from default of Jurors, the Plaintiff sued out a Venire and brought up another Jury for the trial this day – this Jury the Defendt – refused to attend & strike – and he now moved that the Venire should be quashed inasmuch as no new Jury could be had for trying the cause, as the Jury formerly summoned could alone try it and that an alias Venire, or a Distringass ought to have issued to bring them up again – cites

Saturday 16th June 1821.

Present

Justices Reed & Foucher.—

No. 946

On report of the Comiss.rs of Common of Boucherville v. Pr. De Boucherville

On Report — & demand for homologation

Quesnel for Comp.ts the Report made under a Provincial Stat. for regulating the Common — The opposition of Mr. De Boucherville cannot be admitted — The authority given to the Commiss.rs is under Stat. not to consider any greater right to any Individual in the Com. than the individual right of the party & according to the quantity of land each holds in the Seigniory — this has been given — but Oppt asks for rights he has purchased, which is contrary to the Statute —

No. 931

Berthelet & Boing & Poirrier opps

On Report of Experts —

Obj. Experts not sworn —

No. 744

Donegany v. Pickle —

action for money had and received

Grant for Defd.t — action on a receipt for a note of hand qt. he promised to return to Pliff or to pay the amount — The action is irregularly brought as the action shd. have been brd. in the terms of the Contract, either to deliver the note, or to pay the money — Pliff has no right of action for money without constituting Defd.t in default —

Rolland for Pliff — The Pliff's action right — on default of Defd.t returning note in a certain time — and action is a demand — and any thing payable on demand — it is sufficient demand by action —

Porteous
Davies
&
Pickle oppt

On opp. a fin de distraire –
Grant for Oppt – claims several kegs of snuff
the property of Oppt – which he has proved

Ogden for Pliff – The snuff sold to Main – and by Main afterwards sold to Defdt – claim of Oppt – cannot hold –

No. 446
Roi
&
Henshaw
&
McGregor Gar

nothg do –

No. 1026
Carswell
Roi –

action on promy note –
Lacroix for Defdt – Pliff not person to whom note was made –

No. 674
Piché & al
Manaigre &

action to rescind certain deeds – Hears in Law
Rolland for Defdts – The Pliffs do not state that they are the Proprietors of the land – which was necessary to support the present action – Pliffs state that in 1790 they were propsrs but not do that they are so now
There is also a variance between farms described and that out of which Defendt. ousted him –
Not stated in whose possession the farm now is – the Pliffs complain that by means of the deeds executed between the parties ~~they~~ Pliffs have been dispossessed of their property, without saying any thing about the possession of the land
Ross for Pliff – grounds of action are sufficiently stated –

No. 1577
Hedge & al
&
Pierce & al

action on Pr note +

Henshaw for Defd. – Pliff have no interest in the note but indorsed to them merely to collect –

Beaubien for Pliff. Pliff are liable for the amount of note to the owner, and therefore entitled to this action – note here same as a bill of Exchange – Kyd on bills – & Chitty – 9. 51. 52 –

No. 1081
Provendier
&
Murciani

action for board & lodging –
Pliff withdraws facts & art. on Defd.

Vigé for Defd. There is no proof of pliff demand – on the contrary all that was due Pliff at time of suing out this action, was a sum of £19. Cy – Pliff has adduced no evidence whatever except the facts & articles on Defd. which she has discomp.d – so that there remains no evidence of debt beyond what is cont.d in the plea which cannot be divided –

No. 1834
Fraser pts
&
St. Amour

action for damages for non-delivery of a lot of land sold by Defd. to Pliff

Vigé for Defend. The Defend. sold to Pliff, by virtue of gt. Pliff took poss.n and carried on business in the house – it is not a question whether Defend. had a suff.t title if Pliff obt.d poss.n – and if Pliff has given up the possess.n without notice to Defend. he can have no action gt him – In the facts & articles to Defend. it is not asked if he was the prop.r of the lot – gt. might be the case without any writing or deed –

Roi for Pliff – The poss. of the lot was never made to Pliff

Mc Gratt
vs
Williamson
&
Valois opp^t

On Pltff's mo. to withdraw a certain part of money levied, on giving Security to bring same back —

Dis^d

No 724

O Keef
vs
Monk

action on deed of Sale —

O Sullivan for Pltff. The deed of ratification on w^h action is founded is defective in form as being signed only by one Notary — Pltff^s can yet render this valid — by a ratification —

Ogden for Def^d. the ratification is here the point in issue, and it is now in evidence that there is no sufficient ratification. — There is no evidence that Def^t ever took possession — Def^d only acted in this respect as Agents of one Meredith. —

No 1788.

Millandal
vs
Maitland et al

action of assumpsit —

Sewell for Pltff — In 1817. & 1818 Pltff^s sent a large quantity of Rum & Coffee to Def^ds for Sale on Com^n — Sales were completed & Pltff^s advised thereof, w^h an acct. Sales in this acct Sales, there was mention of certain persons who had not paid — at another time the bal^ce was remitted save only that due by one Whitney, whose embarassed circumstances did not admit the recovery of the money — at another time advised Pltff^s of a settlement w^h Whitney for 12/6 in pound — payable at certain periods which they conceived they would be able complete as they became due — Exh. No 4. shews that Def^ds intended to run risk of the outstanding debt but changed their intentions in consequence of Pltff^s taking away their agency from them — The Def^ds have pleaded the general issue, under this plea cannot avail themselves of any right to retain their monies, or to set them off agt the debts still unpaid — The Def^ds could have no lien

on these monies agt debts which are not paid, but qt may be paid, the answers of Defdts on fact & articles are not to be considered —

Gale for Defdt This action means to fix on Defdt bad debts which they are not liable to answer for — The Decln is in the usual & ordinary form wt money Counts — To this decln the Defendts could ~~not~~ only plead the general issue — On this issue Pltffs should have shewn that Defendts had received the money — the proper action in this case wd have been action of acct on which they might have claimed the balce but present action says nothing about agency — By the account filed and the evidence given thereon it wd appear that Pltffs are indebted to the Defendts — The evidence of the Defendts undertaking to pay Pltffs any specific sum for whitney or any other is inapplicable in this case as the action does not admit if it the guarantee of the Debts is not alledged, and this is a specific undertaking to be proved only by a Special action — It is not the custom for agents to guarantee the debts of their principals without Special Contract — this proved by Mr Leslie — & then an extra premium is stipulated — here half ordinary commission only is charged — It is here contended that Defdts by their letters undertook to pay & answer for all these outstanding debts, but this was conditional — must be so understood, and is so explained by Defdts in their answers on facts & articles — The Pltffs here cannot obtain more monies than they prove the Defendts to have actually recovered —

Sewell for Pltffs Pltffs are entitled to balce of £348 — Paley. p. 58 — where demand does not depend upon a settlement of open acts but where balce is settled or agreed — an action of assumpsit can be maintained — Here the accounts have been closed and the only sum due, which Defdts have undertaken to pay & for which the present action is brought — In the acct rendered the Defendts have accounted for all those outstanding debts which they now say have not been paid to them — The Defendts have actually assumed those debts — otherwise they might be entitled to recover back the money they had paid or advance to Pltffs — but the intention here was that Defdts actually made their debts their own — the Debtors on the Sales appear to have been the Defendts own customers, & it was no doubt their intent by giving them a facility for payt that Defdts undertook to pay the outstanding debts —

No. 340
Blache
Willing

action for House rent

Grant for Defdt. — The Pliff here took possn. of the house on ~~first~~ Augt. last and cannot have rent after that period — Pliff even rented the house — The quarter began on 1st. Augt. and Pliff taking poss. during that quarter is entitled to no rent, qt. was paid up to 1st. August —

Rolland Pliff is entitled to 2 months rent —

No. 407
Goyet
Menard
&
Econtra

action on deed of Sale &c —

Roi for Defdt. — Pliff has not delivered the whole quantity of Land sold

No. 1651
Roussy &al
Roi

on acct. rendered —

Rolland for Pliff — contests demand of £1000 for the trouble of the Exer — of which he allows £250. — That Defendr. owes the interest of the money in his hands from the day of the demand — and also the costs of the action, in consequence of the ill-founded contest he has raised —

Bedard for Defdt. moves for a day for proof of his trouble in the execution of his charge — That Defdt. as Exer cannot be liable for interest until the acct. has been ascertained, nor for costs. —

No. 435
Chamereau
&
Chamereau
&
Chamereau

On action of acct. — acct. rendered —

L. Vigé for Defend. Defendr. has taken facts & art. which he moves to discontinue — The billet in question is now before the Court, which is claimed

by

by defendant as her property — The name of the late Vincent Chamereau is not mentioned — it is payable to one Joseph Cadotte or order — indorsed by mark of Jos. Cadotte to Vincent Chamereau — this is not a sufficient transfer of the note to Chamereau and it never can be considered as his property. — The Defend^t contends that this note was delivd to her by the late V. Chamereau she alone had the Conduct and management of the house & property of the deceased, in recompense for which he gave her this note — as to the proof of the delivery of the note to Defd^t by the deceased, being a fact, she has made legal proof of it by verbal testimony — this never can be considered as belonging to the Succession of the deceased — That declaration forms a demand for a note made by Audojo & Co^{ie} made by them to the deceased — whereas the fact is otherwise —

Lacroix for Pltff — The indorsement on the note is acknowledged by Cadotte who has been heard as a Wit^s on the Cause — to have been the property of the deceased — this note the Defend^t claims as having given to her by the deceas^d — on acc^t of her Services

No 187
Plessis
&
Nadeau

action ag^t Caution —

Rollin for Defd^t — has pleaded a dilatory exception that Chaloir has not been discussed and states where the property lies — is ready also to pay the necessary expence of discussion —

Bender for Pltff — The Debtor has no property — nor has any been described — nor offered any money for this purpose

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No 902
Bellanger
&
Gray
&
Contra

On action on Contract of sale of produce of an Orchard

Roi for Pltff Defend^t refused to allow Defd^t to carry away the apples, retained same & converted them to his own use and sold them — Poth. Hyp. ch. 4. p. 2. 1. Dic. Droit. V^o Gage. — 2 Argou 394 +

Ross for Defendt. The article here was only sold conditionally, and the money was to be paid as the apples were ~~to be~~ taken away — The Pliff did not take away the apples nor pay for them, upon qh the Defendt. put the Pliff en demeure, wh notice that the Defendt would sell the apples as they were spoiling. — Defendt. has instituted an Incidental demand for balce due to him. —

Roi for Pliff. from time the apples were picked and put in barrels the sale was perfect and the delivery made to him — and altho' they were to remain in the poss. of Defendt. yet he must be considered as the agent of Pliff in this respect — and could not sell the apples in the summary manner he did —

No 488
Hart
v
Wait —

action for value of a horse — sent to pasture in defendants field —

Grant for Defendt. — No evidence that Defdt. undertook to pasture Pliffs horse — only one Wr — But horse is accounted for, as it appears he died without any fault or neglect of Defendt. the horse was found dead in the neighbour's field — but the Custom after St Michel is to allow the Cattle to stray through the neighbouring fields — but from the appearance of the Carcase it would seem the horse must have died suddenly, and from a complaint to which he was liable —

Rosseter for Pliff — There is ordinary neglect here for which the Defendt. is liable — cites Jones on bailments. — Defendt. ~~to~~ refused to look for the horse — or to shew any care about him —

No 1007
Grant
v
McKenzie
Cur —

action for recovery of matrimonial rights agt. Curator of late ~~Lobart~~ B Jos. Frobisher. —
Ogden for Pliff — It is submitted by Defdt. whether Pliff is entitled to the principal at this moment — and if she be not bound to give security to return it —

No. 628
Perrault
v.
D'Hose

Action on Obligation — hearing on Law
Defendt. gives up his Exceptions —
Beaubien for Pliff contends that plea of compensation pleaded by Defendt. is inadmissible, not being certain or liquidated Poth. Ob. No. 592. — the demand of Defendt. being for goods he alledges to have delivd. to Pliff to sell for him —

Payet
v.
Peltier
&
Peltier opt.

On question whether verbal testimony can be admitted under Defendts. answers on facts & articles. —

No. 507
Anaman
v.
Roi

Action for work and labor &c.
Lacroix for Defendt. contends that demand is not proved. Verbal testimony not admissible

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No. 83
Lang
v.
Harwood

Action for breach of Contract. —
Grant for Defendt. no Contract proved —
That if considered to be proved — the conduct of Pliff was such as entitled Defendt. to turn him from his service —

No. 70
Low
v.
Barber

Action for wages as Clerk in Defdts. service —
Ogden for Defdt. Pliff was of no service to Defdt. but was fed & clothed at expence of Defdt. who had no occasion for his services — Edwd. Low, brother of Pliff — interested in demand.

No. 1534
Luciniani
v.
Bélanger
&
Bélanger
oppt.

On opposn. afin d'annuller —
Grant for Oppt. Exon sued out agt. really before discussion of the moveables —

Monday 18th June 1821.

Present.

Justices Reid & Foucher.

On Report of Commiss.r of Com.r of Boucherville — and Mr De Boucherville Opp.r

Mr Bedard for Oppos.t — contends that report of Comm.r cannot be homologated as the formalities req.d by law have not been observed in makes it — The 2d art. of the Stat. — requires a notice of a day of meeting for election of a Commissioner — but it does not appear, that any legal advertisement was given it is not produced, nor is it said by whom it was given and it is merely alledged that it was given — The Commis.r is bound also to give 2 notices during 2 weeks in the Montreal Gazette — this does not appear — The 6th art. requires the Comm.r to ascertain the number equal parts & shares in the Common — this is not done — The Com.r ought to have ascertained the number of lands of 2 arp. by 25, which had right in Com. Opp.t says that 64½ lands of this discrip.n had right of Com. so that the Com. would be divided into 64½ parts so as to give to each lot of land one share this operation is also necessary — as by 9th art. a division is to be made in such equal shares by the Surveyor The Com.r ought to give 8 days notice of the day on which he w.d pursue the hom.r — in fact the report is dated the 29th May, and the demand for hom. was made on 1 June — this req.d by 7th art. —

Mr Quesnel, Com.r — refers to the notice given of the time & place of meeting for nomination of a Commissioner as to the name of proprietors giving the notice, it is not required that they should be nominally stated in the notice — That the notice in the Gazettes were given, & it is enough that the Commiss.r alledges this to have been done — there is no exception here taken to any want of form in the Oppos.n made —

The

The Commr could not make an equal division of the Common — the original titles are in many instances, and the many mutations which have happened since make it impossible to ascertain the equal shares under the original grants — The Report ascertains all that is necessary the number of acres entitled to right in the Common — it will the duty of the Comr to make the equal division of shares when the extent of the Com. is known — The deposing the Report & demand of homologation is correct according to Stat —

No 235.
Lebrun & Charles } On mo. for alimentary allowance by provision. —

No 187
Plessis & Nadeau & Lebert } Exception of discussion dismissed

No 1577.
Hedge & al' vs Pierce. } Judgt for Pltff — action by Pltff — as holders to recover for benefit of payees —

No 628.
Perrault & al vs D'Hose } Plea of Compensation rejected —

No 88.
Ant. Labelle & Vinct Labelle } Motion for Verbal testimony rejected

No 106
Hildrette & Mitchel } Exception of submission & award dismissed

No 1582.
Joanette & Marmier } Exception of Lesion d'outre moitié dismissed —

Lacroix
t
Lacroix
&
McKenzie
Interv^s

Pracha
Judgt - dismissing Intervention

No. ~~744~~ 744
Donegany
t
Pickle

Action dismissed - see Poth. Obl. No. 248.

No. 488.
Hart
Wait

Action dismissed.

No. 746
Campbell
q. t.
Hall

Judgt

No. 807.
Carmel
Hunter

Judgt

No. 259
Magnan & al
Throop

Judgt

No. 463.
Armour
Pickle Jr

Judgt - note payable for use of Bank.

No. 809
Davis
t
Nichols & al

Judgt

Tuesday 19th June 1821.

Present

Justices Reid & Foucher.

No 263
Bouthillier
Allard
& Contra

Judgt dismissing principal demand & Judgt on Incidt demand.

No 274
Forster
Rideal

Judgt of Separation.

No 187.
Shuter
Thayer

Judgt on Defrs Exceps

O'Keefe
Monk

On Pltffs mo. to open Delibéré — opposed by Mr Ogden for Defts

Main
Roi

On Defendrs mo. to be permitted to fyle an incidental demand — Cause being on Enquête Roll —

Roi for Defendr. Rules of practice limit no time for filing Incidental demands, & the Ordre of 1667. Tit. 11. art. 23 — admits them en tout etat de Cause — Poth. Proc. Civ. ch. 2. s. 7. §. 2.

Cormier
& Henry
& De Longueuil
Oppts

Judgt — admitting opposition.

Wednesday 20th June 1821.

Present

Justices Reid & Foucher.

No 247.

Marteloux
vs
Pacquet
&
Marteloux opps
&
Dufresne Intvs

X Judgt on Intervention, rescinding the Interlocutor for selling the Defts Lands subject to the charge of the rente & pension.

No 1116.

Main
vs
Roi

X Defendr motion dismissed.

Fournier
vs
Montpellier
&
Chenier Gt

X Judgt for Pltff.

October Term 1821.

Monday 1st October 1821.

Present

Justices Reid, Foucher, Pyke.

No 40
Gilbert
Murphy
&c

on Plff. mo. for enquête
L. M. Vice for Defend. moves that cause be referred to arbitrators. —

Wednesday 1st Oct. 1821.

Present

[illegible]

Wilson
Lane

[illegible]

Shuter
Thayer

on Plff. mo. [illegible]
[illegible] in the Court of appeals to [illegible] on 15th [illegible] why an appeal should not be granted from the interlocutory Judgment in this cause [illegible] proceedings within Court, [illegible] to order of 1785 —

Wednesday 3d October 1821.—

Present

Justices Reid, Boucher & Pyke.—

Bridge & Pen
M'Naughton

Prime sub Reddington } On defend^t mo. for Security for Costs — Sewell for Pl^ff — mo too late as Defend^t has filed a plea in bar —

J Sullivan for Defend^t where a plea of abatement is filed which does not recognize the Juris Diction

Gill & Charbaud } On Pl^ff's mo. for hearing

No 591
Debartchy & Lemai } On report of Surveyors —
Rolland for Pl^ff. The plan now filed shews the where lands of Defend^t ought to be limited, and rochers, as it shews where the rochers begin, instead of which the pretentions of Defend^t go to pass these rocks. The plan shews that the rocher begins at end of 22 arpens. The prescrip^n pleaded by Defend^t ought to be founded on title & 10 years poss^n the lot No 1483 is bounded at rest of 22 arp. plus on mouns — exh. No 2 of Def^t & exh. No 5 — this very land has a boundary fixed at end of 22 arp. as appears by Pl^ff's ext. No 1 & by Defen^t No 1 of John Burger — the land adjoin^g No 1484 is bounded by unpainted lands — this title exceeds the 10 years. There is a Cross verbal of bornage in one line as appears by Def^t No 1 — the last land 1485 — bounded by the mountain — has only 9 years exhib. No 4 of Pl^ff & Def^t — vente par Lemerau Def^t — 29 Dec 1808 — That if the limits of Defend^t possession are extended beyond the 22 arpens there is no grounds to ascertain their extent but on the contrary the poss^n beyond this should be considered as an impietation on the Pl^ff — and therefore the premiers rochers must be considered as the extent of Defend^t limits
S. Mr Vige for Defend^t Pl^ff has entered into facts adjudged upon all the lands of the Cote St. Marie are bounded at extremity of 30 arpents, except where the mountain intervene, where Def^t lands are situated, but Def^t lands are not bounded by 22 arpens

That the superfices at point D may not be allowed to Defendr as the rocher intervenes to limit his title —

Thos Pliff is not founded to demand bornage at the appeal of Defendr as being his tenant because the present contest has arisen from the extravagant pretentions of the Pliff.

As to the Cens & rentes, they cannot be granted beyond what is demanded which is claimed at the extent of 22 arpents.

Rolland for Pliff — The middle lot is bounded by unconceded lands, & cannot be extended beyond the trail quarré of the two adjoining lots — qt are bounded at 22 arpents —

No. 1499
Stevenson
Giffin
& Davis opp

Vice opposition afin de conserver —

Bleury for Pliff, It appears that there was an arrangement between the parties, by qt Oppos — agreed to take a lesser sum —

No. 1806
Dupotis
Courcelles

Action to rescind a deed of Exchange between parties of a certain lot of land —

Bender for Pliff, action founded on lesion d'outre moitié. The deed of exchange must be considered as a deed of sale and is in law more favorable 1 Bony. 157 — 2 Desperrier 240 No. 7 — Denizr vo Echange p. 268 — 2 Couchot p. 127 — Poth Vente, No. 626. p. 696. Rispr vo Echange p. 586 —

Lacroix for Defendr The action is founded on a deed of Sale, the Pliff must be considered as a purchaser and as the sum paid is without interest — & no purchaser can be admitted to set up a right to rescision for cause of lesion. That by the evidence adduced by the Defendr it is clear that there is no lesion —

No. 659
Scott et al
Dr. Scott

action for a libel — hears on Exceps.
Gale for Defd. — whatever regards the whole Comments comes within the sphere of editors of public papers — in this case the facts stated are no libel —

No. 753.
Vincent et al
vs
Lambert
et al

On action of account — hears on motions of parties
Viger for Pliffs. an acct. has been rendered by the Practicens named by the parties, with the pieces justificatives, but Defendt. with these has filed des debats de Compte, a proceeding unknown to file deb. de Compte all his own acct. — it is to the Oyant & not to the rendant Compte to fyle such debats — moves that they be rejected, as irregular. — in regard of Defendt. motion for delay to file two certain papers — consents to it —

No. 157
Menard
&
Sene
Sene
&
Barbeau
Gar.

Action for recovery of arrears of interest. —
Defd. called in Garant —
Rollaud for Gar. — action is premature, interest is not yet due — refers to acts filed. —

No. 187
Plessis
vs
Nadeau
et al —

action for house rent —
~~Dress Sugts~~ —
Rollin — Defds. cannot be condemned solidairement —

No.
Wragg et al
vs
Th. Hunter
&
Cowan opp.

On opposn. a fin d'annuller —
Boston for oppt. — claims the ~~property~~ effects as her separate property — as appears by her marriage contract. — a separate living —
Walker on behalf of Rosette the attys. contends that the identity of the goods has not been ascertained —

Poll. Comte. No. 461 & 465 —

Thursday 4th October 1821.

— Present. —

Justices Reid Toucher & Sykes.

McCrae — Pattinson } On mo. for enquête on 9th —
Grant for adjdt. Pltff too late, no diligence on former enquête day —

No. 1780 Vanier & Bellefeuille } Action to compel defend. to fulfill an agreement w. Pltff to building a house —
Hearing on report & ments — conclusions for £400 & £800 augmentation to the house —
Rollin for Pltff, demands hom. of report —
Rolland for Defend. The report is informal & concludes to nothing, and no judgment can be formed upon it. The £100 can be allowed only on the principle of having done the work qt. is not the case — the damages are not proved to this extent — nor does it appear at what extent the work is done — The Defend. never accepted the house but under protest from absolute necessity —

Friday 5th October 1821.

No. 235. Lebrun & Charles } Action en separation de corps & de biens —
Mondelet for Pltff. states that evidence adduced proves sufficient facts to maintain her action —

Rossetti for Defend. The children of the parties are here the principal Wts & their testimony ought to be rec. w. Cautiere, as they appear to have conspired agt. the Defend. to assist to the present action

No. 41
Smith
Byers
& contra

action of revendication —
Grant for Pltff. admit that no proof has been made of the principal demand
Boston for Defend. — contends that the articles ought to be ~~[illegible]~~ sold to satisfy his claim for rent & other objects

Grant for Pltff. — There is no incidental demand set up here upon which any Judgt. can be given

No. 515.
Ferguson
Millaria

On Defend. mo. for a Com. Roz. to ex. Wm. in Vermont
Boston for Pltff. mo. too late, as Defend. was late in filing his plea — nor is there any affidavit to shew that there are necessary wits out of the Jurisdiction of the Court —
Ogden for Defend. The Com. Roz. is allowed within 4 days after issue joined —

No. 282
Martin
Delisle

action for money lent —
Pltff. attn. did not appear — & Mr. Rollin for Defd. contended that action shd. be dismissed as there was no proof to support it

No. 434
Beaubien
&
Morley

action of separation de corps & de biens
On Pltff. motion to revise Judgt. of Judges in vacation on points of evidence —

Mandelet for Pltff. — The mo. irregular, as the question touches the validity of question put to Wm. should be reserved to the hearing of the Cause, as it will be depriving the party of his appeal if the evidence do not appear —
Rolland for Pltff. — The mo. is regular — as every opinion is reduced

may be revised in Court —

over till to morrow

No 991
Ayers
v
Aymas et al

Action in Conjunctive & Reintegrande —

Bourret for Pliff contends that action is made out by the evidence adduced —

Boston for Defdt. The Pliff poss. is not made out It is contradictory, and cannot be credited — the possn of the Pliff was clandestine — the Defdts file deeds of Concessn of Oct 1820 — which concessions cross the lot of land claimed by Pliff — The Pliff after these concessions obtain from the Seignior a letter addressed to the notary to draw up a deed of Concession to him, qh is a proof that Pliff did not conceive himself to have any legal right in possess but that his possn was that of the Seignior —

That Pliff ought to have proved a possn of a year & a day

2 Bury p 509.10 5 [illegible] That the lot No 5 — is laid down by the regular course of grants in the Seigniory qh has been reserved by the Seignior contains all the [illegible] improvements claimed by Pliff — this the Seignr is willing to grant to Pliff.

Bourret for Pliff. The poss. of Pliff of year & day is not necessary in this case — but it has been proved by several witnesses for 3 years — this is recognized also by the letter or writing of the Seignior —

No 946
On Report of the Comissr of Comn of Boucherville

The Commr asks for homologn of the report —

Mr O'Sullivan for Oppt — The Comr has not fulfilled the titulars he has not given in names of persons entitled to the Shares — nor does he shew the number of shares the individuals are entitled —

see p.

No 1534
Troste & al
Armstrong

On defendts mo. to quash writ of Capias —
Ogden for Defendt the person making affidavit is one Huntoon, who ought to have been the Pltff and he is neither the Agent Attorney or book keeping the Pltff as reqd by law

Hemhaw for Pltff — The person making the affidavit is the legal attg of the Pltff —

No 103
Cowan
Hunter

Action on Obligation —
Sewell for Defdt without plea filed — States that debt was to be paid after 3 months notice, and no notice has been given —

Wragg & al
Hunter
Cowan Opp

An claim by opposant of effects seized as her separate property under her marriage contract —

over

No 1852
Turner
McNider & al

Action agt the Fire Society of Quebec —
Papineau for Defendt moves that writ be quashed as summt has been served only on 4 and not on the other 14 for whom the motion is made —

Sullivan for Pltff — Sheriff has served the process on Defdts at the office where they carry on their business in Montreal and this sufficient — the Defendts are merchants & Copartners & their office is their domicile in regard of all the business they carry on — Journ tit. 2 art. 6. — The service of the process is also made on some of Defendts for the others —

Vigo for Defend^t. The defend^t carry on no business in Montreal — they have only an agent there — there was no domicile of there defend^t at the office of the agent — No place stated where the Contract was made.

Papineau — Now if the Defend^t. makes the motion are stated to have signed the Contract upon q^t the action is brought —

—

No 1669
Jos. Roi
Robt. Main

On defend^t mo. to quash writ from irregular service —

Roi for Pliff — there is no affidavit to support motion — there can be no enquete on motion

O'Sullivan for Defend^t a day ought to be given to prove the fact —

—

No 1906
Armour
Thayer

On mo. to quash process as an irregular copy of Decl^n has been served on Defend^t —

O'Sullivan for Pliff, this mo. not within the rule of practice — no variance shewn —

Chesser v. Jones — action dismissed from irregular copy of Decl^n served —

—

~~1 Pigeau 134. on note~~

N. Deniz^t. v^o assignation. §7. No 13.
Rep^re v^o ajournement p 291.

No 1927
Armour
Taylor et al

action on Prom^y Note

Mo. to quash process from irregular service

Sullivan. Sum^s left w^t Taylor personally, q^t is sufficient at the partnership dissolved — this does not vary their obligation to Pliff — Watson Part. p. 385 — Pease v. P. 134 Jousse art 6. Tit. 2. p. 28 —

Walker for Defend^t action brot. ag^t Defend^s as now partners, & service made on one of them — this is wrong

[illegible]

and the affidavits shew there is no existing partnership when process was served —

No 345.

Ruiter val vs May val } On rule to shew cause why there should not be no hearg on the exception filed by Defend^t on 6th inst^t —

The Common of Boucherville } The opposant Mr (Jr) Boucherville has not had his share assigned to him as he is entitled in his arrangement with the habitants — the Court has power to give to Mr (Jr) Boucherville the amount of his right in the Common —

Mr Quesnel in ans^t

No 250.

Armour val vs Jones } On Defend^t mo to quash writ of Capias — Walker for Defd^t — The affidavit is positive, but Defend^t can shew by evidence that the affidavit is without foundation —

Gale for Pliff — Pliff not bound to shew grounds that led him ~~of~~ to make affidavit — there is no room for such enquiry here — it can be only by a Criminal pros^n —

No 1868

Hall vs Vermet[illegible] } Debt on obligation —
Grant for Pliff moved for hearg instanter on Defend^ts plea of Exception, or fin de non recevoir on ground that same contained no reasons of exception in law even if true —

Bleury for Defd^ts 1. Defd^ts are Canadians & have been sued by a writ in the English language, which they do not understand 2^d The Pliff gave delay for payment of debt —

Grant These exceptions form no legal ground of objection to the sufficiency of the demand — first ought to have been by motion, & 2^d — no ground of Exception to deeln —

Saturday 6th October 1821.

No 94 & 117
Girraidsal
Nicklass

Action of Revendication for goods shipped in England —

Ross for Pluff, it was stipulated that the goods should be left in hands of Pluffs until security should be given — Defendts obtd possn of a part of the goods without consent of Pluffs —

Grant for Defendts It appears that Pluffs never had any interest in the goods, they are not the proprietors of them — nor were they ever in the possession of them & their possessn could only be that of the real owners — this action can be maintained only by the proprietors — the goods were consigned to Pluffs to be delivered to Defendts — that the Defendts are offered good & sufficient security, & was refused by Pluffs — Pothe Prop. No 286 — Rep. No Revendication p 619 —

Ross in reply — the goods were sold conditionally, and were delivered to Pluffs as holders of the goods — who must have the action now brought as none other could — The security offered was insufficient —

Mr Sewell of counsel for Pluffs — Pothe Prop. No 288 — If there be a qualified property in the Pluffs it is enough to maintain this action — see also No 289 & suiv. The principle of the English law must be referred to — Paley 2d & agent, p. 284 5. 2d edit. actions of trespass or trover may be maintained by an agent — The poss. of Defendts was sections.

Grant — The Exp. cited to the general, that other than a propr. ~~[illegible]~~ may maintain the action is not apply to the Pluffs case — The english law not in force — & even if it were, the cases go only to actions of trover — here the goods were never in the poss. of Pluffs

No 281.
Burton
v.
Yule

action Petitoire. — on Report of the experts. —
Rolland for Pltff. the ameliorations ought to have been compensated with the fruits & revenues, of qt no mention is made in the Judgment rendered
cites Poth. Prop. No 343. 4. — The defendt was here in mauvaise foi, he knew he had no title, until it was satisfied —

Boston for Defendt demands hom. of the Report of the arbitrators — the possr of bonne foi not bound to restore fruits Prop. No 347. 8. 9 — 2 Bourj. 319. — here there was also an offer of the £100 for qt the sale was made — the Judgt already given should be ~~given~~ binding on the parties —
concludes for costs agt Pltff
Rolland in reply — Defendt must pay the costs — as well as the fruits & revenues — the Defendt is not possr de bonne foi in such way as to make les fruits siens. —

Wraggel
v.
Hunter.
& Cowan Sal
Oppt

On opposn.
Boston for Oppost — all the Creditors are entitled to is the enjoyment of the property, where there is no communauté — Poth. Comte No 461 —
Poth. Puissance du Mari —
Bourjon —

No 759.
Vincent —
Sal &
Lambert —
& Lameau
Garant

On defendrs mo. to unite the Cause in Garantie with the Cause in Chief —
Rolland for Defendt the Causes may be united without retarding the Pltffs cause, it is in order to instruct the Garant of the nature of the proceeding

No 1957
Bleury
&
Audet

On Defendrs mo. to set aside Saisie-arret —
Quesnel for Defendt — action agt Defdts as Curators, therefore they are not personally indebted — the debt here contracted was a personal debt, but they are sued as Curators
Bleury for Pltff — The debt is claimed as due by the Curators & as Curators they are indebted —

N° 1911
Durocher
v.
Beaubien
&
Bouthillier
Sec. Inter.

action by Paternal uncle of late Miss Durocher &c. the Exors to render acct of as such.

Rolland for Pliff. — The late Mr D. made his will & thereby instituted Miss D. usufruitier of certain property — cites will — in case she dies without children, property went to Thomas Durocher, but he died before her — so that this legs became cadue — and therefore the next heirs became the lawful proprietors — Quest. whether it is a leg is to an heir grevé de substitution, or as a simple legataire a titre d'usufruit — The intention of the testator to be considered — the 2d legacy to Thos. Durocher, states that il jouira egalement, sa vie durante, which refers to a leg d'usufruit merely — shews he was charged merely as legataire not as heir — The Pliff therefore as next of kin to late Mr Durocher the testator —

Beaubien, one of Defdts. The Pliffs are not the heirs of the late Jn Bt Durocher, nor have they any action as such. They ought to claim as heirs of Mr Durocher — which is not done — The Defendrs hold no estate of late D. — & owe no acct to Pliff — late D. married in 1792, & of that Marriage Mr D. was issue — after death of her mother she became heir of half of the property of the Comty between her mother & father — the Comty was wnd. he died 8 July 1811. Durocher died — shy his will instituted his daughter his universal legatee — by this will she became propr of the property left her by her father — It was provided by the will of Mr D. marrier a person not of Cath faith, she held only a titre d'usufruit, the property went to Th. D. & his heirs, but failing this condition, she was the proprietor — the words of the will, shew that the leg was a grevé de substitution in favr de ses enfans — Poth. Tut. ch. 7. Sec. 1. reg. 3 explains words usufruit the examples cited by Mr Pothier are of same import as those in Mr D. will — a grevé de substitution — he if the substitution does not take place the grevé becomes heir — here the substitn never became open & therefore

Mr

Miss Durocher remained heir — there is no such thing as a substitution tacite as claimed by Pliff — under qt they found their right — The substitt in favr of Thos D is in same terms as to Mrs D. & must have same interpretation, as grevé de substitution in favor of his children — That as Mrs D dies before the condition happened of the property going to Thos Durocher, she remained propr — As to the word usufruit, Poth Sub. sec. 3 art. 1 explains it — the word usufruit carries with it simplices the property, as the extinction of it & of the property are effected by the same cause — ~~Ib. sec. 5~~ Tut. ch. 6. sec. 5. § 1. on quest. qui recueille le leg — by predecess or repudiation of the heir — Here the usufruit by death of M. D. is given to nobody, therefore her heirs are entitled to it — That this leg being to be considered as a leg de propriété to M. D. she became propr on the decease of her father — But even it had been a usufruit — it does not follow that persons not called shall be entitled to it, on the contrary it must be the heirs of M. D. who are entitled to it & to the property — Poth Sub. sec. 5. L'homme ou autre grevé de substitution est avant l'ouverture considéré comme propriétaire pour there was no ouverture & therefore the grevé & her heirs are the proprietors — avant l'ouverture de la Sub. the others substitutes have only a simple esperance — M. D is heir by rule, le mort saisit le vif — under all circumstances — her heirs therefore must represent her — Sub. sec. 6 — the subs. not having opened on any of the conditions of the will, the grevé remains propr — Sec. 7 art. 2 & the substit — cease by the failure of the conditions to be fulfilled — Neither the law, nor the condition of the will the Pliff are not called to take the property — the plus proches parents du grevé, & not of the Testator who ought in this case to benefit & have the property —

If the Pliff claim as heirs of late D — there are others who ought to be others called to join in the action who are also heirs, namely the children of the sister of late D —

That Defendrs are not in possn of any property belonging to the late Mrs Durocher —

That by the defaillance of Thos Durocher, the property remd in possn of heirs of late M. D — & Defendrs hold it as belongs to her Succr —

As to the moveable property of Deceased & he disposed of them by will — and Pliff as heirs of Mrs Durocher cannot claim them, they must claim as heirs of M. D — The Defdrs are not in poss. of property as heirs of Mrs D — but as tutors of M. D —

The Dr M. D. had a right to bequeath her moveable by will,

cites art. 293 Court. sh. requires age of 20 years to will them — Poll ch. 3 art 2 p. 215 — The law makes no distinction the bequest may be to every person except mortmain corporations &c. here the will is in favor of a presumptive heir, as well as a heir, sh. has been so adjudged by Amt. Rep. v. advantage prohibit — all prohibitions are removed by the Stat. 41 Geo. 3. —

arg. cont. to 10th —

No 1096
Armour & Thayer &c. } W On defend. mo. to quash process from variance between copy of decln served & the original — Mo. rejected as the variance complained of was not stated in the motion. —

same Judgt. given in several Causes this day —

No 250
Armour & Jones } W Defend. motion overruled —
see Emerson. v Hawkins &c. 1 Wils. 335 —

No 1868
Hall v. Vermet } Pliffs mo. granted, & exceptions dismissed

No 188
Forster & Wheeler } W On Defend. mo. of yesterday for security for Costs — The Court granted the motion being of opinion that the mo. made on the 5th was within the 4 days from the entry of the action. —

No 1534
Frosse &c. vs Armstrong } W Rule to quash Capias discharged —

No 1669.
Roi & Main. } a day for proof given on Defd. mo. touching the domicile —

No 1927
Armour & Taylor &c. } Pliffs permitted to serve a correct copy of Decln on pay. of Costs —

Monday 8th October 1824.

Present

Justices Reid, Foucher

No 753.
Vincent
Lambert } Mo granted for rejecting the paper filed by Pltff as debats de compte.

No 930
Marmier
Boutron } Judgt for 500 [illegible]

No 931
Berthelet
Bourg
Pourrier Gt } Judgt on opposn admitting same, save except the Chambre garnie, as established by Report of Expert, which is ordered to be sold.

No 157
Menard Lux
vs
Sené
Barbeau Gt } Action for arrears of interest on obligation.
The Court were of opinion that the stipulations in the obligation could not be interpreted into the payt of the interest annually, ~~since~~ the words, avec les intérêts à raison de 6 p Cent par an, implied only the quantum of the interest, but not the annual payt of it, which must follow the principal — action dismissed.

No 902
Belanger
Gray
Econha } Judgt dismissing principal demand, and granting Judgt in favor of the Incidental Pltff.

No 1834
Fraser
St Amour } Action dismissed.

No 15.
Sleeper
McCauley } Action dismissed.

No 258.
Bourré & Grandpres } W — Rule on mo. for New Trial — absolute —

No 135
Chamereau & Chamereau } W — Judgt for Pltff —
Sec.

No 1788.
Millar & al & Maillard } W — Judgt for Pltff —
Sec.

Tuesday 9th October 1821.

Witness day.

Wednesday 10th October 1821.

Present
Justices Reid Foucher & Pyke.

McGill & al & Burton & Hinz Sites } W — Judt confirm'g Report

Dupuis & Courselles } W — Interlocu. order property to be estimated by Experts

Archambault & Boutonne } — Report confirmed —
Sec.

Durocher dat
Beaubien
Bouthillier
dat Interv &c

Rolland for Plffs — the questions here are 1st. if the absent & simple usufruct can transfer the right to her heirs — 2. That Plffs are not the sole heirs — 3. That Mr. D. has dispossessed of the property

1st question — That Mr. D. has only the simple usufruct — admits that if she has been the heritier grevée de substitution Plffs have no right — The terms of the Substitution must be considered — the authorities cited by Defts do not apply — where the grevée is clearly stated — but Mr. D. by the will is only the simple usufructuary — the words of will are clear — a life usufruct & settlement — Her intention of testator is further evident by other parts of the will, by the devise to her younger brother, where the same words are used — that in case of her marriage &c any but a Testator, she were to be deprived even of this usufruct — two classes have become Cadues, in regard of the brothers & the D — there is then a hard rule to be considered, that of the case existe raris — Sec. 2 tit. 2. Pothier Substitution — The intention of the Testr is that the property should not go out of his family, if express by him in case of default of issue heirs — art. 2. Sec. 3 when the words ou famille must be held to apply to the family of the Testator — Domat lib 1 sec 7. art. 1. 2 & 2b interpretation of testaments — here the family of the testator was in possession of the property Rue Dauph. art. 3 ch 7. p 199 — 3 Duranton, 12 p. 13 — Lacombe Vo Substitution partie 2. Sec 1. No 17 — as regards the value of word Settlement. The Legacy to a Stranger during such settlement could never give such property to him — the dower of the wife has nothing — cites Caron v Rochon —, but independent of this what is the kind of possession Mr D. had — this was a donation entre mari & femme & could claim nothing, but only as devise under the will — the will has been executed in this way —

2d That in case Mr D is only usufructuary — Plffs are not the only heirs, the action is founded on the execution which the will has had — the latter words of Plffs claim — art 330 — had the suit been as instituted — the Plffs must have been differently instituted — 1 Report bo 2. ch 14 Substitution — Representation — Ferr 4 Gl. C. art 36 p. No 8 — The action is brought by the brothers of the testator, but his nephews are no parties, as not being his forced heirs, who could only be parties if there be such here — contestation

3. That action is not brought by Plffs as heirs of testator — but as legal representatives, under the words of the substitution — That in this capacity Plffs are entitled to an account of the property in their hands as heirs & also as heirs of Mr D — Plffs are entitled to an account of all the property in hands of Defts — Remedies to which validity of Mr D's will — The Stat. of 1801 — was never meant to apply to this case — The Act 14 Geo

Geo. 3. has only extended & interpreted by St. 41 Geo 3 — this last stat. refers to persons usans de leur droits which ~~applies not to~~ is of minors this stat. refers more to the faculty of receiving than ~~tif~~ giving — here the will is void from want of faculty to give or to will — the terms usans de ses droits, must refer to age of majority — as generally applied — age & usans de ses droits — if M. D. had the age to tester, it was under the 293 art. Coul. & by this law she must be bound, & by this law a will by minor in favor of her tutor is void — Fenzole Tut. p 282 — p. 457 — But in P. where minor wills in favor of a person who is his heir the will is good, Rep^ce v^o Incapacité — Fa Gr Con 276 art. Glos 1 n° 7 Petit Com^e meme art — cites arret —

M. Papineau of counsel for Pleff — The ord^ces of 1539 & 1549 & art 276 Coul. de Paris prohibit legacy by minor to her Tutor in clearest terms — & is ag the pretention of a presumptive heir of the minor — the article excludes all collateral heirs, & admits only lineal ascendants — the heir at all events can claim under such a will only the part he could claim as heir of the minor — The authority cited from the Rep^ce v^o avantage indirect, as given by Darrau is not correct — as it goes to a proche parent collateral which is an opinion in direct contradiction to the law — The authority on this head are clear Fa Gr Con on art 276 on the different glosses cites the several authors who have treated the question and uniformly judged it as the will of a minor in favor of his tutor — and also in favor of the wife or children of the tutor Ricard Don Dom^r 714 — they are considered as the same person — Id. Dom^r 716 — Denizt v^o Incapacité n° 11 — this has always been considered the law, and applicable even where the legacy was made to the wife of the tuta who was an heritier presumptif which applies strongly to the present case — Poth Orleans art 296 same as that of Paris — extends it only to wife & children of the tutor The stat. 14 Geo 3 is full q^t goes to remove the incapacites imposed by the law — this does not regard minors — The art. 293 is the only one q^t admits minor to make a will without q^t they had no such authority — the st. of 1801 has only explained that of 1774 the words used in both are same — the word age means majority — see art^o respects presumption —

Mr Beaubien in reply — The words of the will contain a divise of property to M. D. — the change of substitute in favor of her children shews this — as the property is given to them —

when the [illegible] [illegible] wt the grave the property goes to her heirs — The authority cited to shew a sub. tacite in favor Pliff. as next of kin to testator must be interpreted in favor of Defendt. [illegible] The intentions of the Testator are clear, that the property was given to his daughter, as he prohibits her from alienating or selling —

The only case where the heirs of Dorothea would have right is in case of the marriage of Att. D. [illegible] the intentions of the will —

It is wrong to say that the representation does not hold out in cases ab intestat — it does not apply — if the will has had its effect the Pliffs cannot claim anything, [illegible] they claim under the will they must be considered as heirs ab intestato —

That Defendt. hold no property of Att. D. as executors of [illegible] D. & cannot be held to account as Tutors, [illegible] is not demanded —

That a will made by the minor in favor a tutor [illegible] presumptive is valid in law — that if the legacy is good only for what the law gives, it is no legacy —

The interpretation of the St. of 1801 gives authority to minor to will to whom he pleases — the words age must refer to the act to be done for there are many acts which a minor may do by law, & in regard which he must be considered as age, so that to make a will of moveables at the age of 20 years —

Thursday 11th Oct 1821

Present

[illegible]

No. 816

Penfield
v.
Lacassa

Chitty & bills p. 74

On Pliff. mo. that Defendt. be held to change his conclusions from Country to Court —

Pliff. a trader, Defendt. a trader — Defendt. gave his note payable to order to S. Boston Attn. at law, payable to order — Boston indorsed it to Pliff. —

Motion rejected —

No. 134.

Beaubien
v.
Morley

Action in separation in corps & biens

hearing on questions touchs admissibility of Defendt. evidence

Holland for Pliff. — Plea in this case is not guilty — Question whether under this plea, Defendt. can be admitted to proof of any facts of Justification, or facts not alledged by him

him in his place — all the facts attempted to be proved by
218 v.P. Defend^t. tend to ensure Pliff character but can tend to no conclusion
of her — cites 2 Pigeon 218 — also case of Shuler v. Shayer.

Merideth for Defend^t. — It is not enough for Pliff to ~~prove~~
allege that he is a person of good character & conduct, but
this must also be proved in an action of this kind — That under
plea of not guilty, all proof ought to be admitted.

203 Quesnel of Counsel for Defend^t. — The facts proved by Defend^t.
go to contradict what the Pliff has alledged, and what she
has attempted to prove — this is the usual in all cases — the
Defend^t. has also pleaded not guilty, & here to shew that he is
not guilty, he ought to be permitted to shew under what
circumstances the facts charged as Defend^t. took place — cite
2 Pigeon 208 — The Defend^t. is intended to shew the incapacity
of Pliff to instruct & bring up her children —

No 1840.
Simonds sal
v.
Clement sal

Action on Obligation —

Rollin for Pliff — Defend^t. sued as heirs of late
the Defend^t. except two have renounced to the Succ^n.
the other two have made default — & Pliff has obt^d. parts &
articles on these Defend^t. one of whom appears & admitted
facts & the other having made default — the fact & art. must
be declared confessed by him —

No 1560
Scott sal
v.
Phoenix Co. —

Action on Policy of Insurance — hears on excep^s.

Ross for Defend^t. — Not alledged by Pliff that they
owned goods to the amount of the sum insured
of their own property, and in the house insured — The Pliff
do not shew the amount of the damage suffered — Not alledged
in the decl^n. that the fire in question happened without any
fraud or evil practice according to the terms of the Policy —

Rolland for Pliff — No authorities cited by Defend^t. to shew
that excep^s. pleaded are sufficient — Decl^n. drawn from
a form in Wentworth — The statement of Insurance of
goods in a particular Store is an admission by Defend^t. that
the

goods were in that Store — could not be done, as the Insurance covers the goods in that Store at all times during the assurance to the extent of the sum ensured — and the amount of goods in a Store, varies every day — Resp. Vo Police d' assurance — the assurance can be reduced to the real amount, but Policy for that is not [illegible] Poth. assurance No. 78. — The decln in every part is [illegible]

Ross for Pliff cites case [illegible] in Globe Insurance Co. where this question was one rate, the Conditions must be negatived, & Pliff must shew himself within these conditions if we could entitle him to recover — It is stated in the decln that Pliff had an interest on the goods, but this is not enough — he must state more, namely that they are their own goods &c.

No. 1780
Vannier
v.
Billefeuille

On Pliffs mo. to prolong rule of Reference to Experts —
Rollaud for Defendt — New Experts ought to be named as their proceedings have shewn a disposition to injure Defendt —

No. 1817
Shuler
v.
Thayer
&
Thayer & Co.
Interv.

On action & Sursee arrest —
Sewell for Thayer & Co. states that every Intervention is a new action, and the opposn thereof persons, ought not to be injured, although there be an order for suspending the proceedings has been granted in the original action —

Rollaud for Pliff — The mo. not according to the practice of the Court there can be no such mo. by the party until he has intervened by filing his intervention —

Ogden of counsel for Interv. party — a rule to shew cause, like the present has been allowed in other cases —

No. 390
Dowie sub
v.
Jeremie

Action on 2. Prim. Notes —
Peltier for Defendt — The 2 notes dated same day & for same sum — alleged these notes were given without consideration and accommodation Notes — The circumstances proved amount to strong presumption of this fact — The testimony of Randhurst when the note was produced & at first rejected — That at all events Defendt can be condemned to pay only one of the notes, as it appeared that the reason why the first note was not recd at the Bank on acct of some want of form —

Walker for Pliff, refers to evidence adduced & contends that Defdt has not proved the allegations made by him —

No 891

De Longueuil
Charron } action for Lods & Ventes. –

Mr Vigé for Defendt has excepted to the right of action as it is on an arrangement de famille – refers to case of Martigny & Deschamps – the act in question is different there it was a Sale – here it is a donation & partage between the mother and her children – Refers to case of Rolland exte v Bellanger – where question was first adjudged – Poth. Fiefs No 156. Introd. au Tit. des Fiefs Cout. d'orleans – Tr. Fiefs p. 152. 153 – Rep. vo Lods Ventes p. 616. §. 8. – Prudhom. ch. 27. p. 257. 259 – Cons. art. 304. 5. 6. 7. art 215 – 278 – shows cases of arrangement de famille – art 76. 178 – exclude donations from payt of Lods & Ventes –

Sewell for Pufs – all acts passed after the death of the ancestor are considered as acts of partage & an arrangement de famille & therefore no Lods & Ventes – but all acts passed between parent & child where money is paid, Lods are due –

Poth. Fiefs. p. 361. vol. in 12 –
— Cens. sec. 2 art. 1. p. 355. 4to p. 142. –
— Fief. p. 155 – 6. –
Prudhom p. 257 – 260. – 265.
Repr vo Lods &c. p. 594 – p. 616 – §. 8. refers to Duplessis –
Arrets de Grainville Lpm. p. 267 –
5 Freminville p. 740 –

All these authorities establish the principle that where a transfer is made in consideration of money paid, or to be paid to discharge a debt due by the parent, there are lods & ventes be due –

Vigé for Defendt – In all cases where legitime could be claimed by the child on a donation by the parent, there can be no Lods & Ventes due to the Seigr –

No 433

Bleigne
Marmier } action to rescind deed of Sale for cause de lesion d'outre moitié –

Sewell for Pufs. Plea of presumption has been put in but the service of Process is made one day prior to expiration of the ten years –

The sale was made for 6000^{t} payable in 30 years of 200^{t} annually without interest — As to Defd. Jn Bt Leonard he has appeared & pleaded & is therefore bound —

Liter R. 168 9.

Quesnel for Marmier, all the parties not before the Court, namely Jn Frans Leonard who is in possn of the land & therefore the parties can be put in the same situation they were in before the deed — Lacombe v Restitution No 3. sec 7. the acheteur & tiers detention must be before the Court — There is no lesion, [illegible] 6000 Poth. vente No 353. If it appears that the party wishes to give up any thing to Defd he was not in want of money, there is no lesion — the value of land as estimated at £104. 3-4 — this left 30 years wd amount to £ . that the interest of the money for 30 years added to the Capital would not amount to a lesion —

Shuler v Thayer, Thayer & Co Inter 3 } Rule discd

Friday 12th October 1821

Present

Justices Reid Foucher & Pyke.

McFarlane v Wheeler } On Pltffs motion to reject pleading filed by Defendt after Pltff had proceeded by default agt Defendt & heard his witd —

Grant for Defendt —

Hunter & al. v Perrault & al & McKenzie Gt } On Motion of Mr O'Sullivan of counsel for Perrault one of the Defendts to reject the deposition of Roderick McKenzie, a witness for the Garant —

Jos. Perrault & Rodk McKenzie the Defendts dissolved their partnership by act of 7 Mai 1818, & it was thereby stipulated that the whole partnership property should belong to McKenzie, who in consequence agreed to exonerate Perrault from all the partnership debts, and for the greater security of Perrault in this respect, Henry McKenzie the Garant became caution or security to Perrault — The Pltffs who were Creditors of the Partnership of Perrault & McKenzie, having sued for their debt, Perrault in consequence sued out an action en Garantie agt Henry McKenzie to be saved harmless and indemnified agt

the

the demand — The Garant pleaded, that he had been deceived by the false statements contained in the books of account of the Defendants, as it thereby appeared at the time he became Security for the said Rod^k McKenzie that the Plaintiffs in this Cause instead of being the Creditors of the said Defendants, were indebted to them in a considerable sum of money, and in order to prove this fact the Defendant Rod^k McKenzie was called by the Garant as a Witness —

Mr Sullivan for Mr Perrault contended that the Defd^t McKenzie was incompetent witness on several grounds —

1. Because he had a direct interest in the action — and more particularly in regard of the Costs, as should the Garant be condemned, he must not only reimburse to the Garant the costs he will be condemned to pay to Perrault — but also the Garant's own Costs —

2. The Witness is a party in the Suit and cannot be examined as a Witness under any Circumstances —

3. The Witness is a party to the act of 7 May 1818, by which the Garant became Security, and he cannot be admitted as a witness to impeach the validity of that act, nor to allege his own turpitude in setting it aside —

4 The Witness is a relation of the Garant, being his first Cousin, & therefore within the prohibited degrees of relationship and cannot be heard in this Cause, because in regard of the security in question, the Cause cannot be considered as Commercial

Rolland for Garant —

1 The Witness has no interest, as he is equally liable for the payment of the debt in question, either to the Pl^ff — to Perrault or to the Garant, & also as to the Costs —

2. The Witness is no party to this Suit, which is an action en garantie simple by Jos. Perrault ag^t Rod^k McKenzie in which is nowise connected with the action of Perrault & McKenzie —

3. The Witness does not come to set aside his own act, but to speak to a fact independent of it, but where he has no interest he may be heard of his own act, as his testimony can be of no benefit to himself —

4. Relationship is no cause of incompetency in this Cause, as it is altogether of a mercantile nature —

Saturday 13th October 1821

Present

Justices Reid, Foucher & Pyke

Hunters &c. Perrault & al & Perrault McKenzie qt. } W

The Court granted the motion of Pliff in Garantie on the principle that the Witness was interested as to the Costs in the Cause in Garantie, and also, because he could not be admitted to give evidence agt his own act, when all the parties to that act only & no third person required it. —

McFarlane & Wheeler } W

On Ca. ad resp. retble 1st inst

The Defendt came in on the 5th & gave bail to the action — and moved to be permitted to enter appearance — On the 4th the Pliff had obtained a 2d default agt. Defendt & had in consequence moved to proceed in his enquête on 8th — After enterg appearance the Defendt moved that as Pliff was a foreigner he should give security for Costs this was granted & security given on 6th — Three days after, that is on 9th the defendt filed a plea — this the Pliff moved to reject as coming in too late, & after he had been allowed to proceed ex parte — And the Court granted the motion, upon the principle, that a Defendt out upon bail may come in by surrender at any time into the Cause, but he must take the Cause ~~in the~~ and be bound by the proceedings had in it, in the same manner as if he had entered his appearance at the return of the writ. —

Monday 15th October 1821.

Present.

Justices Reid Fletcher & Pyke.

No. 1525.

Folts. v. Burton

action on award —
Boston for Pliff moves for hom. of award —
The Defendt. excepts to the demand — no time to make award — this given up —
Objected that the award was never pronounced or signified to the parties —
Rolland for Defendt. That the award was never pronounced nor served on the party — award rendered in Augt. 1818 — & was never signified to the party until bringing the action whereas signification ought to be made before expiration of the time limited for making it — Not even alledged in the declaration that such signification was ever made Jousse Just Ass. 2. Vol. Su. 8. No. 13 — No. 61 in margin on traité d'arbitrage — Repn. 548 No. arbitrage —
The award was made upon objects not demanded nor submitted to them — the points submitted were the acts between the parties & the gestion of Pliff as agent — The arbitrators go beyond this, & take up not only the acts of gestion — but take up an acct. between Mr. Henry the agent of Defdt. personally between him & Pliff & allow the balce. of that acct. ag. Defendt. — Whereas the gestion of Pliff ceased in Novr. 1815 — after that Pliff acted as the agent of Mr. Henry, but not of Defendt. —
The Defendt. has shewed that amt. of award has been paid & more by the receipt of £600 for wood cut on Seigneury & for house rent — this appears by answers of Pliff on faits & articles. Qt. notwithstanding they are evasive, & yet shew that objects have not been accounted for — Exh. No. 19 — is a statement of errors of the acct. submitted to arbitrators made after the arbitration & award, by which Pliff acknowledges

to have committed errors in the acct laid before the arbitrators & on which Pliff gave a bon for balance — & on action brot on this bon, he swore that the amount, £137 was paid to him on acct of Defendt — & thereupon Mr Henry's action was dismissed —

Boston for Pliff — The award was made within the time in the office of a Notary Public, which is equivalent to pronunciation, cite Lange Prac. Fr.

There are no causes alledged sufficient to warrant the Court to look into the award or the proceedings of arbitrators — no corruption is alledged — The exhibit No 19 was surreptitiously obtained from Pliff

The Defendt has acquiesced in the award by payment of a sum of money on acct of it, & cannot come of it — cite Fr. Dec. Vo acquiescer. —

No 178.
Rouleau
vs
St Julien

On award of arbitrators —
Vigé for Defendt moves for hom. of award and that Plaintiff's action be dismissed

Lacroix for Pliff — The Experts have allowed damages to Defendt which was not submitted to them & ought not to be deducted from the plaintiffs demand. —

Vigé for Defdt he had a right to oppose the insufficiency of Pliffs work & also the injury sustained thereby; by exception as well as by action, & it was not necessary to set up an Incidental demand for the damages —

No 1748.
Thayer & al
vs
Shuter

On Pliffs mo. for time to fyle Exh. — & also on Defendts mo. to discharge rule granted for Pliff for delay to fyle his Exh. to 6th — The Defendt appeared on 4th & therefore had a right to see that no proceedings should be had, prejudicial to his interest without hearing

Rolland

Rollaud for Defendt — contends that no extention of time could be granted to Pliff but unto time Defendt appeared but not beyond that time — all motions ought to be made in the presence of the party —

Ogden for Pliff — the proceedings are regular —

No 880.

Primeval v Reddington } On Defendt mo. for reduction of evidence after a Com. Regr —

No 1907

Armour v Mayer } On defendt mo. for consolidating Causes — in order to avoid costs — wh. No 1903. 1905. 1906. & 1907. —

Walker for Defdt. Pr. Act. ordr 1667 Tit. refers also to the English practice touching consolidating of actions —

Sullivan for Pliff, an injury may arise to Pliff by uniting these Causes — impossible to apply credits given — delay in making proof in some of cases from absence of any one witness — cites. 1 Pigeon. p. 37. — 1 Tidd's Prac. 615 — (558)

No 1927

Armour v Mayer } On Pliff motion to reject a plea of abatement filed by Defendt stating a variance between copy of debt filed & that served —

Walker for Defendt plea of abatement regularly filed —

Tuesday 16th October 1821.

Present
Justices, Reid, Toucher, & Pyke.

John Molson
v
Pickle Jr } over

No. 178
Richardson
v
Thayer } On defendt's mo. to reject to reject letters & papers annexed to the Com. Rogr.

No. 160
Gibb Sal
v
Gamelin } Hear on merits, & also on rule to shew Cause — action for goods sold by late Gronovitz — Beaubien for Defendt has no objection to Judge being entered for £18.18.8 but objects to the regularity of the proceedings by Capias, as there was no sufficient Cause for suing out that writ —

No. 223
Jones
v
Henderson } On action for B Not. to see widen

No. 77
Nichols & Sanfin
v
Allan } action petitoire —

Sullivan for Defdt. Pltff do not state their title in the declt. — The lands stated to be on the South side of the River, whereas Defendt has proved that they are on the north side, and in Upper Canada — The lands have been erroneously stated on the South side of River in the title, whereas it facts otherwise, but this ought to have been especially stated in the declaration as an error of description & proved as such — Boston for Pltff, Defendt has shewn no title — the description of the township by Sheriff is not necessary to be looked to here — and this description is not mentioned in the declaration, as the

description

description of the Pltff title is sufficient without this.—

No 253.

Gaucher. g.t. & St Felix. } Action on penal St. for 3 penalties — for practising medicine &c without licence —

Vezer for Defendt contends that proof not sufficient that Defendt acted under the authority of his father, and as his apprentice —

Grant for Pltff, the evidence is sufficient to shew the infraction of the Statute by the Defendant — The Defendt lives & is established in another parish at distance of 10 leagues from the residence of Defendant. —

No 738.

Dickie v. Forster & Co } Action for damages for breach of Contract in dismissing Pltff from their service. —

Rolland for Pltff. Plea to this action is bad conduct and ill management of Pltff, but of this there is no proof the Pltff is therefore entitled to damages —

Grant for Defendant, facts of ill conduct of Pltff have come to Defendt knowledge they dismissed him as soon as this was known, altho' the act may have been done before the Indenture wt Pltff — such as appropriating article to his own use — his selling goods out of the Shop & his receiving monies from Customers without accounting for them That it was in consequence of Pltffs threatening to beat Pltff Forster, that he was discharged. As to wages claimed they ought not to be allowed for account of the ill behaviour of Pltff. —

Rolland for Pltff the facts endeavoured to be proved are stated to have happened long before the Indenture —

No 190
Nichols & al
v
Noro & al

action on promissory notes.
Rolland for Defend^t Plea of compensation which is made out —
Boston for Pliff^s Plea admitted, & claims balance —

No 225.
Bagg & al
v
Pickle

On merits of principal demand
Action for certain quantity of wood sold &c
Grant for Defend^t No evidence adduced in proof of demand — evidence that defend^t remained in poss^n of the timber is not enough, as the timber is not the object of the demand, but action is founded on a contract of sale

No 847
Vallee
v
Dumbreville

action for House rent on lease
Mondelet for Defd^t Pliff could not legally make the lease, being a femme separée de biens —
Fir. p. 28. Pet. Com^n cited by Mr Pelton for the Pliff^s — and Pot Com^n No 522 — to shew that wife has right to do any act of simple administration. —

No 1534
Foste & al
v
Armstrong

Action on a transfer of a bond made by one Huntoon by Defend^t
Ogden for Defd^t excepts to sufficiency of dicte as not containing a sufficient demand — The debt due by Defend^t to Huntoon is not clearly set out. —

No 319
Binks
v
Warwick

action for goods sold & delivered
Boston for Defend^t The goods were rec^d by Defd^t to be sold on commission — The evidence is not sufficient under the St. Geo 2. as sent from England —

No 988
Loedel
Roi.

action for medical assistance &c — hearing on exceptions —

Peltier for Pfiff Defend^t has pleaded an exception which is not admissible, as he first pleads to the action and afterwards pleads a plea of prescription which plea of prescription comes too late 1 Pigeau. 198 199 — The exception first pleaded by Defend^t being peremptoire en droit to the right of action — That the plea of prescription is a plea of pay^t — and such payment ought to have been alledged in pleading such prescription — Art 125 Cont. pet. Com^r —

Lavroix for Defend^t The exception as pleaded by Defendant is sufficiently set forth — Defend^t not bound in pleading Prescription ~~not bound~~ to say that he has paid all he is bound to do is to offer his oath that he owes nothing see Gr Com^r on 126 art —

No 530
Warwick & al
vs
Bell. —
& Contra

Stands over till to morrow

No. 1724

O'Keefe & ux
Mönk

Action on deed of Sale –

O'Sullivan for Pliff. The deed was to have been ratified by the Plaintiff's wife, but the act altho passed was not countersigned by the second notary but this not fatal to the action, as the deed of sale was in itself perfect without the ratification of the wife – The property here was the sole property of the husband who alone could sell, as it appears he purchased in his own name – The bringing of this action by the wife with her husband is of itself a sufficient ratification of that deed, as it is only a matter of form the making such ratification – refers to Duplessis in speaking of Retrait – where husband sells the property of the wife, & dies, & the wife afterwards ratifies – this he says is good only from the date of ratification, but had it not been the propres of the wife the sale would have been good from the date of it

Denizart
Acte Notarié –
No. 3. 8. 8.

Ogden for Defendt – action on Contract – wh. Pliff agreed to ratify deed by his wife, Pliff alledges having made that ratification but has not proved it –

No. 927.

Fellows.
Munn & al
& Contra

Action on Award

Boston for Defdt – The award establishes no right in favor of Pliff – The work was stipulated to be done for £300 and payts nearly to this amount appear to have been made, – but the damages sustained by Defendts are much beyond this, and Pliff is entitled to nothing – The Arbitrators are mere workmen who appear to have decided merely upon the value of the work charged, but they did not ex. work done – the Wrk are all interested being Pliff's workmen – That David Munn & James Young are not partners & as to them action must be dismissed. The workmanship of Pliff was so insufficient that it failed & the Defendts put to great expence in consequence –

Grant for Pliff never contracted with defendts for any specific sum – and work done is proved to be equal to the sum demanded –

No 1769
Trim
Black

action on bornage.—

Rolland for Defend^t — the parties were bounded by an old fence which three years ago was renewed and in same line, according to which the parties have possessed long enough to prescribe even without title — the only question here is whether the new fence has been put up in the same line as the old fence, on this point there is a manifest contradiction in the testimony of the witnesses — but Court must see where the truth lies, and in considering the testimony adjudge the question —

Grant for Pleff contends that evidence of Pleff is suff^t.

No 279
Donegany
Pickle sol

action on Prom^y notes on action ag^t indorsers —

Grant for Defend^t plea is usury which is supported by testimony of Wm Laing, to whom the money was paid, Laing did not make the bargain, but one Barlow made it — Note is for £700 & in it is comprised £29 more than Laing rec^d —

Rolland for Pleff — the wit^s is the drawer of the note and therefore interested, if not rejected, yet ought to be considered as coming ag^t his own act — he is setting his own act by his own testimony — It is not asked of W^s if he was interested — The evidence in this case would avail himself of the Judg^t to be given in this Cause if the note were declared usurious — and if he could not, yet if he were sued he might ~~be~~ call the other Def^ds — 2 Esp. N. P. p. 711. Abrahams v. Bunn — When the debt was not paid the borrower was considered as an insufficient & incompetent witness — That even if he were a disinterested W^s his testimony proves noth^g —

Ofrethwaite Peacke, N. P. Rich v Jeffrey — 2 Esp. N. P. 486 — The W^s ought to have shown that he had no interest, either by a discharge or that he had p^d the money —

Grant in reply — Mr has no interest, no Judgt in this case could avail him — Phillips on Ev. p. 39 Chitty on bills. p. 527

No 2009.
Jenkins
Brodeur

On Pleff mo. to discharge rule ordering Pleff to give security for Costs as Pleff comes by present action in execution of a Judgt obtained to obtain satisfaction of his debt agt the security a caution — Discharged

No 385
Latrace
Currier

On Pleff's mo. to reject Defendr plea as being filed irregularly and too late — Defdr was arrested on Cap. his security came in on 10 & gave bail to action and thereupon moved to be permitted to file appce which was granted and thereupon filed plea — the Pleff however had previous to this made proof of his demand & upon the plea being filed made his present motion which was granted. —

No 1748
Shayer
Shuler &c

On Defdrs mo. to discharge rule granted to Pleff for delay on entry of cause on first instt to 6 for filing his exhibits — Defendr appd 1 & on 6th moved

Wednesday 17th October 1821

Present

Justices Reid Fourcher & Pyke &c

No 988
Loedel
Roi } Exception dismissed, & proof ordered on merit

No 847
Vallée
Daubreville } Exception dismissed —

No 101
Smith
Thos Aylwin
A. Cuvillier oppt
& Ob Aylwin Intervs } Hearing on the merits of the opposition and on the Intervention. —

Beaubien for Defendt There is an oppn to sale of moveables yt has not been discussed — yet Pltff has notwithstand sued out Exon agt Lands. —

As to the seizure agt moveables parties have been already heard, the oppos^n was made upon principle that Pltff was paid, and had transferred his right — Parties have also been heard upon the oppn to seizure agt Lands — this seizure is irregular until question touch^g regularity of seizure of moveables were first discussed — the same allegations as to merits of the oppn have been alledged as to pay^t to Pltff — & the assignment of his rights — As to proof of payment it has not been made out by written evidence, but there is proof of the acknowledgt of Pltff — Pltff was ordered to answer on faits & art. yt he refused and Oppn is entitled to have the faits & articles declared confessed — from this it would appear that Pltff was fully paid — The transaction between the Pltff & Defendt was a Commercial transaction & the Judgt has not altered it — and the same proof to extinguish the debt before the Judgt must also avail after the Judgt — refers to testimony of Geo Symes — shews pay^t by delivery of 5000 bushels wheat to Pltff — Proof agt Pltff is therefore made out

The

To the intervention of Obadiah Aylwin, has made no other proof than by interrogating him touching the facts alledged agt his Intervention — He admits that all that has been done in the Cause was under his authority and consent — in this Case he must be bound by what has been done in the Cause — In his answer to the 2d Interrogt is not precise and made to apply to a great many subsequent answers — but it appears from one of these answers that the Interrg party gave no consideration for the transfer — or he cannot say that he gave such value

Rolland for Pliff there have been several Judgts rendered against the opposn of the Oppt which must again be brought to apply here namely that the question raised he has been decided is a chose jugée — and had the Interrg party refused to answer, the Pliff was entitled to have the Opposn dismissed — There are 2 Opposn by Defdr one to the Saisie Mobiliaire some of Lands the Writ & Exon of chattels having been opposed — the Lands were seized by Madme Perrault, there Pliff was subrogated to her rights, & the Judgt was confirmed in appeal — all the questions raised by this opposition have been determined — The question touching the alledged payment of the debt by the Oppost — but this must be a payment since the Judgt — now by Judgt of 9 Febr 1816, this moyen of exception was by that Judgt determined — & cannot be repeated — That the facts & articles on Smith cannot avail Oppt — because there was chose jugée in his favor, and he had already transferred his right to Interrg party — When the Intervening party comes in the same plea is again reiterated — but when proof is attempted it would appear that pretended payment was made before the transfer but the answers of Interrg party were indifferent, and can be of no avail, as the party ~~Pliff~~ has a Judgment in his favor —

No 1896
Blackwood
Sal. vs
Terrien & al

Action on Promy Note
Grant for Defendr has excepted to the declaration as parties have been joined who ought not to have been joined —

Poth. Change
No 115. 181 in fine 212
162.
Rispn v. Billets
p. 382. 3

Rolland for Pliffs only question is whether Defendrs are solidaires, if they are, the action may be obtained agt them solidairement or jointly — Rispn vs Solidité — The Indorser is only a further security for payt of the original Debt, & equally bound to same obligation —

O Denizart — vo Endosseurs. No 11 —

Grant in answer – the Contracts are different, made by different parties & cannot be united –

No 1828.
Guy
Thiery

Action on deed of Sale – hearg on Excess
Boston for Defdt. The money was to be paid only in the presence of one Vinet, who had an interest in the money, now no allegation that Defendt was ever called on with Vinet to payt money –

No 60
Hutton
Pierce

Action for wages
to ascertain quantum, whether 8 dollr &c.

No 1872.
McNiderd
Dulongpres
& Contra

Action on Obligation – hearg on law –
Peltier for defendt – Defend has pleaded payt
this payment may be made in different ways as well by other means as by money, if it was so admitted – the Pliff exception to the payment set up to the demand is therefore premature until the proof shall be made – cites Lawrence vo compensation –
Ross for Pliff – the plea here is mere compensation which cannot be admitted in the present instance from the nature of the objects set up as payt – Here also the Pliff has excepted to the Incidental demand as not arising out of the demand in Chief – refers to art.

No 199
McFarlane
Wheeler

Action for wages on Sp. Contract – in default
Grant on behalf of Defendt. Pliff has made no proof of the Contract on which he has declared

No 63.
Caldwell
Hutton

Action for prêt à usage –
Grant for Defdt. Contract cannot be proved by Witn –

Bluny for Pliff cite Repr. vo preuve – Danty p. 667.

Deniz. vo Serment No 24 –

No 1907
Brook
vs
Cobb & al
&
Henshaw
Oppt

Opposition afin de conserver —

Henshaw for Oppost — claim founded on a Judgt agt Cobb alone, althd it was a debt due by both Defdts —

Beaubien for Pltff — Oppost is not a Creditor of the Defendts but of one of them only, & the monies here levied belong to the partnership — the Oppost does not claim under an allegation of insolvency — under which only the Oppost could claim —

No 1542
Langlois
vs
Wagner

action on transfer of Obligation

Peltier for Pltff — Pltff not bound to garantee Defendt by the terms of the transport made to him.

That by statement in plea the Pltff is not bound to this warranty as the lot sold to Johnson, extends only to a street or lane, but does not comprehend the lane.

Grant for Defendt — Marie anne Prudhomme & her husband were proprietors of both lots, that sold to Teasdale and that to Johnson that to Johnson without any reservation, this was sold by him to Wagner and by him to Dewitt — That Teasdale having a right to a street claims it on property purchased by Defendt —

No 1851
Peddie.
vs
McNider et al

action on Policy of Insurance — hearing on exception.

Papineau for Defdts — The contract was made at Quebec where only the Jurisdiction over the Case could lie — the Partners at Quebec are sued before this Court, without service of process either at domicile, or in person — The Defendt moved to set aside the service as irregular, but this does not exclude the present exception declinatoire — The Defendts have also included the exception they made by motion to the regularity of service — the service here is made by the opinion of the Sheriff that he has served the process regularly. —

Viger of counsel for Defendt — the presumption from face of proceedings is that the contract was at Quebec where parties reside — It is not acknowledge the Competence of the Judge to appear before him & plead to his Jurisdiction. Lacombe. Vo Competence. —

Ogden for Plaintiffs – The defendr having appeared and moved to quash the writ has admitted the Jurisdiction – and Defendrs have also admitted that they have a domicile here – By the motion defendrs admit they have a domicile but that service was not made there, the Defendrs ought to have shewn where their domicile was – after this they cannot decline Jurisdiction. 1 Pigeau 152. the least exception pleaded in the Case is a waiver – The Defendrs have a domicile here by the trade they carry on within the Jurisdiction of this Court – Boucher Instit, Comerciales p. 73. No. 451. – The exception à la forme to the sufficiency of the service is irregular, it ought to have been made by motion according to rules of Prac. and Defendrs knowing this have made their objection by motion. –

Vigé for Defendr – there has been no service of process on Defendrs at any kind of domicile either real or elected – the motion of Defendrs does not exclude the exception here pleaded

No. 1006
Forbes
Jeremy } On award – notks P

No. 128
Hart
Gardner } Action on note –
Walker for Defendr – Pltff acceded to a deed of cession & discharge of Defendr –

No. 1775
Larocque
Daubreville } Action for rent of a pew in the church –
Mondelet for Defdr – pleads for excep. Pltff does not allege he was specially authorised to bring the action
cite Repn vo Marguilliers –

Rolland for Pltff – this is a matter to be ascertained only by proof – but such authority not necessary. Lacomb. vo Marguillier. Denis. No Marguillier No 42.

No. 10
Chisholm
v.
McAuley
&
E contra

Action for breach of Contract —
Ogden for Defdt. The timber delivered by Pliff at Quebec was refuse timber, and not such as Pliff was bound to deliver by Contract — this appears by the Certificates of the Cullers at Quebec — the certificate of Jas. E Campbell who measured the timber at Montreal cannot be so authentic as he measured it in the water and without particular examination The Defendt. sold the wood on acct. of public — & now renders an acct. of it —

Grant for Pliff The Plaintiff was employed to cut timber as the agent of the Defendt. who pointed out the situations where it was to be cut — The timber was deliverable at Montreal, it was there delivered and there measured — it was by desire of Defendt. that Pliff proceeded to Quebec with the timber — for this and for other charges and delays the Defendt. is accountable. Pliff not accountable for the wood as it was cut on Defdts. premises, and Defendt. never objected to the receipt of it, but disposed of it without the consent or knowledge of Pliff —

No. 815
McIntosh
v.
McDonald

Action on Promy. note
Grant for Defdt. plea no value — Note was given as an indemnity agt. payt. of other notes signed by Pliff wt. Defendt. Garden & Co. but the Pliff does not shew he has paid any of these notes to Garden & Co. & therefore action premature
Henshaw for Pliff — The Defendt. was bound to take up the notes gt. Pliff signed, & has not done it, & Pliff is now called upon by Garden & Co. —

No. 1670
Gariepy
v.
P. I. Gill

Action d'Usure —
Roi for Pliff. Defendt. purchased a debt from Pliff of 6000 for 4000 — Poth. Vente. No. 563. 4. — 577. —

Usure. No. 128. 9. 30 — as to escompte —

3 Salk. 390
1 Doug. 235.

Grant for Defendt. Although this contract may be illicit yet it is not usurious — there is no contract of loan, no interest stipulated — Poth. Usure. No. 87. — The Pliff ought also to have shewn that he had paid the money, or that Defendt. had recd. it Comyns on Usury.

3 Salk. 390.
1 Doug. 235.

Roi in reply. It is enough to shew the contract usurious to entitle Plaintiff to his action — it is not necessary that the contract should be a contract of loan, if it can be so construed — see Poth. Us. No 88 —

No 515
Ferguson
v.
Millar et al.

over

Thursday 18th October 1821. —

Present
Justices Reid Foucher & Pyke. —

No 1021
Mitchell
v.
Russel et al.

action for rent on lease — agt Defendr as security. —

Rep. vo Novation, 233 231 —
Dec. Dmt vo Cautionnement,
1 Bourg. 437.
Poth. No 406. 13. 14.

Bourré for Pliff. Novation has been pleaded but it can extend only to a small lot of land wh was rented out by Pliff after the lease — see auth. As to the discussion, the plea comes too late, it ought to have been made in limine, & besides it is not demanded in a way to be granted in this cause it being alledged only that Pliff ought to have dissecur Principal Gale for one of Defdr. The Defendr alledged that after the lease it was agreed between Lessor & Lessee to rescind the lease, without any participation of Defdr. By an act of May 1816 a few months after the lease — a perfect change took place, and the farm which was the principal object of the lease was taken back by Pliff — Poth. Ob. No 406 — when Cnd puts himself out of power of transferring his rights of action to Cautn. The Pliff obtd a seizure agt Lessee's goods after his death of which no account has been rendered to Defendr.

2 Rep. vo Caut.
2 Bourg. 432. 3
1 Peg. 187.
Poth. as cited
Dec. Dmt

M Rolland

Mr Rolland for Defdt — action must be dismissed — it is founded upon the lease, & demands the consideration of the whole without reference to the part which was afterwards leased by Pliff — whereas it is now evident that lease was rescinded. There is no proof of the lease, it ought to have been made double, but its remaining in the possn of the Pliff, the Defendts could attain no knowledge of it, nor have means of compelling Pliff to fulfill his obligations — But the lease, if ever it existed has been done away by Pliff himself, and converted from a bail à ferme to a bail à loyer — The cause of Caution is always favorable. Rep. Vo Caution. p. 774 — 1 Despeisses. 686 Des Cautions. Sec. 3. No. 42

The Pliff has not fulfilled his agreement in the lease — the proof is that the Pliff never put the lessee in possn of the farm, but only of the house, so that the lease never had its execution —

Bourré for Pliff — There has been no novation, no change of the Contract, although it has been diminished, yet this does not affect the whole, but only in so far as it has been diminished —

Perrault & Poitras & Poitras oppr

On opposn afin d'annuller — on principle of having pd. the Judge

Boston for Pliff. has admitted £16. 7. 6, before institution of the action, qr. Pliff consents to be deducted from demand but as to the other sums, Pliff does not admit them nor does he owe any thing for monies alledged by Defendr to have been paid on acct. of Pliff

No. 227 Try & Dickie

Action on Promy Note —

Rolland for Defdt — Tender made of £10. 7. 11, as being only sum due — another action was brot on 29r Jany last for £12. 2. 6. for instalments then due — having a small part of what was then due in order to bring another action in this Court for the remaining sum within its competence — the only sum due at the time the action was brot. was sum tendered —

Grant

Grant for Pliff. More was demanded by first action than was really due, but there were binds the note several articles sold to Defendt.

No. 1088
Forster & al
v.
Dickie

action for note & goods sold

Rollaud for Defdt. no proof of the sale of the watch chain & seal — only one Wits — but in this Case verbal testimony can not be admitted

Couchot.

No. 515
Ferguson
v.
Millar & al

action on special bail bond —

Ogden for Defendt. on 19 June 1817. a motion was made on behalf of the bail to surrender the debtor which was granted — this was ~~previous to any~~ during the action ag the bail — this action was afterwards dismissed — In 1821, the present action was brd to qt. is pleaded that a Surrender took place prior thereto, which was a discharge to the Defdt. 1 Esp. 192 Price. v Price — here the surrender was made prior to the action — 1 Raymd. even 4 days after the action such Surrender may be made — That there is no legal assignment of the debt by Wilson Robertson & Co. to Pliff — the act filed is a mere power of Attorney by one of the partners to Pliff to recover the money — and the partner Wilson had not alone the power to make such assignment — and although Wilson was named Syndic of the Estate & Effects of Robertson Wilson & Co, yet in the deed of the assignmt of that estate this debt due on Recognizance of Bail is not comprehended, and therefore he held no authority under it in regard of this debt — But there is no proof of the execution of the assignment or power of Attn by Wilson to the Pliff — the proof of the

Signature

signature of Palmer as a Notary public in the State of Vermont can be of no avail in this Court —

Grant for Defendt the assignments have not been correctly stated in the declaration as they were made —

Adds Prac. 269 — Surrender made even after action is sufficient but here it was made before, and the bringing first action which was dismissed cannot benefit Pleff

Boston for Pleff — The surrender of the debtor in the former action cannot avail in this — the surrender must be made in the manner required by the laws of this Province, namely Stat 20 Geo. and we cannot look at the practice in England in this respect — Even the surrender in the former action was declared insufficient, as the rule obtained in this behalf was discharged — The assignment made to Pleff by Wilson is sufficient, and he had power to do so by an assignment of the Partnership property of Robertson & Co to Wilson by deed of 17 Septr 1812. The proof of the signature of Wilson to the assignment is proved by witnesses, or shews that Palmer was not within the Province —

No. 1770
Armour v. Nichols sal

Action on Promy Notes — heard on exceptn

Boston for Defendt — The Pleff has no interest in the notes in question & because Pleff is chief Clerk of an illegal association & can maintain no action —

Chitty on pleads. p. 5. servant cannot have an action — in p. 23 Agent when known is not liable, nor can he maintain the action the Contract here was not with Pleff but with the Banking Co — Chitty on Bills. p. 9. where real parties known they cannot maintain the action — p. 91. and Defendt having a right to set up defence agt action where the transfer is made agt law — p. 396 — Defdt may shew there was no beneficial interest in the Pleff — It is for the public interest that laws should not be evaded — the association here called the Bank of Canada is contrary to law & ought to be suppressed & it is injurious to the public interest — St. 6 An. ch. 22 Sec. 9. & 15 & 2 Geo 2. ch 3. Sec 6 — By St 14 Geo. 2 ch 37. which

was made in regard of the South Sea Co. first act 1 Geo 1 — By St. 14 Geo: 2. was made to extend to the British Colonies in America — and now holds in this Country —

Chitty. 388. their facts may be given in evidence under non assumpsit —

2 Wilson 347 Collins. v. and Sullivan v Greaves in Park on Insurance parties cannot enforce an illegal contract Evans Poth. p. 10 — where parties agree to contravene the law no obligation can arise —

Gale for Pliff. The present action is brot on Promy notes under the law transferred to Pliff — The Plea that Pliff has no interest has been decided agt Defendt by Judgt in Appeal — refers also to — Chitty on bills p. 9. & in no case is it open to Defendt to object — cites 1 Wilson. 189 — Chitty p. 53 — it has been expressly by legislature. illegality of consideration cannot be set up in defence —

In regard of the illegal association of the Bank — the Stat. referred to were made to protect creditors of the Banks and not to enable Debtors to set up this defence — The Stat. referred to must be considered as criml Stat, which does not extend to prohibit recovery of debts due to the Bank

Boston in answer — The objections of Defendt are not answered — The Defendt alledges that by law the association in question is contrary to law

No 1748
Strayer v Shuter &c

Action of trespass on case, hearts on Excepn of John Shuter —

Rolland for Defendt — question whether Defendts can be joined in this action — Defendts can be sued only where there is solidity by law of the Country — the party suing out a writ cannot be joined with Sheriff for executing wrongfully that writ — There are two different acts of which complaint is made, but as they are different acts done by different persons they cannot be joined That allowing even the allegation that the parties combined

to

to execute such writ illegally, yet this ought not to be permitted to be proved, as the telling or advising Sheriff to execute such a writ can affect only the Sheriff who may have wrongfully executed the writ — That solidité is admitted in cases of delit but it must be for the party's own cert — No action for suing out civil process

Ogden for Pliff — The Plea of John Shuter pleads on behalf of another person — but parties are jointly & sev^l liable cites Cowper 476 Baxter v Power Lal^t

No. 1859
DeRouville & Gauthier } On report of Arbitrators — agreed to — only question as to Costs —

No. 320
Plamondon & French } Action for fees of Att^s in Court of Appeals
Rolland for Pliff — Interrog^s have been submitted to Defend^t to prove the authority given to Pliff —

No. 143.
Juneau & Latulippe
Garefy & Meron-gue } Case submitted — quest. as to costs

No. 158.
Gill & Chartrand } Action on Prom^y Note —
Rollin — for Pliff — facts & act. on Defd^t and answers sufficient to condemn him —
Lacroix for Defend^t — answers of Defend^t not sufficient moved to reject depositions of 2 Wits — persons making mark cannot prove any writing

No. 1049
Donegany & Leasdale

On defendt mo. to quash the writ as illegally sued out —
Grant for Defendt the grounds of affidavit not sufficient —

No. 1654.
Lancereau & St. Mard & St. Amand opp.

On opposition afin d'annuller —
Rollin for Opport — no demand by bailiff — not said that not stated if it was before or afternoon —

No. 1513
Scott & al v. Bruguier

Action on Promy Note —
Rolland for Pltff — Defendt pleads a delay to pay beyond term at qt action was brot but as at the time of pleading he has made no tender he must be condemned — there was no term granted here —
Grant for Defendt qui a terme ne doit rien — and it is proved here that Defendt had delay to pay during all the month of June —

No. 1910
Holmes v. McConnel

Action to recover back money paid by Pltff to Defendt.
Boston for Pltff — Pltff was imposed upon by the Defendt in regard of a discovery of the perpetual motion, and selling the invention to the Plaintiff —

Poth. 29. 30. 33. 42. — No. 131.

Walker for Defendt — There is no proof of the agreemt between the parties — moves that dep. of Jeremiah Holmes & on Bludgeon be rejected as relations of Pltff — Not only necessary to prove the agreement, but also the fraud which has not been done —

No 817

Thayer
Marshal & al
&
Mayrand opt

On mo. of Oppost that Contrainte be granted agt Pliff, for not returng money arising from sale & adjudication of certain real Estate of Defendt under Exon sued out by Pliff, and which have been adjudged to Pliff

Ogden for Pliff, the mo. cannot be granted — There is no evidence of any demand on Pliff, the act of the bailiff cannot be recognised by the Court without proof — There is no return of the Sheriff that the money has not been paid — The Pliff is not proprietor of the lot in question, never had any deed for it —

Vigé for Oppost there is proof to shew that a demand was made on Pliff to pay the money — the Pliff is depontain de biens de Justice —

Friday 19th October 1821.

Present.

Justices Reid, Foucher & Pyke.

Perrault
Poitras
&
Poitras oppt

The Opposition admitted in regard of the money paid by Defendt to Pliff before suing out Exon. but not for the monies paid by him to another person on acct of Pliff, as not having been paid with Pliffs consent — Costs compensés —

McFarlane
Wheeler

Judgt for Pliff — Defdt in default — Wages —

Foster
Wheeler

Do — do —

Rouleau & St. Julien } Action dismissed — Report of Experts — the damages arising to Defdr. from the insuffs of the work, although not demanded, yet could be proposed as an exception to Pltffs. action.

No. 158.
Gill & Chartrand } Action dismissed — no proof of promts note except as stated in defendrs. answers on faits & articles — these not sufficient. —

Larocque & Daubreville } W Defendrs. exceptions dismissed — Pltff as marguillier, is entitled to sue & do every other act of ordinary administration, without special authority. —

No. 1513.
Scott — & Bruguier } W Judgt. for Pltff — but without Costs — a promise of delay after debt has become due if made gratuitously & without consideration not binding — but Court in such case has power over the Costs. —

1 Esp: 430.

Rouville & Gauthier } Judgt. for the Lods & Ventes, according to the evaluation of the Ventilation, wt. Costs including those of the Ventilation. —

Dancereau & St. Mard & St. Mard opt. } Opposition dismissed — Moyens not suffts to annul proceedings. —

Henry. — v. Odogherty		Judgt. for Pliff —
Plamondon v. French —		Judgt. for Pliff — attorneys fees. —
No. 1943. Metzler & ux v. Price. —	W	Action dismissed — default case — Defdt. — maker of note, stated to be Capt. of the Lady Sherbrooke S.B. & not proved to be a merchant or trader, and indorsement of note to Pliff — not stated to be for value received. —
No. 1769. Trim v. Blache		Interlocr ordering survey & Statement by a Surveyor
No. 988. Loedel v. Roi —	W	Exception of prescription pleaded by Defendt. dismissed it not being pleaded correctly as a plea of payment to the demand —
No. 1960 Molson. v. Pickle. —		Defendt. exceptions dismissed
No. 1669 Roi. v. Maine	W Prac.	action dismissed — from irregular service of process
No. 251 — Gaucher v. St Felix —		Judgt. of Conviction & forfeiture of one penalty under Stat. —

No. 1896.

Blackwood v. Therien & al. } W The Court were of opinion that the action solidaire could be maintained agt. all the Defendants — and dismissed their Exceptn.

No. 1828

Guy. — & Thierry. — } The 2 first grounds of exception dismissed as being to the form & irregularly pleaded — the 3d ground reserved to be heard on merits. —

No. 1721

Shuter v. Jones. — } W Prac. The Defendt. having produced no affidavit in support of his motion for a Com. Rogn. to ex. Pltff on faits & articles & for ex. of Witn. in England — mo. dismissed. —

Brooke & Cobb, & al. & Henshaw Oppt. — } The oppost. not having alledged deconfiture of Defendrs. and his opposition being a fin de conserver upon the Realties — whereas the levy on the Chattels only was in question — the oppos. was dismissed — The question touchs the sufficiency of the opposition as founded on a claim agt. one of the defendants, whereas the monies levied belonged to the Partnership, was not considered necessary to be determined. —

Forbes & Doucet, Cur. & Jacob Oppt. } W Opposition dismissed

Amour & Thayer — } W Mo. for uniting the Causes granted

№ 63. Caldwell v Hilton	W	Judgt for Pltff — The Court considered the parol testimony sufficient —
№ 128 Hart v Gardener		Judgt for Pltff —
Nicholson et al v Noro et al		Judgt —
№ 1670 Garieppy v Gill	W	Action dismissed Declaration insufficient — not alledged that there had been a loan of money, nor that any usurious interest had been actually received

Saturday 20th October 1821.

Present

Justices Reid Boucher & Pyke.

Roussil & al vs Roi. — Judgt on the account rendered

No 1936
Armour vs Taylor — W — Exceptions dismissed — Debt & assumpt joined sed. vid. 3. Barn. & Ald. Rep. 208. Brill vs Neele

Hondlow vs Christie — Action dismissed.

No 94. & 117.
Gerrard & al vs Nicklesson & al — W — Actions dismissed.

Turner vs M'Nider & al — W — Exception declinatoire & motion to quash process, dismissed.

Peddie vs M'Nider & al — W — Same Judgt

Bowker vs Scofield — Judgt pro Plff.

Pearson v Vanderslupp — Exception of Defendt admitted & Judgt on Verdict.

No 1550.
Scott val v Phoenix Co — Exceptions of Defendt dismissed.

No 519
Binks v Warwick — Judgt for Pltff.

No 77
Nichols val v Allen — Judgt for Pltff on petition.

No 1927
Armour v Taylor val — Pltffs motion rejected

Donegani v Pickle val — Judgt for Pltff.

No 1748.
Thayer v Shuter val — Plea of Excep: of J. Shuter, dismissed

No 1724
O'Keefe dux v Monk — Judgt for Pltff.

No 530
Warwick v Bell & E contra. } Report of arbitrators confirmed

No 525.
Bagg & al v Pickle & E contra } Judgt for Pltff - Incid. demand dismissed.

No 1570
Warwick v Ermatinger } Judgt for Pltff

No 1534
Froste & al v Armstrong } Defendrs excep. dismissed, but without Costs

Shuter v Thayer & Perr & al. T. S } Defendrs mo. for main-levee dismissed

Beaubien v Morley } The Court directed the admission of all such testimony on the part of the defend. as tended to rebut that adduced by Pltff - reserving to determine as to the depositions of those witnesses already examined by Defendant -

Thayer
et
Marshall
Sal
&
Mayrand
Opp^r

The Court granted the latter part of the Opposants motion in regard of the Sale by folle enchere, but served to determine upon the other part in regard of the Contrainte par Corps. +



