Kings Bench Montreal.

Civil Pleas.

February Term. 1822.

April Term. "

June Term. "

October Term. "

La Declaration constitutive de l'Etat des deux Compagnies des Indes donnée en 1664, porte que les Juges des Lieux que la dte Compagnie pourra occuper, seront tenus de juger suivant les Loix & ordonnances du Royaume — & se conformer à la Coutume de Paris. —

Les art. 14. 15. & 23. de l'Edit du mois d'Aout 1717, enregistré au Parlement le 6 Septre suivant — portent, que les Juges de nos Colonies en amerique seront tenus de juger suivant les Loix & Ordonnances du Royaume et se conformer à la Coutume de la Prevoté & Vicomté de Paris, suivant laquelle les habitans pourront contracter —

Armour	Dwight	11	13		
Armour	Bangs	"	"		
Aylwin	Cuvellier & oppt	14	17	34	50
Allison & Co	Denau & oppt	15	29		
Archambault	Fullum & al	15	64	98	104
Ayers	Cozen & al	27			
Armour	Thayer	28			
Armour	Nichols & al	29			
Alsopp	Cook	42	45	53	
Aylwin	Cuvillier & oppt	59	60	67	95
Ayers	Minard	61	103		
Ansell & al'	Delorme	79	106		
Aylwin	Cuvillier & oppt	105	112	158	
Archambault	Fullum & al'	114	115	150	
Abbot	Welsh	116	167	219	
Arnoldi	Brown	157			
Alsopp	Throop	169			
Auclaire	Auclaire & al	169	178		
Arnoldi	Belestre	203	221		
Allison	Turgeon & al	216			

Brown	Fleming	12			
Bender	Johnson	12			
Burton	Yule & E contre	13			
Bergeron	Ouellette	13			
Bradbury	Atkinson & al	19			
Bellet	Raymond	24			
Bethune Cur'	Ou Pelt Exp	37			
Bourdon	Auclaire	37	49		
Beaubien	Morley	38	134	213	
Bibeau	Pasteur	42	50		
Brunet	Legault	44	62		
Baxter	Thomas	52			
Brodeur	Brissette		52		
Berthelet	Berthelet & opt	56			
Berthelet	Neveu	56			
Bagg	Boue, & e contra	77	103		
Blackwood & al	Guy & al'	85			
Bender	Durand & al'	101			
Brown	Millar & Gat	102	223		
Bachan	Beausoleil	136			
Brousseau	Cartier & al'	144			
Barnard	Wallis	146	223		
Blamarhasset	Throop	147			
Brackenridge	Hersey	153			
Blache	Wisby	163	172		
Burnet	Hall	167	172	206	222
Bridge & al'	Sheldon	183	218		
Bastable	Bridge & al	186	218		
Belouin	Pilotte	188			
Brouillet	Leclaire	193			
Blackwood & al	Pastair	194			
Brackenridge	Jones & al'	203	217		
Boston	Bricault & Gard	221			

C.

Cairns	Duff	12	15		
Cicot	Morley	27	33		
Chaput	Dupuis	30			
Cuyler	Holt	38	84	104	124
Cadieux	Durand & aux	39	103		
Cardinal	Allaire	42			
Cadieux	Auclaire	44			
Chevallier	Pillet	62			
Classon	Healey	98	104		
Cameron	Atkinson	98			
Chalifoux	Marotte	123			
Chapman	Taylor & oppt	136			
Chamberlain	Stem	140			
Cardinal	Allair & al	146			
Clarke	Forrest	150	165		
Cadieux	Auclaire & Canl	152			
Cuyler	Holt	158	171	173	195
Cartier	De Longueuil	164			
[illegible]	[illegible]	178			
Chevrefils	Chevrefils	195			
Cuyler	Holt	217			
Cartier	Normandin	223			

D.

Durocher	Beaubien & al	13			
Debartchze	Lemai	17			
Dickie	Foster & Fry	23			
Dowie & al	Jeremie	29			
Donegani	Pickle & opp	30	77		
Doyons	Arnold &	32	55		
Donegani	Therien & opp	36	147	148	
Davies	Therien	46	51		
Dingwall	Forbes	48			
Durocher & al	Beaubien & al	54	55	126	
Dupuis	Chevallier	63	82		
Dumas	Turgeon	64	67	124	215
Dobson	Webster	74			
Desrivieres & al	Durocher	80	207		
Dubord	Armstrong & al	92	150	173	
Delabruere	Roi	99	104		
Driver & al	Scott	99	105		
Dingwall	Forbes	103	219		
De Rouville	Sourdain	105			
Dorions	Dorions & al	113	115		
Davis	Orkney	125			
Douglass	Moncny & al	144	155		
Dunning	Chamberlain	154			
Douglass	Campbell & opp	169			
Dubord	Armstrong & al	173			
Dalrymple	Beaubien	179			
Desjardins	Gendron & opp	182			
Dufour	Bro	194			
Dunn & al	Johnston	207			
Derick	Gunn	209			

Evans. — — — & Huntoon. —	209	222		
Ferguson — & Millar & al	16	53	76	157
Fellows. — & Munn & al	23	172		
Foster. — — & Dickie. —	23			
Forand. — — & Vincelet & Gar	54	62	119	162
Franchere — & St. Dizier. —	57			
Fuller. — — & Johnstone & Gr	98	138		
Frost & Porter & McKenzie —	111	115		
Frosle & Porter & Armstrong. —	120			
Farrair. — — & Colburn & al —	134	178		
Fisher. — — & Lacasse & opt	139	194		
Freleigh & al & Bowker. —	193			
Fisher. — — & Little. — &	199			
Fowke. — — & Hazard —	202			
Forster & al & Mondelet. —	209	221		
Foster. — — — & Ransom. —	216	222		
Forand. — — & Vincelet & Gar	219			

Galusha. — — & Tecmen. —	18	52	55	63
Guichaud & al & McGee — —	19			
Gubert. — — & Murphy. —	24			
Grece. — — — & Cameron & al	35	50		
Gagnon. — — & Paillé & opt	44	62		
Gibb. — — — & Dumont & opt	47	50		
Guy. — — — — & Thierry. —	47	51		
Gibert. — — & Pickle. — —	60	66	119	148
Gale. — — — — & Belisle. —	63			
Galusha. — — & Tecmen. —	67	129		
Gibb & al & McPherson —	83	178		
Gunlack & ux — & Perrault & ux —	116			
Guibert. — — — & Murphy & Gar	143	156		
Gougeon. — — & Pourrier & opt	153	156		
Guillaume — & Prevost. —	171	178		
Gay. — — — & Johnson. —	174			
Gray. — — & Hart. — —	185	223		
Graham. — & Morton. —	188	219		
Gray. — — — & Wisely. — —	200	217		

Homes.	Gagné & al	18	29	50		Jarry.	Marmier	20	
Hubbard.	Barnard & ors	22	23			Joinville	Pratt	97	
Homes.	McConnel	23				Jackson & al.	Clarke	98	104
Hart.	Raymond	24	36	58	105	Irvine & al.	McDonald & ors	101	150
Haliburton.	Holt & E cont.	33				Jones, Cur.	Armour	183	
Hitchcock.	Bostwick & ors	35	50			Jenkins.	Martigny & ors	216	223
Hatt.	Bricault.	52							
Holt.	Savage.	61	64	74	203				
Handyside.	Galloway.	62							
Halliburton.	Holt.	79	104						
Henderson.	Babuty.	91	157						
Handyside & al	Galloway	96							
Hubert & ux.	Cartier.	102	121	158					
Hart.	Warwick & al	117	165						
Haight.	Barnard.	118	158						
Hall, Jun.	Lacroix.	164	187	219					
Hildreth.	Mitchel.	168	221						
Herrieux.	Decarry. & al	172	173						
Hutchison, ex parte	Pelton.	174							
Harbec.	Papineau	177	199						
Hunter & al'.	Perrault.	210							
Hoofsteter.	Fournier & ors	215	222						
Holt.	Savage.	217							

King. & Fraser & al	25	43	53	199	
Knower & al & Gregory.	133	150			
King. & Cuvillier & al'	141				
Kuhn. & Lefevre.	148	156			
Kendall & Lamb & al'.	174				
King. & Fraser & Doucet	218				

Lewis. & Vandersluys	12	17	35	49
Loedel. & Roi.	16	61		
Langlois. & Waggner	17			
Longueuil & Charon	20			
Lussier & Duchenois	25	80		
Lachapelle & Dumont	28	51		
Longueuil & Therrien.	28	50	204	
Labbé & Armstrong	30	33	49	
Lebrun. & Charles.	31	34	202	
Lemieux. & Thayer.	38	119		
Lusignan & al & Pickle Jr	40	54	81	157
Leroux. & Trottier &	42	49		
Longueuil & Gaboury.	52			
Lane & al'. & Leclaire.	56	66		
Langden. & Jeremie.	57			
Limoges. & Lemai & Delorm	62			
Levreau. & Birch.	67			
Lacroix. & Lacroix & opp^{t}	82			
Levreau. & Birch.	96	105		
Lacroix. & Grattons.	100	104	111	115
Lussier. & Ainse.	119			
Letourneau. & St Denis.	125	182	219	
Lewis. & Hart.	136	156		
Leroux. & Trothier & al'	146			
Labelle. & Labelle.	147			
Larose. & Duprat.	149	168		
Leclaire. & Dame & Gar^{t}.	155			
Lamb & al' & Haven & al	166	172		
Lemieux. & Thayer.	173			
Langlois. & Wagner.	178			
Lewis. & Essenhart	180	181		
Lacroix. & Lacroix & opp^{t}	196			
Lafresniere. & Warwick & al	197	—	—	—
Lusignan & Serres & al'	200	—	—	—
Loisel. & Lacoste.	161	—	—	—

Mitchel. & Russel & al.	17			
Menard. & Bellair &	24	36		
Main. & Roi &	25	103		
Same. & Same &	26	103		
Mount. & Healey & opp.	29			
McArthur. & Stewart. &	32	36	45	
McGratt. & Williams & opp.	34			
McGillivray & al & Wilcocke. &	44			
Mills - John on Petition. &	46	55		
McNider. & Dulongpré	56.			
Mcdonell. & McKenzie -	57	82	106	
McIntosh. & Luman. &	61			
Menard. & Neveu. &	64	188		
McKenzie & al - & Roi. &	64			
McCallum. & Stem. &	67	126		
Millar. & Thayer. &	84	105		
Menard & al - & Prince. &	93			
Molson. & Deshautels -	125			
Masson. & Taillon. &	137	173		
McLeish. & Bethune. &	143			
McPherson. & White & al	155	157	158	
Main. & Towns. &	155			
Maitland & Co & Deshautels &	173			
May & al. & Sampman	186	218		
McGale. & Gillon. &	187	222		
Molson. & Deshautels -	196	218		
Miller. & Burton. -	198			
McNider. & Fraser & opt -	202			
McLean. & Trusdell & opp.	221			

Ouimet. & Jetro. & & cont.	20	123	
Nickless & al. & Knapp's & opts -	100		
Nickless. & & Brown. & &	187	189	

Potts	Burton & ux	20				Ryan	Dupré	39	50		
Pomeroy	Barnard & op	30	36			Reeves	Gerrard	41	49		
Plessis	Nadeau & al	31	50	56		Raymond	Leclaire & op	99	104		
Peck	Murphy	37	51			Raymond	Bisson & op	125			
Perrault	Laporte & Ecrs	38				Roussille & al	Roi	147	158	163	
Phillips	Boulter	41	49			Roi & al	Smith	212	222		
Pell	Teasdale	56				Rolland	Scott & al	214			
Pothier	Foucher & al	68	74	107	174						
Perrault	Fraser, & E contra	77	104								
Pangburn	Jeremie	106	157								
Police — Regulations of		106									
Pepin	Colineau	117	156								
Pierson	Charles & Intervn	123									
Pardy	Bruneau	124									
Perrault	Meilleur	126									
Peddie	M'Nider & al	131									
Prince	Scott & al	153									
Pardy	Robitaille	154									
Paterandet	Ayet, & E cont.	184									
Pierce & al	Brush	185	218								
Pigeon	Whitty comb	196									
Perrault	Hubbard	212	222								
Prudhomme	Desilets	213	219								
Pirie & al	Smith	222									

S.

Shuter. — — — &	Thayer & al'	13	20	21	29
Shuter. — — — &	Jones. — — —	16	49		
Shoulbr. — — &	Nelson & Ewd.	30			
Shuter. — — — &	Thayer & al' —	38			
Stewart. — — — &	Scott & al'. —	46	51		
Shuter. — — — &	Thayer on Inter.	62			
Shuter. — — — &	Thayer & opp't	78	151		
Smith. — — — &	Beers. — — —	97	157		
Stewart. — — — &	Nichols & Gar.	102			
Sleigh. — — — &	Caseneuve. —	102			
Smith. — — — — &	Aylwin & al' —	105	135	158.	
Sexton. — — — &	Marshall —	120			
Sanborn. — — &	Doucet, & al. —	124	156		
Serres. ex p. arle	Tubelle. — —	148			
Scott & Co. — — — &	Phonix A. Co	159			
Savage. — — — &	Holt. — — —	195	217		
Stewart. — — — &	Beerwolth & Gar.	197			
Stuart. — — — &	Nichols. — —	197			
Scott. — — — — &	Cosser. — —	215			
Savage. — — — &	Holt. — — —	217			

T.

Turgeon. — — &	Danis. —	27	51
Trim. — — — &	Blache —	28	219
Taylor. — — — &	Smith & al' —	80	105
Turgeon. — — &	Lacroix, & —	96	
Thayer. — — &	Pierce & Ewd.	128	220
Turner. — — — &	M'Nider & al'	144	
Tabeau. — — — &	Desforges —	154	156
Taillefer. — — &	Truchon. —	161	
Thompson. — &	M'Gale & Ewd.	166	
Thirkell. — — &	Perham & Ewd.	167	
Talon. — — — &	Talon. — —	171	
Todd & al' — &	Holt. — — —	200	217
Thibaudeau &	Bousquè & op't	201	223
Try. — — — — &	Daubreville	218	

Vannier. - - -	Bellefeuille -	47		Wilson. - - -	Emerson —	19			
Vannier & ux.	Thuot. - - -	63	66	Warwick & al'	Nickless & al -	33			
Valliere & ux -	Cameron & al -	112		Whitacre. - - -	Beckworth & al	45	103		
Valliere. - - -	David & al. -	133		Wilkinson & al	Nickless & al	45	51		
Vanderslugs —	Bleury. - - -	164	173	Ward. - - -	Jeremy & al	48	169	205	221
Vegiard & al -	Piccard & ux -	201	220	Whitticombe & al	Mc donald -	51	46		
Vincent & ux.	Lambert & Gar -	214		Wragg & al' -	Hunter & o/p/s.	58	97		
				Webster. - - -	Toupin. - -	180	181		
				Woods. - - -	Vanderslugs	182			
				Warwick. - - -	Yule & mis in Cam	213			
				Wood. - - - -	Gent. - - -	219			
				W					
				Young & al'	Orkney —	167			

February Term 1822.

Friday 1st Febv. 1822.

Present
Justices Reid Foucher & Pyke.

Armour vs Dwight. } On excep. pleaded by Defendt to sufficiency of Plffs declaration —
Case was submitted by the parties without argument —

Armour vs Bangs. } Similar Case. —

Saturday 2. Febr. 1822.

Present
Justices Reid, Foucher & Pyke

No 1576.
Cairns v. Duff

On Defdt mo. to quash the process from a variance between the writ & declaration —

Mondelet for Defendt refers to rule of practice touching sufficiency of the Proc. 1 Tidd. 336 — 641 —

Ogden for Plff — the original writ & docket are correct, the copy only irregular — this matter for plea of abatement

No 1573
Lewis & Vandenslays

On defendt mo. to quash writ —
Rolland for Defendt — bail ordered by Judge for £200 the writ issued afterwards for £2500 — & for which bail was exacted —

No. 1094
Brown v. Fleming

action for work & labor —
Bowen for Defdt no evidence —

No. 1945
Bender v. Johnson

action on Promy Note —
Bender for Plff — was allowed to amend — last Term
Bowen for Defdt — Plff was not allowed to amend nor has he paid the Costs —

No. 1928.—

Armour vs. Dwight } Defend^r exceptions dismissed.—

Armour & Bangs } Same Judg^t on Except^s.—

Durocher & al. vs. Beaubien & al. } Action dismissed.—

Burton vs. Yule & Contra } Judg^t on Report of Experts — and Incidental demand dismissed.—

Shuter vs. Thayer & Thayer Intv^s } On Pl^ff^s mo. for hear^g—
Semble for Defend^r an Interv^n has been filed, on q^t no issue has yet been raised, and Cause ought not to be heard till this part of the case is also ready—
Rolland for Pl^ff in reply — Intervention does not regard Pl^ff^s right of action but only the regularity of the attachment—

No. 1687—

Bergeron & Ouellette } action on Obligation—
Pelletier for Pl^ff — Defend^r has set up plea of pay^t — but has not proved any part of the objects he alleges to have paid
Roi for Defend^r — proof sufficient of the delivery of 60 cords of wood to Mr Dorion on act. of this demand, & on q^t act the Defend^r ought to be admitted to his serment supplementaire—

Monday 5th Febry 1822.—

Present

Justices Reid Boucher & Pyke.—

No 694
Aylwin
vs.
Cuvillier
&
Cuvillier
opp.

On Pltff. mo. to dismiss Defendr opposition

Rolland for Pltff — The opp. ought to be dismissed without enter on merits, as the merits of the oppn have been already determined — In such cases in France the proceedings were summary, and the Judge heard the parties immediately upon the return made by bailiff — 1 Pigeau 616 — The saisie ought to be made provisionement, at all events — Serpillon. 621 — Defendr ought to be held to make offres reelles of what he owes, before he is allowed to allidge the nullities he pretends — 2. Jousse p. 658. g. Defendr ought not to be rd opptr to a Judgt. where a first oppositn has been disposed of — Here the moyens de nullité ought to be summarily disposed of according to Fr. Law — otherwise Pltff is without remedy — As to other moyens d'opposn — of payt. it has already been determined as Defendr — and ought not to be entered —

Bourbeau for appellr — The opposn here is not same as already made & disposed of — the question here is, whether Defendr can have a second opposn after a first has been judged, when that opposn is diffr from first — Here Defendr contends there is no writ for selling the goods of Defendr not in the custody of them — Here the Pltff calls his writ, a writ of fieri facias, he had no right to this writ, he was entitled only to a writ of Vend. Expo. in cons. of Judgt. of Court of Appeals — There is also a motion from Pltff that Defendr file his moyens d'opp. &c. it is contradictory — it is a waiver of present motion — The writ here sued out is not a writ of ~~Vend Expo~~ fieri facias. — That certain moveables of Defendr were formerly seized & now in hands of Sheriff, & they ought to have been proceeded after by a writ of Vend. Expo — & not by writ of fieri facias, as here is pretended — That writ here sued out

is

is not even a writ of fieri facias — the writ refers to a P. Verbal, but it is not stated what this P. Verbal is, nor on what occasion it was made nor by whom —

Stuart of Counsel for Defdr — The mo. is irregular, as Pltff has given notice to fyle reasons of Oppn — when very frivolous oppon — are formed, a Defdr may be held in contempt. This writ sued out on Judt of appeals qn dismissd oppn on want of formality in serving copy of rolle on Pltff in his exn — on footing of — this being the Case 2 Rodd. 928. touchg nature of Exons — p. 953 — Rodd ap. 953 — form of writ of Vend. Expo. —

Rolland for Pltff in reply — This is a writ of fieri facias, directg Sheriff to levy the Debt & Costs, qch is all that is requisite, — There are no forms established in this Court for writs of Exon — when an oppn is dismissd, all a writ of Exon has to direct the levying of the Debt — Here the exon directs as well the sale of the effects already seized, as the seizure of other effects in case the former were insufficient —

—

No. 1090.

Allison Turner & Co. vr Denant — } Oppt
& Denant — }

On oppn. afin d'annuller —

Pelletier for Defendr — the Pltff accepted a note for the Debt & agreed to suspend proceedings agt Defdr — but instead of doing so proceeded to obtain Judt — sued out present exon. —

Boston for Pltff — The agreement was conditional — & was not complied with —

—

No. 1974.

Archambault & Tullum dan } Defendrs

On defendrs mo. for delay to plead —

Stuart for Defdrs — they are sued as Cautions — for a large sum of money — & ought to have been served w process long before —

—

Cairns Dfft — } Defendrs

Defendrs mo. dismissed. —

Tuesday 5th Febry. 1822.

Present

Justices Reid Foucher & Pyke.

No 2030
Loedel
vs
Roi

On mo. to reject plea of exceps. filed by Defdt—
Pelletier for Pltff— Defend. has filed no list of Exh.
with plea— as req. by 11th Sec. rules of Prac. and
for not having deposited 2 guineas with plea—

Roi for Defend— The rule of prac. in regard of
list of Exh. is not applicable here, as no exhib. were filed
The other rule does not reject client but only the Protys—

No 1721.
Shuter
vs
Jones

Action on deed of Sale
Sewell for Defdt— no power filed to maintain or
institute the action— on the contrary the power
filed Exh. No 2 prohibits the institution of the action—

Gale for Pltff— the objection too late, after all the proceedings
had— Defendt made an Incidental demand— which
shews that he admitted Pltff to be in Court— The power
filed is sufficient.—

No 575.
Ferguson
vs
Millaval

On Pltffs mo. to open delibere &c
Boston for Pltff. Court has a power over cases
But. N. P. p. 320— amendt allowed. p. 322—
The officers of the Court are under its controul; & their
acts

17 Feb. 1815 acts amended – refers to case of Bricault v. Bricault where an authentic copy of a deed of donation was allowed to be filed after delibéré –

Ogden for Defend – Pltff has proceeded upon an insufficient paper, a paper not proved, & cannot be amended – the proof of it might have been made on enquete, but has been omitted – Case of O'Keefe v. Monk. –

Grant for Defr – this is a motion to correct a piece of evidence in the Cause –

Debartchze & Lemai. } Judgt

№ 1021
Mitchell v. Russel dal } Interlocv.

№ 1542
Larizlois & Wagner } Interlocutor for proof

№ 649
Aylwin & Cuvillier & Cuvillier opp.t } Pltffs mo. dismissed

№ 1573.
Lewis. & Vanderlinys } Defendants motion granted.

Wednesday 6th Febry 1822

Present

Justices Reid Fowler & Pyke

No 1557

Holmes
vs
Gagné dal

Action on deed of sale –

Borlon for Pltff – is entitled to Judgt without going into evidence, it being founded on an authentic deed and no special fact alledged of it

Loewen for Defendt. Jnt Bte Gagné is only a Caution and not bound solidairement, & Pltff ought to proceed of Henry vs Gray Ld 1 Oct 1811 Franc. the principal only saving Pltffs recourse of the Caution –

Borlon in reply – The defendts are solidairement bound but if the Defendt Jnt Bte is entitled to discussion, he ought 1 Py. 189 to point out principal debtors property & also furnish money to carry on the discussion – 1 Pigeau 189. –

No 127.

Galusha
vs
Tessier –

On motion of Defendt. to set aside proceedings had by Pltff, and also by Pltff to reject the ~~papers~~ motions & pleadings filed by Defendt –

Henshaw for Pltff. The Defendt was assisted on Ca. but on default of him Pltff was allowed to proceed exparte – proof made, after which Defendt came in gave bail, & moved to set aside proceedings, & also filed a plea & exceptions – the Pltff joined issue saving his right to have the exceptions dismissed. –

Beaubien for Defendt – That was never any default

mtd

ens^{t} Defend^{t} at return of writ nor on 4th Oct^{r} The proceedings then had by Pltff agst Defend^{t} as ex parte were irregular, as the defend^{t} was not then in Court and no proceedings could be had agst him — the proceedings ought to have been had agst the bail — When Defend^{t} thereafter came in & gave bail he was entitled to plead, & it was only after he came in that he could be considered in default if he did not plead — refers to case of Hart v. Goodhue where Defend^{t} was allowed to come in & plead after 2^{d} default entered — The Defend^{t} has moved to set aside Ca. as both parties are foreigners and the law does not apply to them — the debt contracted in United States where Defend^{t} being an insolvent debtor wd be exempted from Imprisonment — Vide Sannes rule 8. & 9th —

That Defend^{t} has pleaded and Pltff having ans^{d} the Defend^{t} is entitled to have the merits of that plea determined by the Court —

—

№ 1823.
Bradbury vs Atkinson & al.

On defend^{ts} mo for security for Costs —
Grant for Defend^{t} — mo. made too late — mo. made only yesterday. —

—

№ 1086
Guichard dec^{d} vs D. McGee

On Pltff's mo. to reject pleadings —

№ 1628.
Humphrey vs Anderson

On Defend^{t} mo. for Enquête. —

№ 158.
Wilson vs Emerson

On defend^{t} mo. for security for Costs as Pltff has left the Province since the action commenced —

№ 1817.
Shuter. –
v
Thayer
&
Brodie et al. I. S.
&
Thayer et al –
Intervs

over till to morrow.

De Lorgueuil
&
Charron –

V Action dismissed

Jarry
&
Marmier
et al –

Action dismissed

Potts. –
&
Burton
&
E contra

V Judgt confirmg award

Ouimet & ux
v
Tetro. –
&
Dansereau
Intervs

Judgt

Thursday 7th. Febr. 1822.

Present.

Justices Reid, Foucher, & Kyke.

No 1817.
Shuter.
vs
Thayer.
& Bridge TS
Thayer et al

Action on award.

Sewell for Defend. It was necessary that award should have been pronounced & signified to the parties — this has been reserved by the Inf. on the pleas of exceps. filed by Defs. The necessity of pronouncing Judgts has been dispensed with, in courts of Justice, but not so with regard to Judgts of arbitrators. see 6 Geo. 1787. cont. Dic. de Jurisp. where this has been so determined Dic. Fer. Vo Sentence arbitrale — Poth. Proc. p. 2. ch. 4. art. 2. Rep. Vo arbit. 548. Dic. de Jur. des cont. Roya — shew that pronunciation to the parties is necessary — Dic. de Brillon. Vo arbitre The party is intitled to have a copy of the award served upon him and not a copy of a copy such as has been the Case here —

The Plff here is a non-resident, and not sufficiently reputed the power of att'y filed, prohibits the prosecuting actions for money due by mortgage — Here the mortgage would accrue upon the reference made to arbitrators by compromis before Notaries —

Rolland for Plff. the points reserved arose from the allegations of the Defend. that no copy had been served on the parties — this being matter of fact could not then be decided the fact is now to be enquired of, and is made out by the Certificate of the Notary upon the award filed — the fact is further made out by the silence of the Defend. in not answering to the faits & articles served on him — The power of Att'y in this case sufficient — the debt in question was only a personal debt due by Defend. — but Defend. having pleaded to the action is precluded from using this exception, even the fact were as contended. —

Friday 8th Feb3

Witness day.—

Hibbard
v.
Barnard
&
Barnard opt

On Plaintiffs motion for Summary hear3 on the opposition afin d' annuller made by the Defts in as much as the reasons therein contained, form no sufficient ground of opposition, and as Defendt cannot be admitted to allege such grounds, as tending to delay Pltff in his obtain3 the execution of his Just— The reasons allegd are 4— First— that the seizure was made without any previous demand on the Defendt. to pay — 2d— That Plaintiff did not request two neighbours to be present and assist at the seizure — 3d— Because the Pltff attended in person at time of making the said Seizure — 4th— Because no regular copy of the Procès Verbal of Seizure was served on the Defendt— all which grounds Pltff contends to be insufficient, & moves that they may be rejected —

Grant for Defendt— contends that all the said grounds are good and sufficient — and that any one of them, if founded must have the effect of annulling the said seizure — refers to Jousse on Proc. Civile.

Saturday 9th Febry. 1822.

Witness-day.

Hibbard vs Barnard & Barnard opp — The opposition dismissed — The Court considered the return of the Sheriff as sufficient to ascertain all the regularity required in making a Saisie and would not admit the allegations of the Defendt to come agt. it — but more particularly in an opposition of this kind where the Defendt makes no tender of what he owes, and which he ought to do before the Court will allow him to enter upon the discussion of such points of nullity in the Seizure as those alledged by Defendt — see Dupillon. on 33. Tit Code Civ. art. 3. ps 621. 622. — Plff. motion granted —

Holmes vs McConnel — Judgt pr Plff. —

Fellows vs Munn et al — Interlocutor refers matters to Experts —

Foster vs Dickie — Judgt. in two Causes. —

Dickie vs Foster & Fry — Judgt. pr Plff. —

Monday 11th Febry 1822

No 80
Guibert
&
Murphy
&
Eccles.

On Report of Arbitrators
Bouvet for Plff. asks for hom. of Report —
Vigers for Defts. consents — only question as to Costs
under deduction of Plffs demand —

No 1691
Bellet
&
Raymond

On Plffs mo. that Defend. be held to change the conclusions of his plea to the Court —
Roi for Defend. The mo. is premature, the exceps. pleaded by Defts. must be first be disposed of — that the transaction is besides of a mercantile nature. —

No 1770 1916
Menard
&
Belair
Var & TS

Heard on Exceptions — action on transport that a Defend be held to rembourse the amount of what he was for Defts. in giving him the transport
Bender for Defend. The action is irregular, the conclusions in declaration are in contradiction with the demand —

No 1886
Hart
&
Raymond

On Plffs mo. to be permitted to proceed ex parte —
Ogden for Defts — Defend. never had any domicile within this Province — moved to quash process in June last — nothing yet done on that motion — the Plffs motion is therefore premature & irregular —
Borton for Plff. the Defts mo. is irregular, he should have pleaded to the Jurisdiction —

№ 1653.

The King
vs
Fraser
Doucet Gar
Stuart Intrs

Ogden mo. of Intervs party to ex. McRoss on faits & art.

Stuart for Int. Pl. Prov. ad mg. of Comts & others of this descrp. may be exd.

Ross for The King - says as he represents the King he cannot be exd. on faits & art. as another person - see 14 Tit. of code Civile - Rep. vo Temoin. p. 72. King cannot be a witness - No Roi - King cannot be called upon as an ordinary party -

Stuart in reply Ross stands in same light him as any other public officer such as a Comt Genl from whom facts can be obd touchg any Contract he may enter into -

№ 392
Lussier
vs
Duchenois

On Pltffs mo. to be permitted to amend &
Vigier for Deft Defend ought to have leave to plead
over -

№ 1116
Main
vs
Roi

Action for damages for not delivg possn of a Cellar & cutts away a gallery. -

Grant for Pltff contends that he has made out damages. qt. ought to consist in the rent Deft was obliged to pay & the loss of articles in extra carriage -

Rolland for Defd - no proof that Defend ever refused to give up the possn of the cellar - no proof of Injt - a copy of a copy only produced - the ex. of the Prothe cannot be received - & now moved to be rejected - In point of damages there are none, nor can the Court from the contradictory nature of the proof adjudge any - & pts ought to be named - As to darkening the window of the Store complained of, there are no damages proved - There are two Causes between the parties, in qt same witnesses were heard, & these Causes ought to be joined -

McRoi

M^r Roi for Defend^r The Judg^t rendered between the parties does not apply to the case before the Court. — There are no damages made out the evidence preponderates in favor of the Defend^r —

Grant for Pl^ff — action is not founded on a Judg^t. but upon the case between the parties. — the copy of Judg^t is authentic, and is filed to shew the obstinacy of the Defend^r Refuses to evidence adduced in support of the proof of damages particularly the deposition of Gen. Roi — Henri Pierre —

N°. 1100
Main
Roi —

Action for damages for having cut away a gallery, & not restored it after Judg^t. on this subject —

Rollaud for Defd^r — action is founded on a Judg^t. of w^h there is no proof before the Court — as there is no proof that Judg^t. refers to the objects now in contest between the parties — The Certificate of the Prothy^s upon a certain paper filed, cannot be received, as it has no reference to any record in the poss^n of the Prothy^s, nor does it refer to the case in question — but may apply to any other Cause — The Pl^ff never had any right to a gallery by the case — & ought not to be allowed any damages by its having been removed

Roi for Defd^r — contends also that Judg^t produced has no connexion with the action before us — The testimony adduced is contradictory and Court can draw no inference therefrom in favor of Pl^ff — moves to reject depositions of Prothy^s touching explanation of the Judg^t. rendered —

Grant for Pl^ff — the pleadings in the case shew that Judg^t. referred to applies to the Case — Damages are proved & ought to be exemplary. —

N°991

Ayers
&
Cozenal
&
Johnson
Gar^t

Or action on Garantie by Defend^s —

Mondelet ju^r Garant — This is an action en voye de fait^s etc can Mond.^n Dubois. ju^b. 1819 and action en garantie cannot be maintained — cites Domat. viute. liv. 1. sec. 10. §. 4 — Dig. liv. 21. tit. 2. Cod. liv. 8. tit. 45. — The Garant has not been called in the time to defend the Cause —

Boston ju^r Def^s — refus to Code Civ. to shew that Garant is called in time if brot in before 2nd ct — The Defend^s here held their poss. from the Gar^t and under a title from him — the Seigneur is interested in this question before the Court — the poss^n of Defend^s is the possession of the Seigneur q. Poth: p. 33. N° 118. 119 — 105 — 2 Boug. 609 — Poth. poss. 96. Dic. Droit. v^o evincé —

N°2000

Turgeon
&
Davis.

Action on transport

Bender ju^r Def^t Pliff entitled only to a part of his demand — The defend^t was bound only to pay a sum of 900^t — dros the intent which Maillous owed to his creditors — the intent amounts to 240^t — the Defend^t was entitled to hold ju^r his own protection —

Roi ju^r Pliff. The Defend^t took upon himself to pay 240^t. of intent to Brunet q^l Def^s was not bound to pay non justifiable in paying without the participation of his Creditor Maillous —

—

N° 1905

Cicot
&
Morley

action ju^r interest on principal of sale to Def^t —

Mondelet ju^r Def^s — Pliff not regularly appointed Tutor. —

No 257
Lachapelle
&
Dumont

on mo. for Defdt to shew Cause why a prise de corps should not be granted in consequence of Defendt having shut up his doors - & opposed the Seizure of his effects -

Rolland for Defendt There is no proces Verbal drawn up by the bailiff at the time of the opposition complained of the return of the Shiriff is made up a month after the date of the warrant - The Shiriff does not certify the fact upon his own responsibility -

Pelletier for Pltff - The fact of resistance is sufficiently certified to the Court by the Shiriff -

Delonguemil
&
Therrien -

On Pltff mo. for Exon for Costs -

Ross for Defendt - By a transaction between the parties each party to pay their own Costs -

Stuart for Pltff The transaction does not embrace the costs in appeal -

Armour
&
Thayer

On Pltff mo. to reject plea of Exceptions filed by Defdt as irregularly filed after time allowed by rules of practice -

Gale for Pltff - The delay was taken on mo. to consolidate actions, after time had expired for filing exceptions

No 1769
Trim
&
Blache

on report of Surveyor -

Rolland for Defdt moves for hom. of report -

Grant for Pltff - no notice of operation given to Pltff refus to affidavit of Pltff - The Surveyor has not run the line from the one end of the Pltff's property to the other -

№ 119. Mount. vs Healey & Healey opp'	W	The opposants claim of priviledge for part of his wages as a clerk to Defdt admitted & Judgt accordingly
№ 1090 Allison & Co vs Dereau & Dereau opp'		Opposition dismissed —
№ 1558 Holmes vs Gagnier		Interlocr ordering pltff to pyt clerk transferring to him the property in question. —
№ 1770 Armour vs Nichols & al'		Order for proof
№ 390 Dowie & al vs Jeremy		Judgt for amount of one of the notes. —
№ 1817 Shuter vs Thayer & Thayer & al Interv's	W	Judgt for Pltff on demand en Chief — reserves to the parties to proceed on the Intervention. —

Tuesday 12th Febry. 1822.

No 606
Chaput
& Dupuis

On deeds of transport —
To draw Lots

No 1697
No ~~311~~ 131
Labbaie
vs
Armstrong

action on a promy Note — Pleas on Exceps

Donegany
vs
Pickthal
&
Terrieu dal
Opps

The Defendr opposg alledge payment, the question now is whether the parties opposts shall have a day for proof — Or whether he ought not to be held to deposit money

No 119
McRae
&
Atkinson dal
E contra

Case submitted —

Pomeroy
vs
Barnard
&
Barnard
Opps

On opposn afin d'annuller made by Defr
Thurlow for Duff — Defendt has set up a plea
of Compensation, qr — in this case cannot be
admitted —
Grant for opposr. Prays for a day for proof —

No 381
Shoultz
Nelson
&
E contra

action on oblgn & Incidt. Demand —
Grant for Defde — The Incidental demand has
been made out — Plrs are also nonsuits for money
pd. qr have not been credited —

Bouche

Bender for Pltff - The act. set up by Defdt - is for board & lodging - but by Defdt own letter it appears Pltff was reputed to live wt Defdt - when he worked as a Servant - Pltff is entitled to his demd - except as to a sum of £22 -

№ 2015

Plessis & Nadeau & al - } action agt Defdt as Caution for one Chalut - Pelletier for Defdt excepts to action, because it shews no sufficient cause of action - no demand of the principal debtor - no sufficient execution of the Contract entered into by the Debtor - & that lessee even had intended into possn of the house - The Contrat de Louage is assimilated to the Contrat de Vente, where tradition is necessary - It is a contrat synallagmatique, where the party claiming the benefit of his part must state and shew that he had performed what he was bound on his part to perform - No demand made on chalut to pay, nor refusal on his part to pay, the ground of the action agt a Caution is the refusal of the principal to pay -

Bender for Pltff - The declaration is suffte - not necessary to state a demand on principal debtor - this might have enabled Defdt to pay debt without Costs - The insolvability of Pr. Debtor is established in the Cause agt is equivalent to a demand -

№ 235.

Lebrun - Charles } On defendt - mo. for delay to render his acct - Savoie for Pltff - Consents to give up all claim to any property out of Lower Canada - the act may be made up in a few days - refers to an affidavit by agt Defdt has S. he meant to make away with all his property & to deprive Pltff of her rights in it -

Rosseau for Defendt - The business at Chaleurs Bay & in Upper Canada has been unprofitable & Pltff must support her share of it -

№ 144.

Mc Arthur
vs
Stewart

On Pltff's mo. to have the faits & articles submitted to Defendt declared confessis & averres. — —

Gale for Defdt cites Serpillon. p 101 — tit. 10 — says that faits & articles can be given only after the Cause contests or issue joined — here there was no Cause in existence when the petition was presented to Judge calling on Defendt to answer upon faits & articles — but this was de béné esse — as the authority of the Judge was then only ministerial — a party cannot be exam.d without the authority of the Judge — and the Judge has no authority in this respect out of Court. —

Boston for Pltff. The Defendt was about to leave the Province, whereby the Pltff wd be deprived of the benefit of Defendt answers if they could not be obtained in this way — The law of this country admits the ex. of Wt before issue and before Cause entd in Court — this ought to apply to the case of a party himself in the Cause as well as to the Wt — The Cause must be considered as in existence from the time the process was served on the Defendt —

—

№ 1029

Doyons
vs
Arnoldi
&
E contra

On Report of Experts —

Bourré for Defdt. The proceedings here have been very irregular — Before the Exps. proceeded or differed in opinion, they named a 3d Exp. — which is suffte to set aside their operation — 2d The Defendt was not notified by the Experts of their proceedings — The whole of Pltff's demand has been allowed, — whereas had Defts. Witnesses been examined very considerable deductions would have been made — No notice is taken of the Incidental demand —

Rolland for Pltff. The report is regular in all points, and contains on the face of it a sufficient explanation of

of all the matters referred to the Experts — The Defend was heard bfore the arbitrators and his witnesses also —

No 1697

Labbaye & Armstrong et al — action on joint promy note drawn by Defds partners

Henshaw did not appear to support his exceptions —

Bourré for Pltff — excepts taken that it does not appear that Defds were partners when note was drawn —

Refers to Dec. Droit Pr Société —

Wednesday 13th Febry.

Warwick et al
Nicholls et al — action of Indeb. ass. Plea of pay.

On Pltff mo. to be permitted to type a certain aut. furnished by Defds to pltff — ats Moodie v McCraw

Borton for Defds — objects to motion — in case party has any corrobral testimony to adduce he must give it in — according to the rule of practice — must have been filed with Replication —

No 311 & 331
Halliburton
Holt —
&
Holt
Halliburton — On award of arbitrators —

Rolland for Pltff — moves for award of arbrs

No 1901
Cicot
Morley — Exceptions pleaded by Defds dismissed

No. 193
McGratta
vs
Williams
Williams opt

On opposition afin de conserver –

Blennerhassett for oppt – Offt for wages – the Oppost – has made out ample proof of his demand for 3 years & ten months – & ought to be pd him – & that notwithstanding the 127th art. of the Custom. – There is no plea of prescription filed – the opposition has not been contested –

Walker & Pelton for other Oppts

–

Aylwin
vs
Cuvillier
& Cuvillier opt

On hears on oppos

Mr Stuart for Oppt – the writ sued out here is so insufficient, that the Court must necessarily quash it – The writ here ought to have been a writ of Vend Exps. refers to Tid. Pra. see form Tid's appx. 347 – The writ here sued out is not in this form. – it is no writ of Vend. exps. – The writ also contains an order for selling goods of Defr for part of Costs of – had been ordered to be paid by distraction to the Attys

Rolland for Offt the writ here sued out is a writ of fi. fa. which is a general writ orders the Sheriff to make the Pltff debt & costs, out of the Defrs goods – this is sufft and it is not necessary to recite former writs – That even if there was an irregularity in joining the order for levying the distraction, yet this will not prevent the execution of the writ with regard to the other parts of it – That the other point of opposition ought not to be received, as having been already adjudged upon –

No. 235
Lebrun
vs
Charles

Interloc. orders Defend. to file Inventory

Lewis. vs Vanderslurys

On plea of exception.—

Rolland for Defendt. The Pluff has here blended an action of ~~false imprisonment~~ malicious prosecution with action for forcible entry and injury to the property and effects of the Plaintiff, and for which ~~a~~ entire damage of £2500 is demanded upon all the Counts — so that it is not certain upon which of the demands the damages are founded

Bleury for the Defendt — many Counts, and many demands may be joined in the same action. and the action can be considered only as an action for a malicious prosecution. —

No 689

Hitchcock vs Bostwick & Sheldon Oppt

Ou oppos^n afin de ~~annuller~~ distraire. —

Bleury for Oppt. claims the effects seized under a contract of sale. & given in payt. of a debt Deft owed to Oppost —

Stenshaw fa Pluff — the sale was fraudulent & made at a time when defendt could not dispose of it to the prejudice of Pluff & his other Creditors. —

No 1073

Grece vs Cameron et al

Action on a deed of lease — ou Exceps

Jewell fa Deft — The premises leased are not sufficiently set out — never alled qu'd that the defendt was ever put in poss^n of the property leased. The rent was to be paid in money & in wheat — & no value is laid for the wheat — There should also be an allegation as to death of some of parties & who are represented by Defendt —

No. 770
Menard & Bilaud & Gareau — Exceptions pleaded by Defts. dismissed

Pomeroy & Barnard & Barnard opp. — Opposition dismissed —

Donegani & Terrien & Terrien opp. — The moyens de nullité pleaded by Oppt rejected — & proof ordered on the allegations in Opposition. —

No. 1486
Hart & Raymond — Interlocr. for proof on Defts motion

No. 144
McArthur & Stewart — Plffs. mo. to have faits & articles declared ~~pertinent~~ &c dismissed. —

Thursday 14th Febry. 1822. —

Enquête day. —

Friday 15th Febry. "

Enquete-day. —

Saturday 16th Febry. 1822.

Present

Justices Reid Fourcher & Eyke.

No. 1799

On Petition of Bethune, Curr & Reffenstein claimt

On claim of Reffenstein –

Mr Eyke contends that the claim is made out and prays costs of the Curator on his contest

Mr Hardcastle for Curr – the Com. ought to be allowed on the goods sent to Mr Leith for sale –

No. 388

Bourdon & Auclaire

Action on Promy note – Issue on exceptn Roi for Deft – it does not appear that any value was given for the note in question, not for value recd –

Beaubien for Pltff – the declaration is sufficient value recd. not necessary – 1 Bouy. tit. 1. ch. 4. Sec. 1 §. 1. d 2 the value is not denied, otherwise Pltff would be bound to prove it – That the St. respects Promy notes, does not destroy or render invalid the payt of notes made without value received –

No. 93

Peck & Murphy

action for value of a mare, they over-heats her by wh she died –

Grant for Defendt – there is not suffi. evidence before the Court to maintain this action – The Defendt on the contrary has shewn the care he took of the mare – Has proved that mare had been injured before this –

No. 1878
Cuyler
vs
Holt —

On motion of Plff for a Provisional Lst to
Grant for Defdt — The mo is irregular — is a
claim for payt of furniture & other articles —
allowance ought to be limited to subsistence —

—

No. 1594
Lemieux
vs
Thayer

Hears on exceps
Mr. Morrough for Defdt — action on case, and
the circumstances stated do not shew any right
of action at Defdt —

No. 548
Perrault
vs
Laporte
& Contra

On award of arbitrators —
Vigé for Defdt — Defdt ought not to pay costs —
they ought to be divided on the demand in chief

—

No. 1436
Beaubien
vs
Morley

On mo. for a provisional allowance —
Rolland for Plff demands £60 —
Mondelet for Defend — Defdt pays the Plffs
board & maintaine — qr. is all she can claim — She is
not charged with the care of her children. —

No. 1817
Shuter
vs
Thayer
&
Thayer & Kay Int

On Intervention of Thayer & Kay, in consequence
of an attach sued out by Plff — as good seizure
are their joint property —
Sewell for Interv to article — The articles seized
must be delivd up to Interv parties — Pa. property is liable
to part. debts — if any thing is over this Plff is entitled to —

a

a creditor of the Individual cannot put an end to a partnership, or to claim a partage of it — There are no conclusions taken here agt the partnership, and it is now too late — The issue here is whether the property seized is the property of Defd. Thayer — or of Intervt parties — Toullier Dr. civil. 2 vol. p. 534 — Watson on P. p. 263. Debts of partnership must first be paid — It would be ruinous to partnerships if they could be dissolved at the instance of a creditor of any Individual partner —

Rolland for Plff — this is a Saisie conservatoire — That Intervention is irregular — as it ought to have been made by Thay alone for his share in the partnership goods — The Saisie may be made on the joint-property, otherwise the rights of a creditor would be frustrated of his right — Wat. on P. p. 72 & 98. the Sheriff must seize the whole goods where Exon agt one Partner only —

Eddis & Dawson.

—

No 139
Ryan
Dupré

Action on Lease for house rent —
Lacroix for Defendt — Plff is not entitled to his Saisie as there was no rent due to Plff at the time — Defendt was bound only to pay rent, but not to garnish the house w. moveables. —
Grant for Plff — Every tenant is bound to furnish house w. suffic. moveables — Poth. Louage. No 204 — When effects are carried out of house Plff must follow them or he will lose his recours. No 227. — 229 — Fr. Gr. Court. Art 161 — Cout.

No 2048
Cadieux
& Durand

Action on transport —
Lacroix for Defdt — There were mortgages due on the land agt Defdt. paid — It is contended that Defdt pt wrongfully to wife of person from whom land was purchased — but she has her mortgage on land, in consequence of —

of her Ludt. of separation —

Rolland for Plff. The wife of Jerome Durand joined in the Sale to the Defendt who could not pay the rights she claimed to the prejudice of Plff, as she was garant for the debt —

No 1962
Lusignan dal
Pichet Jr

on action by Apothecaire — heard on Exceps —

Stuart for Defendt — Plff not entitled to claim the Capital of the Rente Constituee, unless the property on qt it was constituted has been shewn to be sold — but this is not shewn in all this declaration — The Plff makes use of the word Decret, but this is not the proper word, as all forced Sales are now made by the Sheriff — & not by Decret, which was a Judicial Sale — Poth. Tr hyp. & Obl. The Tiers Detenteur is entitled to discussion and Defendt has put in the exp. for — but has also pleaded the dilatory exception —

Roi for Plff — It is not necessary that there should be a forced Sale of the property to entitle Plff to the remboursement of the Capital of the rente. refers to Poth. Rente Constituee — The word Decret is equally suff. as to forced Sale — as to the exp. of discussion — Plff here is not bound to make such discussion — refers to art. 101 of Coutume — and if such discussion were to be made — the exp. does not dismiss the action, but only to delay it — but here discussion is not required under 101 art. of Coutume — Rep. vo Discussion p. 713 — But if discussion were allowed, yet in this Case the plea is inadmissible as it neither points out the property to be discussed, nor offers money to make the discussion 2 Pigeau 189 — Poth. Hyp —

Stuart for Defdt — forced Sale is necessary to entitle Plff to the action — whereon Capital not due — by a private Sale the right of the

the Creditor over the Estate is not altered — Plff can only claim the continuance of the vente — There can be no vente forcée at present Day but by Shiff, and not by Court. — The art. 101 — applies only to the continuance of the vente by a tiers detenteur, but not to the part of the Capital — action ought to ~~have~~ been dismissed on Part Exception — as to the indication of property, the Debtor is not bound to shew it, when Plff does not allege having made any discussion whatever — upon to Both. —

No
Ryan
Duncan } Action noh — noths Pc —

No 1068
Phillips
Boulter } Action of Revendication —
Ross for Defd — There is no proof in support of the demand — The wife made a will & appointed Defend as Exter — and as such he is ready to account —
Grant for Plff — Defend — cannot hold all property under this pretence —

No 1948
Reeves
Gerrard } Action for 1/6 of a sum of £250 adjudged to be paid out of monies levied under a Sale by Shiff. —

Ross for Defend — Cause is of bad faith — The final Judgt — avows the part — of the money. —

№ 1349
Leroux
vs
Trottier.
& other Cases

On action by apothecaire — heard on 2d exp.

Beaubien for Defdt Trottier — part of the lot on qn the Pltff. claims his mortgge is in the possn of the Defdt: the other part is in the possn of Injt & Cardinal — the action is joined as persons possessing different parts of the lot, who ought not to have been joined —

2 Bury 541.

—

№ 212
Cardinal
vs
Allaire

action for fish sold

Vigé for Defdt — by ans: ~~pltff~~ Defdt he has 2 years to pay

—

№ 6
Allsopp
vs
Cook —

On Rule Nisi — why Defendt should not stand committed in consequence of his persisting to remain in possession of a land adjudged to Pltff —

Ogden for Defendt — there has been no contempt committed by the Defendt — who has been in error — he confesses Judt by mistake —

№ 2064
Bibeau
vs
Pasteur

action for work & labor as a Printer &c

Lussier for Defendt — ~~Defendt~~ Pltff — was bound by his contract wt Defendt not to edit any other paper or work, whereas he edited a work called Franchere's Journal — That Pltff admits by his answers that he never gave any notice to Defendt for carrying on this Paper called the Aurore —

Bourré for Pltff — The facts Lord — have no reference to action There is an error in on the answer — but at all events it makes no diffce

Monday 18th Febry 1822.

The King
vs
Fraser.
Stuart
Intervs

On question of preference between Intervs party & the King touching the payt. of their respective claims—

Stuart for Intervs party, the claim for house rent — an assignment of Defts effects was made to Doucet saving rights of all parties, to have them sold without expence for common benefit of all the Creditors — Poth. Louage. Nº 226. shews preference of Prop^s Nº 228 — also Nº 252. — Rep^se vº Privilege Rep^se vº Bail. p. 22. — Poth. Louage. Nº 255 — King preferred only for the taille, which is of the highest nature — and does not extend to Canada where the law in this respect was never in force — this law even does not extend to collector of taxes — The Plea to the Intervention does not set up a claim of preference in the Crown to the monies in question —

M^r Ross for Crown — facts admitted as stated — the only question is whether the King or the Landlord have the preference Pltff contends that Intervs party has a privilege can extend only to two terms cits. Poth. Louage. Nº 265. — altho' this is not the taille yet it is the debt of the King &c. is the same — but prov. extend to every comptable. Rep^se vº preference. p. 274 — extends only to two quarters of the rent — This is the Kings Privilege and does extend to Canada, no enregistration of this Ord^ce of 1680 was requisite in this respect — It appears that Intervs party has rec^d £50 — and also a pipe of wine valued £75 — this ought to be imputed to the present claim — A great part of the effects sold never made any part of the household furniture and not subject to the privilege, amount^g to £28 — & over

Stuart for Intervs Party — credit is given for £50 — rec^d — The payt of pipe of wine was made at time when parties could agree as to the imputation of the payt — The enregistration of all Laws subsequ^t to 1663 was necessary in this Province —

№ 1032
Gagnon
Payant
& Caillé opp^s

On opposition afin de distraire de Rolland fur Plff. claims under a title by q^t it appears that effects were given in ex. for other property & became her property — but this title does not apply —

Grant for Opp^s. The opp^t. is entitled to the whole of the land in question under the deed of Exchange.

—

№ 366
Cadieux
& Audaie

action for damages for non-ex. of an agreem^t in building a house. — on question touching rule of reference to Experts —

Beaubien for Defd. parties will submit each their rule

—

№ 224
M^c Gillivray ^{ès qual}
vs
Wilcocke —

On Exc^ps pleaded by Defend^t
Grant for Defd. — action on Judg^t — whereby Plff prays that Judg^t may be declared executory as Defd
this is irregular, and also prays a Judg^t upon a Judg^t —

Rolland for Plff the proceeding is regular —

—

№ 284
Brunet
vs
Lefaivre

on rule Nisi for Ex. on Judg^t on appeal — alleged that Defd. is dead and cannot have an Exon as Plff —

Stuart for Defd — this not material. refers to Brad. Imbert. p. 389 — —

Lacroix cites case of Lacroix v. Ker — when this Lacroix was dismissed on this application for Exon for Costs —

№6.

Alsopp
Cook — } On rule to shew Cause why an attachmt. shd not issue agt. Defdt—

Ogden for Defdt— This is no contempt of the Court that Defdt— disturbed Plff in the enjoyt. of his property under the exon of the writ of possn—

Sewell for Plff— contends he is entitled to the rule as there is no other means to enforce the exon of the Sheriff of this Court — assimilates case to that of moveables seized and taken in exon —

—

№144.

M'Arthur
Stewart } On Defdt— mo. to set aside proceedings had by Plff. as irregular —

Gale for Defdt it is an unusual practice to proceed in a cause without notice —

Boston for Plff the proceedings are regular, and the writs were heard because Defendt— counsel was absent —

—

№22

Whitaker
&
Beckworth
and
E contra } Action for work & labor —

Hinshaw for Defdt— work done insufficient— and incidental demand for board & lodging &c with damages sustained reduces Plff's demand to nothing —

—

Wilkinson and
Nicholas and } action for goods sold — pleas on Excep's

Grant for Defdts action is bard by an Act's —

No. 2044
Stewart
vs
Scott et al

Action on Bill of Exch. Lamph by Defts
Rolland for Defts. There is no acceptance
the defts signature does not imply such—
The bill ~~implies being~~ drawn payable at a particular house
and it does not appear any demand made there—
the protest filed exh. No 3. does not suffe a demand
should be made upon some of the persons of the firm.
when note was payable— application is made to a Stranger

—

No. 1682
Whitycombe
vs
McDonald

Action for goods sold & on indorsed note—
Desrivieres— Indorsmt— not made by person
to whom payable— Indorsment not full as
req. by law— the Drawer is not a merchte—

No. 1769
Davies
vs
Terrien

Action on promy Note—
Grant for Defs. files non-assumpt & payt—
Defdt has filed Pltff accept for Auctioneers Note for £200—
qt. Pltff gave up to Bondp & Penn without consent of Pltff.
Sewell for Pltff— all the monies rec'd from B. & Penn have been
accounted for to Pltff—

—

On Petition of John
Mills— to set aside a
Curator ——

Sewell for Petr— The person appointed
to take the opinion of the friends has acted
irregularly in proceeding upon petition of
Guy Mills alone when he should have heard
that of Petr also—

Bourret for Guy Mills— proceedings are regular—

№ 222.
Gibb
Dumont
& Fére opp^t

On oppos^n — a fin d' annuller —

Bourré for Oppt — claims effects seized as his property under sale —

Beaubien for Pltff. By a sale date 9 July 1821 Defend^r sells certain moveables to Oppt — & he promises to deliver to oppt — but there never was any delivery — the P^r out by oppt. to Defend^r is made same day — Both. № 318. Vinet —

—

№ 1780
Vannier
& Billefeuille

On Report of Experts —

Rollin for Pltff. demands hom. of report —

Rolland for Defend^r — moves that report be set aside, as they have allowed more for the half of the work, than the parties contracted for the whole whereas the Exp. should have estimated the work to be done in proportion to what was done, having regard to the price for the whole. —

Rollin for Pltff. admits have rec^d 615^{tt} —

—

№ 1828
Guy
Thierry

action on deed of sale —

Boston for Defd^r money was to be paid in presence of one Vinet, and it is not stated that Vinet ever was called upon to receive the money, or that Defend^r was in default to pay to Vinet on Pltff's act —

Grant for Pltff. Vinet is no party to the Contract and it was Defd^r business to have called on Vinet to liberate himself —

№ 353.

Dingwall
vs
Forbes

action of separation —
Boston for Defendt The conduct of the Pltff has been so outrageous, so violent and so improper, that she ought to be deprived of all her matrimonial rights. — Denis. vo Sep.n № 26. — Jd. Nle Mari. № 26 — Rep.n Sep.n de corps — 5 Jour. des Aud. p. 374. 375. 6 — 1. Dupless. 326. lt. 13 part. 1re —
Grant for Pltff. The conduct of Pltff is not such as to deprive her of her rights in the Community —

№ 1543

Ward
vs
Duncy
& contra

action for work & labor — Report of arbtrs —
Boston for Pltff moves for home of award
Pelkie for Dfdt. award must be set aside —
By the rule of reference, several points were to be ascertained by arbtrs — wch they have not done — There is no mention of the Incidental demand of Defendr nor do they appear to have considered it — the arbtrs have been partial & shewed themselves so by their conduct — refus to affid avits filed —

Tuesday 19th February 1822.

Present

Justices Reid Foucher & Pyke.—

No 1948
Reeves
vs
Gerrard

Action dismissed.—

No 1068
Phillips
vs
Boulter

Action dismissed

No 388.
Bourdon
vs
Auclair

Exceptions as to sufficiency of declr dismissed the Court holding, that it was suffr that the Defndt made his certain promissy note in writing as containing enough to maintain his action.—

No 1573
Lewis
vs
Vandenburys

Exceptions dismissed — diffr lots may be joined and one conclusion for damages —. see 2 Chitty. 369.—

No 1349
Leroux
vs
Trottier

Exceptions dismissed.—

No 1721
Shuter
vs
Jones

Judgt for Plff

No 1697
Labbé
vs
Armstrong
et al

Exceptions dismissed.— Defts charges as Parties—

No 2015 Plessis & Nadeau et al: —	Excpt dismissed — deb. suff.
No 1073 Grece & Cameron et al. —	Excpt dismissed. —
Terrien & Longueuil	Rule discharged
No 689 Hitchcock & Bostwick & Seldon opt.	Opposition dismissed
Gibb & Dumont & Féré & opp.	Do — do
No 1557 Homes & Gagner et al —	Action dismissed as to Int. Bk. Gagnier —
No 139 Ryan & Dupré	Judgt. for Plff
No 2068 Bibeau & Pasteur	Judgt. for Plff
No 648 Aubrin & Cuvillier & Cuvillier opt.	Execution set aside as irregular

No 2093. Wilkinson et al & Nickless & Co	Exceptions dismissed
No 2000 Turgeon & Davis	Judgt for Plff for his whole demand —
No. 93 Peck & Murphy	Action dismissed
No 2044 Stewart & Scott & Co	Judgt for Plff
No 1682 Whittycombe et al vs Mc donald	Action as to note dismissed — Judgt for balce on other counts
No 257 Persillier & Dumont	Rule absolute for Capias —
No 1828 Guy & Thierry	Action dismissed
No 1767 Davies & Therien	Judgt for Plff — deducts what was to be paid by Borrow & Pen. on this note —

Wednesday 20th Febry 1822.

Present

Justices Reid Foucher & Pyke.

No 1859.

Hall
&
Bricault

Cause for recovery of Lods & Ventes & Cens & Rentes
the action was as well ag Defend. personally for
so much he owed, as hypothecarily for what was
due by his predecessors — Defend. was in default —
The question was whether the personal & hypoth'y action
could be joined — the Court gave Judg. for Pltff —
see Pouth. ch. 16. p. 180. — Poth. Introd. au Tit. 20. des arrets
& Exons. art. 2. No 52. Traité de l'action personnelle, hypothecaire —

Comment. Le St. Vast
4 Vol. p. 373. —

No 1651

De Longueuil
&
Gaboury

Similar Case. —

No 827

Galusha
&
Tecmer

Proceedings set aside from time of
Defend. Surrender & appl.

No 30

Baxter
&
Thomas

Pltff sued out Capias ag. Defend. by wh he
was taken, but by Plaintiffs directions the
Sheriff liberated him — Pltff afterwards served a
copy of declaration on Defend. and after writ was
returned, proceeded to prove his demand ag. him — But
the Court dismissed the action, considering that Defr
was not before the Court. —

No 335

Brodeur
&
Brissette

The Court gave Judg. according to terms of
Verdict, but without case being considered as
a precedent — as Jury had no power over Costs —
the issue they had to try regarding damages only

Alsopp
Cook. } K Rule discharged.—

No 515.
Ferguson
to
Millar } Rule discharged — The Court considered it as forming a dangerous precedent to allow making up new evidence after Cause heard as it was wholly different from amending pleadings

—

The King
v.
Fraser
Stuart Intd } K Judgt. on Intervention —

April Term. 1822.

Monday 1st April 1822.

Present

Justices Reid & Foucher

No 1962.
Lusignan
Pickle

On Pltff's mo. to reject Plea filed by Defendt as not being a plea to the amended part of the declaration, but to the whole demand, in as much as Defendt plea heretofore made to former declaration still subsists.

Stuart for Defendt — where Decln has been amended the Defendt is entitled to plead over as to a new declaration —

No 2125.
Durocher dal
vs
Beaubien
dal.

On defendrs mo. for security for Costs, as one of Pltffs is out of the Jurisdiction — & also for payt of Costs of a former action, before pleads —

Tuesday 2d April

Present

Justices Reid Foucher, & Pyke. —

No 1821.
Forand
&
Pinsoneault
&
Johnson Gar

action to

heard on Exceps pleaded by Smart —

Mondelet for Gar — There appears no ground for the action as there appears nothing in the Decln wh can maintain the action —

Lussier for Defdt— The Pltff shews no trouble in his poss.n & has no right to complain of any debt &c incurred by Defend.

—

On Petition of John Mills. } To set aside an act of Tutorship & appoint another

—

No 1029

Doyons & Arnoldi & Econtra } On defend.rs mo. for the appointment of new Experts —

Bourret for Defdt— the Experts have shewn a partiality in their proceedings

—

No 127

Galushea & Jeemen } On Pltff's mo. to reject exceps. filed by Defdt—

Henshaw for Pltff— The Court has already rejected similar exceptions filed by Defd. last Term —

Beaubien for Defend.t— The exception filed could be filed in tout état de Cause. 6. Toullt. liv. 4. tit. 13. p. 276 The Defend.t obtained a right to make a Cession de biens under Laws of the State of New York & was discharged from all contrainte & all demand in regard of present debt & all others he then owed — By Judgt. of Court in Libry last the exceps dismissed was not to the merits but to the form of the action — That if this be chose jugée the Pltff ought to have pleaded this & not to have made the present motion —

Henshaw, for Pltff— The Defdt. is too late to file any plea —

No 2125.

Durocher & al & Beaubien & al } Defendants motion granted. a

Berthelet
& Berthelet
& Cazeau ats

Quest. whether proof is suff. to maintain the opposn

No. 2015

Plessis
& Nadeau sal

Same question —

No. 1881

Berthelet
& Nevers —

action for builds a house for Defend. — by Contract —

Ogden for Defend. — work insufficient & part of charges included in orginal Contract —

No. 1872

McMorday
& Dubourgay
& Contra

action on oblgn. — Award of Arbitrators — Defend. contends that Plff ought to pay £5 of mutual demand —

No. 1857

Pell
& Teasdale

On Defend. mo. to set aside Capias & allow Defend. to enter com. appearance —

Morrough for Defs. Affidavit of Plff is insufficient. & not true, & in support of this allegation files certain affidavits —

No. 334

Lanedale
& Leclerc

On Defs. mo. to quash process from short service

Roi for Defs. — the Sheriff's return will show the fact —

M^c donnell
vs
M^c Kenzie

On Pltff's motion to shew Cause why the ~~defend^t~~ cause should not be set down for hearing on merits —

Sewell for Defd^t — presents affidavit to shew Circumstances which prevented him from adducing his witnesses during last Vacation, and prays that another day may be given to him for this purpose. —

Stuart for Pltff — Defd^t has not done in diligence to obtain the testimony of his witnesses — refers to the rules of practice. p. 57. & 48. 49 — art 14. p. 50 —

No 733.
Franchere
vs
St Dizier

action for house rent —

Bender for Defd^t — the Defd^t has not quiet and peaceable poss. of the house from the workmen of Pltff

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Wednesday 3^d April 1822. a

Present

Justices Reid Foucher & Pyke

No 1024
Langden
vs
Jeremie

action on an award —
hears on exceptions —

Peltier for Defd^t — the Compromis ment^s in the deed^r — is not a compromis — there is no penalty stipulated — the arbitrators have exceeded their power in naming a 3^d before Defd^r in opinion — Award has no certain date — and not rendered within time limited —

Where there is no penalty the compromis is null
Fer. Vo arbitrage — also Vo Compromis — To this may
be opposed Dame author Vo Sentence arbitrale where he
admits that a Sentence so rendered is still executory —
The experts had no right to name a third, before a difference of
opinion — Rep. Vo arbitrage — such ters in case of diff
of opinion may be named without consent of parties —
There is no certain date to the award — it is sous seing
privé — not deposited in any public office — Not rendered
in time, being on the 26th. whereas it ought by Compromis
to have been rendered on the 25th —

Walker for Plff Pigeau p. 20 — any number of Experts
may be named — It is superfluous to state a penalty
in a compromis. Vo Rep. Vo Compromis 3 & 13. 14 —
Id. Vo arbitrage — It is alleged in deln that the
award was made on 26th. & notified to the parties on
the same day —

—

Wragg dal
vs
Hunter
&
Cowan opp.

Ds oppos. mo. to be permitted to fyle supplementary
moyens d'opposition —

Boston for oppos. — since the first opposition
made there has been a separation de biens between
the oppos. and Defds —

Rossiter for Plff. opposes this right, as opp. is too
late —

—

No 1486
Hart
vs
Raymond

Ds Defdr mo. to quash process from irregular
service —

Ogden for Defd — Defd. never had a domicile
within the District. & no service could be made at
his

his last domicile—

Boston for Pltff, action to recover payt of a lot of land sold in Gretna town in this district — The appearance of the Defendant this motion admits the Jurisdiction of the Court, he ought to have pleaded to the Jurisdiction 1. Chitty 431 — Defend— should have shewn where the proper Jurisdiction was in which he could have been sued — Jousse art. 3. — Poth. Proc. Cv

Ogden for Defend— distinction between residence and domicile — Defend— never had domicile here —

—

Aylwin
v.
Cuvillier
&
Cuvillier
opp.

On mo. of Opposte to suspend the proceedings until costs on former Opposn be paid —

Rolland for Pltff, there is no Judgt here in support of payt of these Costs — That the Pltff have also a Judgt agt Opponte —

Beaubien for Opposte — the Judgt makes part of the record — that Pltff— Judgt— cannot be set up in compensation, as it is not admitted to be due to Pltff

The Court dismissed Oppte motion, on the principle of right of Compensation of his Judgt with that of Pltff.

Thursday 4th April 1822

Present

Justices Reid Foucher & Pyke

Sylvain ... v. Cuvillier ... & Cuvillier opp.

On Pltff's mo. for summary hearing on the opposition.

Rolland for Pltff - the moyens here are wholly insufficient, and according to antient laws of Country they must be heard summarily -

Stuart for oppos^t - This writ is a nullity - this is a writ of Vend. exp. to sell goods under a ~~writ of opp~~ the second writ of Expon, whereas the goods were seized under first writ - There can be no summary hearing in this case, nor does any law warrant it, the law has been changed under the local laws & ord^s of this Province - Oppositions must now be considered and conducted as actions, and the rules of practice of the Court have been formed on this principle there is no authority to depart from this course - nor can this Court adopt any other course - But by the Code Civil this opposition could not have been decided in this way - This is not a matiere sommaire, but exceeds much the amount of which Courts could take notice - the instances of Saisie & oppositions as matieres sommaires, states that they should be three & the sum not exceed 1000^th -

Rolland in reply - moyens d'opposition are to be filed when demanded & when necessary - but here they are not necessary - But the proceedings on Execution must be summary -

Gibert v. Pickle

On Defend^rs except^n - That Pltff ought to have stiled himself parson or rector and not Curate. -

Gale for Defts. Immaterial - but Curate is taken as translation of Curé - refers to law of Registers of Baptisms &c -

№ 1751

McIntosh
vs
Lunan

Action of Seduction — default case —
Damages laid at £200 —

—

№ 1532

Ayers
vs
Minard

Action en Complainte —
Sewell for Defd — action is without foundation and without evidence to support it. — That the Plffs fences are so insufficient that cattle of all description went on Plffs land —

—

№ 390

Holt
vs
Savage

On rule Abt. agt. Plff by Defd to shew cause why an attachment should not be granted for carrying away certain effects out of the hands of the Guardien. —

Rossiter for Defend — This is a rebellion en Justice and the Contempts ought to go. Rep. vs Rebellion en Justice — Dec. Droit. vs Reb. en Justice —

over to Saturday.

№ 2030

Loebel
vs
Roi —

Action for medical attendances &c —

Pelletier for Plff submits that demand in regard of such parts as not proved may be submitted to Plffs oath —

Roi for Defd demand not made within the year & may cannot be received to their oath — refers to Com. de pr. en 125 art. of Coub. cob. en 12. —

Pelletier for Plff — the proof here made by Plff — is sufficient to warrant the Court to submit matter to their oath —

№ 30
Handyside & Galloway

On Defend^rs mo. to grant process —
Grant^d for Def^t — The Pl^ff ought to be held to shew the grounds upon which the affidavit of Pl^ff is founded —

Ogden for Pl^ff. The affidavit is in the terms of the law & must be maintained by the Court —

—

№ 2019
Chevalier & Pillet

On mo. to discharge rule for enquete —
Ogden for Pl^ff — The affidavit of Defend^r to obtain this motion is not sufficient; —

Peltier for Defend^r —

№ 1840
Limoges & Lemai & Delorme

On Pl^ff motion to amend a Judg^t by correcting errors entered in it —

Mondelet for Defend^r — cites Rep^re v^o amendement

—

Gagnon & Payan. Caillé. op^t

Opposition dismissed

—

Brunet & Legauet

Rule for Execution absolute. —

—

Shuter & Thayer & Thayer & Kay Intervs

Intervention dismissed. —

—

Forand & Vincelet & I. Johnson Gar

Plea of Garant dismissed

Saturday 6th. April 1822. –

Present.

Justices Reid Foucher & Pyke. –

No. 1806
Dupuis
+
Chevallier

Action to rescind a deed of Sale –

Bender for Plff moves to set aside the Report of the Experts –

1. Because Plff never had notice of proceedings of Expts – this counsel admits was his own fault –

2. The Defendt has entirely changed the nature of the buildings sold to her, since Oct last, without her knowledge so as to deceive the Experts –

Lacroix for Defendt. The Defendt was bound to make certain repairs to the house, which he has made – but the Experts give the value of the house as it stood at the time of the Sale, as well as in its improved state –

No. 127
Galusha
+
Seemen

On Rule to shew Cause why Defendt should not be allowed to file a plea & discharge of present demand, since the institution of this action –

Henshaw for Plff – There is no room for admitting this plea this an a personal action & Defendt liable for payt of this debt wherever he could be found –

No. 285
Gale
+
Bilisle

On Defdrs mo. to quash process –
allowed to amend.

No. 299
Vannier & ux
+
Thuot & Duval

On Defdrs mo. to quash process from variance between writ & Decln –

Bourré for Plff – Variance must be pleaded – not moved by mo

№ 335.
Dumas & Dugzon } On mo. to quash process from Short notice of service —
Lacroix for Defdt. refers to rule of practice regulating service of process —

—

№ 1807
Menard & Seven — } action of separation —

—

№ 390
Holt — Savage } on Defendt mo for an attachment —
Boston for Pltff — The Guardian here ought to have made this motion as Defendt disclaims all right to the effects in question — The return of the Sheriff is not certain, as it refers to a schedule annexed, when there are three schedules annexed —

Rossiter for Defdt — This application is in the nature of a criminal prosecution, regarding the public Justice of the law, where any person may give the information —

—

M. Kenzie et al Roi — } action on contract for making a road —
Rule of Reference. —

—

№ 1974
Archambault et al' & Fullum et al } action by Pltff as Syndics for building of Chambly on contract. — hears on exceptions —
Stuart for Defdts — action brot by Pltff as Trustees for a public trust must shew under what right they found their

their right as Syndics – This is wants in the decl^n – There is nothing to shew any repartition made, or under what authority they were appointed – not said by whom the Syndics were appointed – They assume the power delegated to the Governor which is impossible – they cannot be deputy Governors – the declaration ought to refer to the law under which the Gov^r delegated his authority to Pltff –

Not alledged that any discussion has been made of the principal debtors – Poth. obl. N^o 411. – This is an essential preliminary to bringing an action agt. the Caution – until this is done the Caution not bound to indicate the property and furnish money to discuss –

Rollard for Pltff. – It is novel to see Cautions contest the appointment of Syndics after contracting with them – The decl^n is sufficient – The election of Syndics is sufficiently set out – their autorisation afterwards – & the act^e de repartition and its homologation – It was not necessary to state specially under what law the authority was given to the Commissioners by the Governor –

The discussion is an exception of gt Cautions may avail themselves, it is not of right, and Creditor not bound to make it unless when set up as an exception – Rep^re v^o Caution & discussion – 1. Pigeau 186 – Deniz^t. v^o Discussion. – That a plea of discussion cannot be admitted as a peremptory plea, but is always a dilatory plea & must indicate the property to be discussed – cites case of Thayer v. Marchand 2d. ofs 1819

Thayer + Marchand Plait ofs. 1819.

Strachan reply – The declaration states the authority from the Governor too largely, as conts a general deputation from him – whereas it ought to have been limited to the powers given to the Governor in regard of building or repairing churches – The authority to the Commissioners is also variously stated in the declaration. –

Instances have occurred where Exceps. of Discussion have been admitted as a peremptory exception – although it has a dilatory effect – But Dft^rs have added the dilatory exception – but it is contended

That

that this plea even is insufficient as there is no offer of the principal debtor, nor any money offered to make the discussion — but Poth. loc. cit. seems to lay down the rule differently —

Monday 8th. April 1822.—

Present
Justices Reid Foucher & Rykert

Gibert. vs Pickle. } Defendt. exception dismissed. —

All that is necessary for a Pltff. is to assume that title or character that shall distinguish him from other persons, and sufficiently point out to the Defendt. the person who calls upon him to answer — This is all that is required by the Code Civil, which in regard of a pltff does not require that his name & surname even should be set out provided he makes himself known sufficiently by any qualité he may possess — That here it was immaterial whether the Pltff assumed the name of Curate, of parson or Vicar, as by either he meant to designate himself as an ecclesiastical person in a certain place or parish, and as such sufficiently described — That although the distinctions taken by the counsel for the Defendt. in regard of Curate, parson & Rector were legal and correct, yet as there was no question before the Court which required a decision upon this distinction it became unnecessary to consider it —

No. 334
Larue & al vs Leclaire — }

No. 229
Vannier & ux vs Thiot — } Variance between writ & declaration — on Dfts. mo. to quash — This must be pleaded, & cannot come by motion — Dismissed —

№ 335.

Dumas
+
Turgeon

Service of process beyond 5 leagues — writ served on 28th. March, to appear on 1st inst — held too short, as by the rules of Prac. Sec. 21. §. 17. the day of service cannot be reckoned one. —

№ 127

Galusha
+
Tecmen

Rule absolute. — allowing Defendt to file his plea —

Tuesday 9th April 1822. —

Present —
Justices Reid, Foucher, & Kyte. —

№ 171

McCallum
vs
Stem. —

On Pltffs mo. for hearing instanter on the exceptions filed by the Defendt — as being irrelevant and insufficient. —

Boston for Defendt — The exceptions here pleaded are not such as contemplated by the rules of practice, not being à la forme or dilatoire, but are peremptoire en droit — and such as require an answer —

№ 213.

Lerreau
&
Birch —

On similar motion by Pltff in this Cause —

Aylwin.
&
Cuvillier.
+
Cuvillier.
Opp.t.

Plaintiffs motion granted in so far as regards the grounds of nullity alledged in the opposition but adjourning parties to proceed in the usual course as to the allegation of payment therein stated.

Wednesday 10th April 1822.

Present

Justices Reid & Paysc~~ee~~n

Pothier
" Touchereau
& Henry Law lately

Mr Bedard cont'd his argument —

Testaments are of natural right — it arises necessarily from the right of property, it is in the right of nations — the right of substitution arises from the right of testament — It may be objected that this right is of Civil institution — but on what is this Civil right founded — it must be upon reason — & these principles antecedent to Civil institution — the Civil institutions must be considered as restrictions upon right of testament — The Test~ ought to be respected as droit natural — It may be said that by will the property of a father given to bastards in exclus~ of legitimate children — this may be a partial inconvenience, but still the right ought to be acknowledged —

As to form of Will, it is of Civil right — the opinions of different nations must be adopted to ascertain the expression of the will — but the natural law knows no heir — it is only Civil law which gives this right — & when there is no will & is supposed the ancestor meant that his nearest of kin should inherit — the Succ~ test~ is preferable to Succ. ab intestat where there is a testament, the Succ. is test~ a salutary principle that of the civil law — Domat des Succ. tit. 1 Sec. 1 Des testamens en general. art. 19. ~~2 Ricard. p. 528. 3e ed. Loisel~~ D'Antoine 252. 589. Cout. Fr. sur l'art. 299. Stor. Eq. Jur. N° 129. There are no restrictions to giving by will unless in Mortmain — all the authorities of the Civil law will apply, & even these are not sufficiently favorable as in restriction of natural right — Dic. Degeste. v~ heredité. N° 8 — the testm~ testamentary is preferable to the heir at law — Testaments have the same authority as the laws under which they are made — the Test~ act of Mr F— is of equal force as law of 1774. if not made agt. its result — Domat. des Test. p. 425 — tit 1 Sect art. 7

art. 7. — Dec de Degets. v° Testament. p. 459. N° 3
Domat tit. 1. Sec. 6. art 5. p. 451 — 3 Furgole. ch. 10. Sec 4. —
The law of 1774 has set aside the Saisine of heritier — it is a
Statut réel — 1 Provot de Lanner. p. 69. N° 13 — all the rules of laws
regarding lepteme, Saisine de l'heritier are Statut reels — as also
right to dispose of real Estate by will — is a Statut réel — the laws
regarding quarte quints, the Saisine of the Executor — have been
set aside all these laws, by Stat. 1774. as contrary to the liberty
of willing —

2 Riccard. tit. 3. Ch. 7. partie 1re. p. 317. N° 333 — prohibition to
alienate is fidei commis — this done by M. L. to preserve the
property in his family — refers to the Codicil of 1815 — when the
prohibition to alienate Isle Boys and Fief Closse — Lacombe
v° Enfans N° 2 — word enfans comprehends petits enfans —
Poth. Des Sub.s N° 36. p. 517. when prohibition is in favor
of the Children — Id. Don. Test. p. 415. reg. 5. in fine — 1 Argou.
p. 365 — & 1771. Des Sub.s — not necessary that words defense
should be made by the Testator n'i pretre de nullité —
Poth. Substit p. 518. 519 — 1 Provot de la Jaune. p. 159.
express words of substitution not even necessary. p. 181. N°
40 —

Rep.e v° Legs. p. 418 — when intention of Testator is clear, not
necessary to consider words used by him — Id.e — even to the
injury of the heir — Id. v° Substitution — p. 77. N° 20
Domat liv. 3 tit. 1. Sec. 8. art 23. Des Testamens — That even
improper words, are to be properly construed — Dec. Deg. v° Fidei
commis p. 294 — N° Riccard des Don. part. 2. ch. 4
p. 392. N° 127. The Judge even ought to seek & assist the
intention of the Testator. — 2 Riccard. p. 311 N° 299 — N° 300. —
Domat des Test. tit. 1. Sec 1. p. 426. art. 9. — en sum tit. Sec. 5. art. 6.
p. 455. Sec. 7. art. 1. — Domat des Sub. liv. 5. tit. 3. Sec 2. art. 4.
D'Antoine. p. 60 — Blanc. Com.

Every intention of Substitu.s ought to have effect. Dec. de Degets
v° Fidei-commis. Sec 827. N° 2.

The Heir has ought to give Caution. 1 Argou. p. 326. ch. 12. de
Testaments —

Rep^re v^o Substitution. p. 492. N^o 23. - he not substitute - is alone a substitute - p. 467 - 1 Argou. p. ~~306-10~~ 351. 353. - The defense d'aliener being in the Codicil is as effectual as in the will. Ricard. N^o 214. p. 148. - Fer. Du Droit - v^o Fideicommis - 1 Argou. liv. 2. ch. 14. p. 365. - It may be in any part of will. Dig. Dig. v^o Testament - 5. Pandects. p. 516 - §. 2 Huet

Cliff &c. not to be only Ex^teur & admin^r - but he is the only one who acts - he who renounces, must renounce to all right. 2 Bacquet p. 167.

1^o. that the heir was seized to exclus^n of Exr - but Exr is seized by the will. Poth. Don. Test. p. 360. N^o 31 - p. 361 - 363 - p. 365. N^o 34. Ric. des Don. entre vifs p. 2 ch. 4. p. 379. N^o 82 N^o 83. 84. 85 - 2 Pigeau 292. liv. 3 des Substitut - Du. Droit Ex^teur Test^re - Denis^t. v^o Ex^teur Test^re N^o 20. & 21 - Gr. Comm^re art 297. glose 1^e N^o 22 - 23. & just part N^o ~~24~~ 5. art 318. glose 1. Sec. 1. N^o 6. Sec. 2. N^o 21 - art. 316 - §1. N^o 16 - Denis^t. v^o Exr Test^re N^o 29 - Denis^t. v^o Testament N^o 26 - Lacombe. v^o Exr test^re N^o 10 - 2 Bouj^r. p 376. not^e & 19. on note Id. p. 697. prop. 7 & 8 - Francon ed. 1643. p. 636. - Poquet de Livonniere p. 277. 44^e regle - offers made by the heirs to execute Testament do not prevent Exrs from being seized & doing their duty -

Test. when acknowld - ought to be executed par provision Ric. des Don. partie 2. ch. 1. sec. 5. p. 368. N^o 43 -

It is unfounded to pretend that Cliff not having made Inventory immediately is deprived of his right -

Here the heirs made an Inventory without the participation of the Executor - which was illegal - the Exr could not by any lapse of time lose his right nor be discharged from the obligation of making the Inventory and rendering an account.

The ex^tion test^t. ought to be raised summarily, Lacombe v^o Exr Test^re N^o 8. - Ricard part 2. ch. 2 glose 5. p. 378 - Gr. Comm^re art 97. N^o 6. - Denis^t. v^o Exr Test^re N^o 29 - ~~Pour la Cause~~.

Vigé for Defend— There can be no fidei-commis in this Case, if there is any the persons to whom that trust was given ought to have been parties in the Cause — the action is in the name of one only of the Fidei-commissaris, and therefore unfounded —

The Succ. Testam. is not presumed to succ. legitime. Domat des succ. prefac. §. 9. —

The Saisine of the heir cannot be set aside by the will — but were it so — here the heirs have the actual possession which is better than that of the Exer — who never had any Saisine but an imaginary one — There was certain property in the poss. of the Testator not his own and which he could not give to his Exer —

In the testament there is no Substitution, or impediment to alienate — nor is there any fidei-commis —

There is no obligation on the heirs to give Caution, nor any condition to this effect —

Exer not vested to prejudice of heir — Poth. p. 365. Don. Test. and has no Saisine till he apprehends succ. & makes Inventory How can the Summary execution be here ordered of the will when Exer has no Saisine & 6 years have gone by — The Exer did not do diligence in the first instance & left the heirs to act. —

It is here alleged that the will has been recognized by the heirs, & action founded on this principle, yet the greater part of evidence goes to prove the will —

The offers made by the heirs were sufficient —

The Inventory was made by the heirs, after due notice to the Exer he ought to have united their w. them to the Summary execution of the will — 2 Pigeau. 270 — Exer can use Scellé only when no Inventory is made — The Court dismissed the Scellé because the Inventory was made, & thereby acknowledged the right of the heirs to make that Inventory where the Exer had not made it —

When the Testament is contested as null the Exer is not vested 4 Vol Ge. Com. p. 277 —

This action must be dismissed because all the parties, all the heirs are not parties to the Cause —

Lacombe. v° Exer — as to summary proceeding on will by Exer this necessary only when there was no person to take charge of the property

property.—

The heirs by taking poss. of the property left by Mr F. were taken poss.r only of their own property by a succ.n of which Mr F could not dispose — Poth. Proc Civil p. 93.. 89. Edit.n 12 — their possession was legal saks their right to make the Inventory.—

There could be no substitn of other persons property — Poth. Subn p. 529. — there is no room to suppose the existence of such substitn of the property of Mad.e Fortier by the Testator — Id. 540 — Testator could give no more than he himself had — in regard of a whole succession, altho' he may do so in regard of any particular object — Lacombe. v.o Substitn p. 686. ~~Sect~~ N.o 4 — also p 691 — N.o 36. — Rep.n v.o Subn fidei.re p. 476 — Domat des Substns Directs — Sec. 2. art. 2. in regard of a fidei commis particulier see 1. art. 4. p. 518. where heir cannot be bound for more than he rec.d — a Testator cannot give beyond what he himself has — Id. p. 469 — Liv. 4. tit. 2. Sec. 2 art 10. p. 469.

That the Legs of the property of Fortier had not the property is nulle — Lacombe — v.o Legs — part. 3. Sec 2. N.o 1 — at all events he could be presumed to have bequeathed only what belonged to heir — Poth. Don. Test. p. 343. 4. 5. — Then the Testator possessed the estate of his heirs only on sufferance

1. Furgole. p. 318. 319 —

2 Bourjon. p. 345. ch. 2. S. 1. The will may be considered as made on hands of the heirs — There can be no partage of the succession law, it is not demanded — nor are all the heirs parties — Poth. Don Test p. 321 —

at all events the legacy can avail only for what the Testator had of his own — & so must be presumed here — Domat. p. 473. Liv. 4. des Legs. tit. 2. Sec. 3. art. 2 — Legacy can avail only for share of the Testator — 2. Furgole p. 59 — one cannot dispose of community property beyond one's own share — refers to St. 1805 — where right of husband is thus limited —

Riccard. nos 1545. Des Don.s — Penal Legs — cannot avail — Domat. liv. 3. Sec. 7. des Test. — see also p. 425. Domat. Sec. 7. du tit. 1. D.o — p. 518. liv. 5. des Substitutions — heir cannot be bound to give more than he receives —

That

That Testator could not compel the Tutor of his daughters child to renounce to the rights of that child in the Succession of her mother —

The husband of Mde Pigé not bound to accept a will by which his sensibility is affected — he is entitled to enjoy the property of his wife due to her from her mother's succession. —

That there are four parts into which this Succession must be divided before the part of the Testator can be ascertained 1. The propres de Mde. Fortier — 2. his share in the Comty 3 The share of the Testator in that Community — and the division of the second Community with a second wife —

That the Fedei-commissaire is a different character from the Executor — Mr Henry although he renounced to his right of Exor never renounced to his right of fedi-commis — and ought as such to have joined in this action — but action is not instituted by fedei commissary but by an Exor to obtain the execution of the will

That Maynard & his wife are not parties who are interested and it is impossible to proceed without them — Pigé can a persons rights cannot be adjudged upon without hearing him —

The action is founded on a testament, deposited, & of which authentic copies are produced — yet they have proceeded to make proof of the testament —

That Scellé & Inventory are so connected as to be considered as same thing. —

The Heir ought to pay the debts, unless the Exor be specially authorised by the will to do it — The heirs were entitled to make sufficient offers to put money into hands of Exor ought to pay the legacies he was charged to pay. —

Pltff not entitled to demand the dis inheritance of the heirs he has no interest, & can have no claim for such demand nor has he any interest in asking for damages. —

The 15e moyen d'Exception cannot be answered — no appropriate conclusions — to maintain the action —

cont till to morrow to hear Mr Bedard in reply —

Holt
&
Savage.

The Court were of opinion to discharge the rule for an attachment, as it did not specify the different goods & chattels which were said to have been fraudly carried away by the Pltff.

No. 165
Dobson
v
Webster

On defendr mo. for security for Costs — Defendt took off default on 4. instt — and moved on 8. for this Security — but it was held too late. under the Rule —

Thursday. 11th. April. 1822.

Present
Justices Reid & Pyke.

Pothier
Foucher
et al —

Mr Bedard in reply —
Mr L. died 3 Decr. 1816 — on 14. Henry renounced to his situation of Exr. — on 15. the testament was deposited with the notary — on 20. the will was recognized by the heirs — on 21 Decr Henry writes to Pltff to propose arrangement — on 22. Pltff answd — on 26. Henry sends a projet of transaction by the heirs, wch had been signed on 16. — On 5 Janv. Henry writes to Pltff to get back this projet — a Contreprojet was made by Pltff & sent to Deftr — wch remained without an answer — on 17. Janv. Pltff wrote to Deftr that on 20. he would proceed to make the Inventory — on the 18. Pltff rec. a letter from them to say that they would not allow him to proceed — on 20. he went to house of deceased wt a Notary but met with a refusal, when he made a protest agt them — On or about the 20. the heirs made the Inventory without the participation of the Pltff — and here they were in fault. — On the proceedings in this Case ought to be Summary — and the exs ordered by provision Riccard Pr. 2. ch. 1 Sec 5. No 43 — p. 368

305
240
12.

and this even in case of contest of nullity of the legacies in the will —

Testament — 1 Furgole. p. 12. N° 3 — has force of law

The authorities cited by the Plff to shew that the right of testing is from natural law, as the base upon which to establish his right to make the present will — 1 Furgole N° 28. p. 9. & N. N° 29. 30. page 11. ch. 2. N° 1.

The Testator by his will has made his Exrs fidei-comm — as there is but one Exr — there can be but one fidei commissaire — none but the Exrs here could be the fidei-com —

Fr. Vo Renonciation — was cited by Defds — to shew that a general renonciation is no renonciation — but it does not apply here the Renn of Mr Henry must have effect to all the rights of administration under the will —

The Executor must be considered as a mandataire & vested with all the authority given by the will — 1. Furgole. p. 363. N° 17. N° 42.

By the St. 74 — abolishes the Saisine of the heir, where there is a will to the Contrary — unless such will be of good morals — but this cannot be considered to be the case either in regard of Mr Fourchy or Mrs Vizer — The authority cited from Domat in his preface by Defds does not — invalidate this principle —

The testator united the 2 Successn — & gave the whole on certain conditions, to wt — if the heirs refused to submit he declared they should be deprived of their right in the part belonging to him the Testator —

That if the heirs have taken possessn of the property of the deceased under the will, they must be bound by them act & held to comply with the will — they are Executeurs de leur propre torts —

Ferguson
vs
Millar —

action on Recognizance of Bail —

Boston for Plff. the paper produced as the Recogr of bail, is an act of the Court — which is sufficiently stated — but said that it is not a true copy — but it was not necessary it was a true copy, as there is no original here and all the Prothp could do was to produce the very act itself — this act here must be taken as the original — if not the original, it must be a copy — either is sufficient — In England the proceedings on the Bail is by Scire facias or by Sp. action — but in either case the record being here before the Court, they can inspect it — Peake Ev. p. 23. Com. D. 1° pleader (P) 29. 2 W. 1° 30 — 1 Chitty 556 — 5 Wentworth 653. when there is a question of truth of a record, it must be tried by the Court itself — This must be considered as the further proceedings in the original action although under a Special demand. — The Plea here just in, is a waiver of the plea of nul tiel record — There are also proceedings in the record on the part of the Defendt which acknowledge the validity of this recognizance — 1 Pegram 54. 55. — This is sufficient Bull. N. P. p. 229 — a rule of Court under hand of the proper officer must be taken as a true Copy or an original — 1 Douglass 57 — The signature of proper Officer is suffe. 2 Esp. N. P. 742 — The Court will themselves inquire into validity of a record. Lilly Mod. Ent. p. 392. 3 Bur. Rep. 1243. Plff ought not to be turned round on objections not touching the merits —

Grant for Defdt — The document produced is of no avail, and record cannot be tried by the record in the way contended — The Judges cannot judge of a record given in evidence if not under Seal. Lilly's Abr. p. 421 — There is a variance between the

Declr

decln. & the evidence adduced, that is on the Issue referred to by Deds, he refus to record as containing the amount of the Costs, which is not the Case —
Pb. on Ev. p. 172.3 —

Ogden for Defend. Millar — the paper produced is not properly certified — Record not brot up to compare it with this paper — every exemplification of a record must be under Seal Gilb. on Ev. p. 21. —
Gilb. 21
Esp. N. p. 740 to 743 —

—

№ 1737

Bass
~
Bowe
&
E contra

On Report of Experts —
Lawrie for Defr contends that he is entitled to a new hearing before the Arbitrs as they have omitted to adjudge on part of his demand.

—

№ 1583

Donegany
&
Pickle
&
Therrien
~
Pickle

On oppositions —
Grant for Oppt has pleaded payment —
refus to answers of Pltff on fact Articles —

№ 210

Pernault
&
Fraser
&
E contra

On award of Arbitrators —
on question submitted by the ~~Experts~~ arbitrators how far they can take into consideration the object of Incidental demand —

Friday 12th April 1822.

Present

Justices Reid, Foucher & Ryke.

Shuter
v
Thayer.
&
Thayer opp^{t}

On plaintiffs motion for hearing instanter on the opposition pled by the Defendant a fin d'annuller.—

Sewell for Opp^{t} - The grounds of the opposition here are that since obtaining the Judgment in this Cause the Plaintiff has given delay to the Defend^{t} to pay the amount thereof, and this he ought to have an opportunity of shewing and proving -

The Court were of opinion that the Pl^{ffs} motion could not be granted -

Saturday 13th April.

Enquête-day.

Monday 15th. April 1822

Present

Justices Reid Foucher & Pyke . . .

Arnold sal
Delorme

Action of Carrier for negligence

Ogden for Defendt. the box was entrusted to Defe so long ago as Oct 1820 — the delivery by 2 boys whose evidence cannot be admitted as sufficient from the manner they have answered to the Interogs put to them by Defdt. Defendt. has shewn the usual way in which he conducts his business — the parcel was ordd to Mr Turner but the box had no direction was left in Mr Cannon's Store where he usually left the articles he transported to Lachine

Mr Rossiter for Plff, the evidence of the two boys is sufficient and precise —

Halliburton
Holt —

On mo. of Plff for a contrainte of Defendt

Borton for Defendt — The only evidence here is the return of the Sheriff, which supersedes the old law under ordce of 1785 — but something more is necessary than this return, it must appear that all the formalities required by the Code Civil were complied with — It is so in the order that there must be due proof of the insolvency and certainly the Sheriff's return cannot be taken as such due proof — Then it does not appear that there was any violence ~~was~~ used — nor does it appear that the house belonged to the Defendt — 1 Pigeau 624 — refus to conduct of the huissier pp. 603 — 2 neighbours req.d to be called — with two records — Table de Garand. 1 Vol. 524 —

Rollard for Plff The cause shewn is insufficient,

the

the return of the Sheriff is binding — refers to case of Brazilly v. Dumont.

—

№ 1060
Taylor
&
Smith & al

On Report of arbitrators

Rostan for Defend. the arbitrators have proceeded without notice & without respecting rights of parties —

—

№ 1882.

Desruisseaux & al
v.
Durocher & al

On rule to shew Cause why Interlocutor should not be changed —

M. Stuart for Defs. in support of rule —

Beauvais for Plff. the rule in respect of division of the property is right — There are two successions — one of father, one of the mother — each party has a right to their share

Poth. Intr. Ch. 4. art. 4. ed 12. p 521 — 2 Pigeau. mot. Succession. p 442 —

Rolland for Durochers.

=

M. Beauvais for Plff moves that Interl. be amended as to nomination of Experts — the Durochers have the right to name an Expert — & the Desruisseaux have same right — & Interl. re Expert. No. 9 —

—

№ 392
Lussier
&
Duchenois
&
Econha

On Plff's mo. for Judgt. on offers of Defd on 18 July 1822 —

No 1762

Lusignan dab
&
Pickle & J

On action hypothecaire —

On Exceptions per. pleaded by Defendt — Stuart for Defts. That Hypolite Lusignan never ratified the deed of Sale — allegd. there was a promise to this effect — the vendors pursuant post. not oblig'd Obl. No. 74. 75 —.

The other is the exception of discussion — cites to Despeisses 1 Vol. 723. No 5 — p. 726 — Nouv. Denizt. Vo Discussion No. 2. §1 — when there is no previous discussion the action cannot lie —

3. Sale by Sheriff not sufficient

Roi for Plff — It is not stated that the vendors bound themselves that Hypolite Lusignan should ratify the deed — but this ratification necessarily arises out of that persons joining in the present action — this is a confirmation of the deed — see Repve Vo ratification — Poth. obl. No. 74. 75 —

The exception of discussion is not pleadable, as pleaded & ought to be dismissed — it is a dilatory exception only — Poth. No 410 — 1 Pig. 179 — Poth. Hyp. part. 1. cap. 2. §1. p. 436. Repve de Dr. Vo Discussion — Poth. Hyps. Ch. 2. Sec. 1. art. 2. Lacombe Vo Discussion — Fr. Instit. Inst. liv. 4. tit. 6. and notes. —

That the declaration is sufficient, it states that under a Saisie relle the Sheriff sold the Estate — this refers to his office of Sheriff —

That the plea of Exceps. Dilat — is irregularly pleaded and insufficiently — it comes too late, & makes no offer of money to discuss the property, nor point out the property of Debtor — 1 Pigeau 189. 190 — Lacombe. Vo Discussion — Fr. Cp Com. art. 101. glose 3e — No. 24 —

Stuart in reply — without ratification no Contract can exist in name of a third — That the joining in this action will not give a right of action on the deed which was imperfect.—

The Decl^n is not sufficient in stating that the property was saisie reellement & vendu par le Shiff — this does not imply a legal vente legal proceedings by the Shiff —

—

No 1806
Dupuis
vs
Chevalier

On Report of Experts —

Bender for Plff — The Experts have shewn as much favor for Defend^t as they could — the ameliorations they estimate at £39 — they commend also a Verbal promise to make a pense — valued — But even after allows all these ameliorations there is an evident Lesion — submits a Calculation —

—

Lacroix
&
Lacroix
vs
David opp^t

On oppos^n —

Rolland for Plff. the intent on the principal sum should stop at the period of Decret of Defts property — cite Rep^re vo Interets —

Beaubien for Opp^t — this principle does not apply but only when there are several Creditors of same debtor & when the sommes are traille la livre, — but here the party is personally bound to pay the whole debt of Opp^t —

2^d that Shiff's return is not complete —

—

No 114
McDonell
vs
McKenzie

action for money of value of Slaves

Sewell for Defend^t — The Plff has not made out his title by two witnesses — It appears that one of the wits sold a part of these Slaves to one Jennie —

he

he afterwards says that this sale was afterwards done away with — but such testimony renders him a suspicious witness — if he has sold he has an interest — & he may be called upon by Defdt — on this cause to fulfill his sale — There is no evidence to establish any sum of damages ag[t] Defend[t] — as all Staves found in Montreal did not belong to Pltff — The expense of transport must also be allowed — The Staves ought to be valued when they were taken — Only one witness speaks to this — & Defend[t] not bound to go into that value till Pltff has made it out

Stuart for Pltff — where a party is a trespass, he is not entitled to any remuneration for ~~their~~ his labour — to settled in case of Crown ag[t] Individuals in having cut down timber in Seigniory of Beauharnois —

No 63

Gibbs ad
M[c]Pherson

action for balc on a bill of Exchange —

Walker for Pltff — The bill was lost — after ye Defdt paid a certain sum on acct — leave bal[ce] now demanded Draft having been lost after it became due Pltff. are entitled to recover Chitty on bills 195. 196 — 7. 8 — 202. 3 —

Grant for Defdt — If the action had been brot by the person who lost the bill — a had there been a restricted indorsement — ~~it would be unavailable~~ The 2 first Counts are founded on bill, or ye bill ought to have been produced — It appears the bill was indorsed by Pltff to Thomson & they were the proprietors who ought to have been Pltff — The precise time when bill was lost does not appear — cannot say how bill was indorsed to Pltff — Thompson is interested in suit, sought not to be a witness — action cannot be maint[d] if not lost — Chitty. Lo. cit. ~~Holt~~ Chitty. 198 — There is a 3[d] Count in decl[n] but Pltff cannot recover on it. 5 East Chitty 199. there must be a new bill —

Walker. 2 Camp. 211 — action brot & bill not produced because bill was said to have been lost — action brot in usual course

The third count in decl. would at all events entitle Pltff to recover — The Wt was not impeached when Interrogatories proposed — The authority refused as not giving right of action on this count refers to case where bill was lost on day or before it became due —

—

No 1878.

Cuyler ~ Holt

On mo. for Contempt on Guardian of effects seized for not delivering up effects rep.d —

Walker for Guardian produces his affidavit to shew that the property could not be produced as it had been carried away forcibly by Mr Holt. —

No 1575

Miller ~ Thayer

Action on transfer on deed of Sale —

Scovill for Defend.t — action must be tried as it stood when brot — and by the Compromise filed the objection this suit was included — and the award shews this was the case by saying that they did not allow any thing on this object but reserved it to parties —

Strong for Pltff — This object was never referred to the arbitrators — The arbitrators come up and state that this matter was never laid before them —

—

Tuesday 16th April 1822.

Present

Justices Reid Fowler & Pyke

No 618.

Blackwood
val
Jos. Guy
& al.

action to obtain subrogation of rights of Jos Guy.—

Bedard for Defdt. The heirs of a deceased person can divide the succ. among them as they please without considering the rights of heirs — without this there could be no partage — That Defendt here is sole proprietor under acts executed — The Curator to the absentee consented under the authority of the Judge and under affiches and notices to the licitation of the property of the late Pre Guy & and Defendt became purchaser to a certain extent —

The Defendt alledges that Jos. Guy never had any property or right in the lands sold — and even if he had, that still Pltff have no right to action, as it concludes only to fruits & revenus & as Defendt was poss. de bon. foi, he owes no fruits & revenus — The Sale in question was a licitation faite en Justice — to shew this, it is enough to shew it was by the authority of the Judge — That powers of a Curator are more extensive than those of Tutor — Fr. Digeste Liv. 42. tit. 8. Curatem donné aux biens Curator was well known to Pltff, by his action after him — The Curator here represents the person of the absentee & is not as a simple administrator — Arrêtés de Lamoignon p. 283 — Pltff's ap in this Country has always been to sell the property of Minors under an authority of the Judge without a proceeding before the Court — in 1741, Mr Monreper was named Judge of the Jurisdiction of Montreal — he gave many permissions of this kind, as appears by the proceedings of that day — such was the usage of the Country up to 1774. and this usage has been continued to this Country by that

act

Act – this decided in case of Pothier v. Martin – refers to reporters in 49. 50. 51. & 52 –

Rep^re V^o poss^n p. 204 – Possess^r in good faith is presumed under title. p. 207. he takes the fruits, until claimed by Pet^r here the Defend^r must continue poss^r de bon. foi until the title under wh he holds shall be declared null & void Rep^re V^o heredité p. 215.

That the absent cannot be considered as ever having had any part in the property mentd in declr as in consequence of the liciation the right of the deceased passes immediately into the person or coheir who purchases –

Mr Papineau of counsel for Defend^t – By law of 1774. all the usages of Canada have been continued as law in the Country, and in regard of the licitation and alienation of the minors property the customs of France have not been followed – That action here cannot be maintained from irregularities in form & in substance – action for rend^n de compte de fruits from one heir of the absentee – the action ought to have been en partage – if he had any rights – Action is not directed aft proper persons – there are three other heirs besides them sued who ought to have been parties – That Defend^t Jos. Guy ought to be before the Court – by his Curator as an absentee, & no proceedings can be had aft. Jos. Guy otherwise. – Plff concludes that he be subrogated in all the rights of Jos. Guy, & therefore he must be before the Court – Nothing states that Jos. Guy is even alive, this was necessary – he stated only as being absent from the province – but this is uncertain as to his existence – Rep^re V^o absent. the party having an interest should allege the party alive & be admitted thereupon to prove it – That Jos. Guy is not before the Court – he is said at his last domicile – he has been absent 15 or 16 years – refers to ord^ce of 1785. which has abrogated the ord^ce of 1667 in regard of assignation to parties before a Court.

and recourse must be had to the course adopted in France before ordce of 1667 in case of suing an absentee — cites — Fer. & Repse vo Curateur —

Repse vo Curateur aux biens vacans — he is the person who represents the absent & of whom all proceedings shd be had. —

The action of Pltff cannot have more or greater effect than his debtor — an heir can have no action as his Co-heritier for fruits & revenues — he ought to claim a partage of the fonds

If the Pltff could have proceeded by Saisie-arrêt in the hands of the Defendr as holding fruits & revenues of his Debtor — or by action hypothe — This action is anomalous & cannot be maintd

There then was a licitation such as usually practised in Canada, what suits Defd with property. — His say is different, when not proceeding af absolute law, that is a law arising from usage and from written authority — Dic. Droit Droit Coutumier — That in the Parlement de Paris regulated the licitations under the usages then followed, so has the Conseil Supreme of Canada done here — 2. Pigeau. Succ. p. 421. no fixed law on subject of licitation 2 Bourg. Actions mixtes. p520. &c. — observations on difference of right of minor to prosecute a licitation — Id. p.524. Repse vo Licitation — there is no necessity there should be an impossibility of partage — licitation may be granted upon other grounds — when the Communion among the heirs becomes inconvenient, or when all agree —

If the sale thus made under this licitation is valid, the pltff have no right of action, as Defd is presumed in this case to succeed immediately to his father. 2. Pig. Succ. p. 461 — Denis. vo Licitation

Rolland for Pltff. The usage invoqued has no application to the question before the Court — The action is to obtain the fruits & revenus of a property indivis held by a Cohéir — There

is

There is no law to authorise the sale of the property of an absent, but under the authority of Courts — How can absentee claims his rights of an illegal sale of his property to a Curator? There is a great difference between a Tutor & a Curator to an absent — who enjoys all his rights — 1 Bouv. p. 103 — he is present in regard of all his rights of of which he cannot be deprived — Jos. Guy may have left a procureur in this Country, perhaps at his dernier domicile — The sale here is a Vente forcée, the least favorable kind, no man is obliged to sacrifice his rights for the benefit of another — it is a right always unfavorable to the person who is obliged to submit to this course — Rip^re V^o Vente — to shew it a Vente forcée — It is sale here of a man's property absent, say for one month — it is same as if 10 years, the law is the same — This being a Vente forcée the parties should have proceeded as in case of a licitation forcee. Rip^re V^o Licitation — where one of heirs does not consent 2 Pigeau 414 — it must be by an action in a Court of Justice, which divests party of his right of objection —

This action could be maint^d by Jos. Guy in prison & therefore by his Creditor, & he is entitled to claim the fruits & revenues of the joint property which Def^ts have enjoyed — That Jos. Guy is before the Court by assignation at his dernier domicile That Sales by Curators cannot be authorised by opinion of an assemblee de parens nor at the Church door —

It is not necessary that a Curator shd have been named to Jos. Guy as an absentee — nor was it necessary to allege that he was alive because he was absent — the presumption is that party is alive, he is sued as such — absentee is presumed alive for 100 years — 1 Bouv. 103 — in regard of Creditors —

There is no instance to shew that the parens are the Consils of the absent to advise in regard of the alienation of his property, after the minor — There is only the case of the property falling into ruin — The authority of a Curator to an absentee extends only to the administration of property, but not to alienate the property, — Merlin. Rep. p. 9. —

The

The appointment of a Curator can extend only to administration
There must have been a procedure Judiciaire to dispossess the
party of his right—

The usage of sale of Minors property does not apply here,
in this Case— nor does the usage hold in regard of that
property, except in particular Cases, from the little value
of the property and to avoid expence + there are numerous
arrets on the subject of these sales shews what the law is
in this respect— Where property falls into decay, it
may happen that Curator may be appointed to dispose of
it— but this is a particular case, & may even be doubted
that cases may have happened where Curators have been
authorised by the Judge to sell, but it must have been
under very particular circumstances, and the authority
at best doubtfull— here the general usage is set up,
but no such general usage can prevail, unless it can be
shewn that Curator has by law authority to alienate
That the private orders of a Judge at his Chambers
cannot create an usage contrary to law— nor could
a Judt. of a Court create such an usage— but it is
known that a contrary usage prevails in another
district in regard of licitations, and as being the best
and safest, is preferable— It may have been countenanced
in certain cases of property in the Country, of little value,
& allowed according to usage— Here the value is very
considerable, several thousand pounds, and yet the property
has been alienated without any formality—

If the sale here be null, the Defendt cannot pretend
to claim the fruits as poss.r de bonne foi— who
has a bad title, better have none— Denov. Vo
bonne foi— party must have a title from one he considered
to have a right to alienate to be in good faith—

Provo. 1 Bouj. p. 802. Lacombe. Vo absents.— Denov. Vo Licitation No. 6.

Bedard in reply — The proceedings of the pltff as the Curator ought to preclude him in this Cause, by having called in the Creditors of the absent to take their share in the monies arising from the Sale of the real property —

That as part of the heirs had a right to obtain the Licitation and could have forced the Curator by Judt of a Court, the authority of the Judge in authorising the Curator to proceed out of Court was following up the law —

The Sale was made in the most public manner, de bonne foi, and by admitting strangers to bid up the property, nothing can be alledged as the proceedings of the parties — The usual course of proceeding in this Case by adopting the Sale by Consent under the authority of the Judge, is sufficient to confirm the Sale — it has been the constant usage to sell property by public notice at Church door as the most public —

There is a difference between an absent in this case and in general cases — he is a debtor, in deconfiture flying his creditors — it became necessary for the benefit of all parties that a Curator shd be appointed to him to take care of his property — this Curator being en faillite is the person at whom & with whom all proceedings are to be had — he is like a procureur general who has a general power from his Constituent to act in all cases for him — Rep.re v.e avis. — The avis de parens when homologated by the Judge has authority of Judt —

Wednesday 17th April 1822.

Present

Justices Reid, Foucher & Pyke. a

~~No 455.~~
~~Fisherval~~
v

No 1740
Henderson
vs
Babuty

action for recovery of a note drawn by Defendt in favor of Pliff.

Gale for Pliff. First action lost as it had been indorsed in blank & action brot by one Frost — & nonsuit entered. In consequence 2d action was brot by present plaintiff & it was dismissed because Pliff declared on oath that he had no beneficial interest in the note — This action is brot by Pliff as having the ~~beneficial~~ legal interest, the beneficial interest being in the Porter — The first plea here is chose jugée — but Pliffs right was reserved to him by last Judt — There are other pleas, which Pliff has denied & shews to be inconsistent, and as admitting the facts of the note — This case is of a commercial nature, as note was made payable to order — proof accordingly when note is lost. Nouv. Denz. vo adhiré — vol. 10.

Chitty on bills 196. 7. 8. 9.

Beaubien for Defde has pleaded chose jugée — but first object is to reject testimony of 2 Wits Robt Frost & Thomas Pluckett & also exh. No 1 filed by Pliff — & certain Wits who have signed it — This not an affair of Comce Repe vo Consuls which extends to matters between merchts & Merchts & regards sale of goods only — simple billets à ordre are not commercial. the note here between a merchte & a person keeps a boarding house — Therefore the rules of evidence accords to Laws of England will not apply — The St. 34th. of Geo. 3d does not render any notes negotiable as commercial, but such as are signed by a merchant — That the depositions here

taken

taken do not shew the necessary formalities as to relationship of witnesses.- That Exh. N° 1 ought to rejected, were it even proved - This exh. shews that the interest in this note is in Mr Proctor - who is stated to have the beneficial interest - Plff ought to have stated his title as derived through Mr Frosts and Mr Proctor - but this exh. has no reference to any thing in the declaration, and must therefore also be rejected That the wits Frosts and Plunkett are interested wits - That transfer to Porter is of no avail, as he was no party to it That altho' Mr Henderson gave a right to Mr Frosts to use his name in prosecuting the pay of the note, yet he did not give liberty to Mr Frosts to transfer this right to any other person - The Stat. 34. Geo. 3. will not make this a commercial transaction and therefore there is no proof of the note -
First plea. chose jugée - Obl. N° 37- 40. The Plff has no more interest now than he had in the last action - Here the Case is exactly same in all points as the last, and same ruling must be given -
Chitty p. 168. 169 - lost bill, no action at law -
Potbier charge - the transport to Frosts & Co gives them the right of action - by signification of the transport - such as it was -
N°. 38. 39. to 42 inclusive -
That Exh. N° 1 - is not proved - & besides Proctor no party to it.

—

N°. 322

Dubord & Armstrong & Legueay opt

Ou opposition afin de conserver -

Bourré for Oppt - Oppn founded on Judgt obtd. ag. Defend - being for wages - & for which he claims a privilege - 2 Bourg. p. 688. 9 -
Rep. vo Domestique. vo privilege. 689. 690 -

Ross for Plff - Oppt has no privilege such as demanded Poth. Louage de matlots. N°. 227. extends only to the last voyage - no proof of this -

Bourré in reply. the authority cited is from the Ordre de la Marine, qt is not in force in Canada —

—

№669
Fuller
&
Johnstone
&
Stayner
Gar —

Action Petitoire to obtain certain lots of land
Henshaw for Plff demands Judgt on exhibits filed
Stuart for Defendr Parties must first be heard on
the action en garantie, in order to ascertain whether
the same is regular, so as to hold him in the Cause
Henshaw in answer — The proceeding is regular — If
Defendr and Garant do not proceed in their action he
ought not to be delayed —

—

№802
Menard dit Lorange
vs
Prince et al

Ou action to recover certain effects put into the
hands of Defendr as guardians —
Stuart for Plff — There was a Judgt directing
that the effects in question should be delivered up to Plff
in consequence of an arrangement between parties in Court
at the time the attachment was made —

L. Vigé for Defend. Decouagne — The transaction
of 22 Jan 1816 gives no right of action agt Defendr — 21 Feb 1816
the parties proceeded to make an Inventory of the effects which
had been so seized, and a Sale was made thereof jointly with
Plff as appears by P. Verbal of Sale — all this was done without
knowledge of the Caution — Defr Prince left the Country
and on 20 June 1817 a Judgt was entered that the
effects seized should be delivered up by Sheriff to Plff
But the Caution was discharged by the proceedings of

The

the parties, by the Inventory and Sale of the effects — and the parties consenting that all proceedings should cease & be null by the transaction, the Judt. afterwards entered on 20 June 1817 could not affect the Guidrieus — This Court can give no Judt. except as to such articles as were not included in the Inventory, & these are uncertain as well as their value —

Bedard of counsel for Defend — It is necessary to consider what the effect is of the transaction between the parties — Now it is certain that from the moment the parties entered into this transaction annulling the proceedings at law, the Caution was discharged — Rep^tre V° Transaction p. 242 — It is like a Judgt. of a Cour Souverain — a gt. case the Defendt. could not revive the Cause without the participation of the Caution, by consenting to Judgt. of 20 June 1817 — 1 Pegeau. p. 14 — Obl. N° 406.

Stuart for Pltff — The Defendants entered into a bond to the Sheriff to deliver up the effects seized when required — and altho' there was a subsequent transaction, yet could not affect the bond given by Defendt. to Sheriff, it was res inter alios acta — and the Judgt. of 17 June 1817 was necessary in order to get at the effects which had been put into possn of Defdts — the transaction itself contained a clause of consent by Defendt. to deliver up these effects — The effect of the Kings writ still subsisted until discharged by order of the Court in regard of these effects — This case not like that of Cautions, the Defendt. on contrary are Principals in regard of the Sheriff under their bond — The Defendts have not satisfied this bond — the effects in question were never sold in the manner alledged — the identity of the effects not made out — nor whether seized under the particular suit in question — The answers to Interrogatories by one of

the

the Pltff. cannot bind the others, nor does he admit that all the effects seized were included in the Inventory made, & sold were sold —

Aylwin
Cuvillier
&
Cuvillier
opp

On hearing on opposition. —

Stuart for Oppt. This is a writ of Vend. Exps. — stated to be grounded on an Exon issued on 29th Oct. 1819 — but this exon was itself irregular & should have been set aside, & consequently the Vend: exps. on wch it is grounded — This writ on face of it shews that a former writ had issued & that an opposn had been made thereon, but does not shew how that opposn been disposed of — This writ therefore of 29 Oct 1819 was an absolute nullity the rule also shews the former writ & the opposition annexed.

That uniformity should be observed in all writs of Exon following each other — otherwise there will be such a variance as to cause a nullity — In writ of Vend. Exps. now issued there is a variance between it & the writ of Exon of 29 Oct 1819, in regard of the Costs, so as to render it doubtful to say in what manner the Costs are made up — that is in regard of £60 — in one & £46 — in the other —

There appears an irregularity in language of writ as to Judgt in appeal, as it wd appear to have been so returned so by the Sheriff —

It is not shewn that Oppt was ever adjudged to pay the costs on the opposn by the Court of Appeals, the Sheriff is only directed to levy the Costs without stating that such Costs were awarded by the Court. —

Rolland for Pltff. The ~~opposition~~ writ & Exon of 29 Oct 1819 cannot now be inquired into, particularly as Oppt has already been adjudged upon, & he cannot be allowed

to

to make another opposition thereto.—

Handyside
et al
vs
Galloway.

Defendr motion to quash Saisie-arret, set-aside—
The Court considers that where the Pltff by his affidavit
complied with the requirements & terms of the law
evidence to contradict it ought not to be received, but
leave party to his remedy at law

Thursday 18th April 1822.—

Present
Justices Reid, Foucher & Pyke.—

No 220
Turgeon
&
Lacroix
&
Lacroix ats

Action for sundry writings & papers drawn for
Defendt—

Mr Beaubien for Defdt— prays homologn— of
the report of the arbitrators—

Mr Roi for Pltff. The arbitrators have done wrong
in admitting prescription— They have also judged on a part
of the demand & omitted another— Repn vs Sentence Arbitrale.—

Lerreau
&
Birch

On Petitory action— on Exceptn
Grant for Defdt. declr insufficient, no title set out
Ravaud— P. Civ. p. 10— this necessary.— the forms
are so. 2. Pigeau 113— so held in appeal—
Boston for Pltff— Declr suffe Cod Civ. art 3. tit. 9.— The
property should be properly described— see Lange Pr. Fre—
Isle de Gaume p. 22. forme of action reelle— Jousse. Proc. Civ.

Wragg & Hunter & Cowan Opt

De opposition afin de destraire by Opp Boston pr Oppt claim founded on right of Defendr wife as contained in her marriage Contract which is now made out —

Rossiter for Pltff — No identity of the articles proved of the articles seized w. those claimed — Other articles must be presumed to have been purchased by Defendt — The Defendr has right & control over them. Repse Vo Mari — There is no proof here to shew that the articles are those in the Inventory of Opposant —

—

No 1980
Smith
Beers

Action of Trover — for a Colt — on merits. —

~~Grant for Defr~~ Rossiter pr Pltff — Defr pleads that he came into possn of Colt by a wager —

Dic. Droit. Vo Gageure — Repse Vo Gageure — Dauty. prem par Demonts — ch. 10. p. 305. No 16—17. & 18

Grant pr Defr — This is an action of Revendication. — Defendt has stated that the horse was delivd to him as the winning party on a wager — The horses were delivered into hands of a third person as stake holder, who delivered up horse to Defendt as winner — It is not ascertained that Defendt knew what money he had in his pocket at the time, on the contrary Defendt wished to be off the bett — Had bett even been illegal, after delivery of the property the Pltff cannot recover it back — Repse Vo Gageure. —

Rossiter pr Pltff — The delivery not satisfactorily proved, and pltff objected to it, on the grounds that the bet was illigal

No 1002.
Jonville-
Pratt

To draw Judt

№747
Classon
Healey

On Pltff mo. to set aside report —

Henshaw for Defend. the proceedings before the arbitrators were regular — by affidavit filed shews that Defend. agreed to admit all that the witness of Pltff could prove, who had not been heard —

Rossiter for Pltff. the arbitrators wrongfully admitted the evidence of Defend. in the Cause — to set aside depos. of one of Pltff Ws —

Jackson dal
Clarke

Action for breach of Contract in not delivering certain Cattle —

Grant for Pltff. The Defend. delivered the Cattle to other persons for a higher price than that agreed with the Pltff —

Sewell for Defend. The question here is whether action is not premature, as the Lake was not open according to Contract — This action was commenced on 26th April, and it was only on that day or next that the navigation of Lake Champlain was open —

Grant for Pltff. Court will look at what was the intention of the parties — and here the Cattle were brot to Montreal & sold by Defendt before action brought. —

№413
Cameron
t
Atkinson

Action of separation —

№1974
Archambault
dal
v
Fullum

On Plea of Exception of Fullum —

refers to arg. already had in Cause —

№ 312
De la Bruere
to
Roi —

Action for stopping up a public road —

Quesnel for Defend^t — for Exception that action is irregular — action brot by Pltff as Seigneur for stopping up a road conducting to Pltff mill — The Pltff ought to have stated that they were proprietors par indivis, otherwise it cannot be presumed — Then it does not appear whether this is an action possessoire or petitoire — & if either the conclusions are irregular 2 Pig. p. 9. art 6. — That if it is an action popularie, it cannot be brought by a minor, as in this Case — and in case of action pos^re the conclusions were for a penalty 1 Pegeau 41. Sec. 2 requires party to produce his titles in support of his demand —

Vigé for Pltff. This founded on the joint interests of Pltff — The Defend^r is not interested in the division of the damages between the Pltff — This may be called une action d'injure under the Roman Law or an action for damages for an injury to the property where the action en complainte does not lie — Dennat. liv. 1^r tit. 8. Sec 2 § 18. p. 63. 64. Droit publique — Dennat. v^o Chemin. —

—v—

№ 1526
Driver dale
&
Scott —

Action for repeirs done to a house — hear^g on Report

Sewell for Defd^r — Third Expert, not sworn —
Bender for Pltff — This not necessary — all the Experts agree — & third Exp. not requisite. —

Raymond
&
Leclerc
&
Leclerc Opp^t

On Oppos^n afin d'annuller —
Pelletier for Oppt — Pay^t of £42 alledged — bal^e due only £14 — Exon for whole amount irregular —

№1636

Nicklessen
v.
Knapp
&
Castonguay
Opp

Ou opposition afin de Conserver

Bourré for Opp.t demand for amt. of an Obligation due him by one Sarah Burnett & her husband — and as Opp.ts are legatees of this person, they are bound to pay the Debt —

Grant for Pltff — The opposition ought to have been en Sous-ordre —

M.r Beaubien for M.r Cadieux claims payt. of a sum of money as bailleur de fond — heard ex parte — M.r Grant alleges that it appears that this money was paid —

—

№71

Lacroix
&
Gratton

Ou Defend.rs mo. to change conclusions. —

Beaubien for Pltff. The Pltff has not concluded to a Jury in his Rep.se because plea of Def.ts is irregular & such issue could not be had — but has joined issue on the issuable part to the Country — & has demurred to the other part —

L. Vigé for Defend.t has pleaded general issue, and also a plea of Justification — the conclusion to the Jury is made sufficiently — That Pltff has pleaded to merits of Defend.rs exception, and ought to have concluded to the Country —

—

N°346

Ironmonger & Mc donald & Raymond oppt

Ou opposition afin de conserver —

Bourré for Oppt — demand founded on a deed of Sale and Constitut made by Oppt to Defendt as being prior in mortgage that in consequence of Sale of the house in question the Oppt is entitled under his general mortgage to claim the proceeds in deduction of the Capital of the rente Constituée, although the property specially mortgaged for the payt of that rente has not been so sold — otherwise Opposant would be materially injured — Resp^n v^o Hypothèque — Jd. v^o Vente p. 141 — 2. Bourj. p. 543. 4 Hodgson & Hall. & Heney oppt Oct. 1819 —

Gale for Pltff — Quest. whether Oppt who has a hypothèque speciale, shall be allowed to claim monies from a general property — but the Oppt is not entitled to claim his Capital by his Contract — and as to the deconfiture of the Defendt it is by no means ascertained — Loysean, liv. 3. ch. 8. N° 29 party must proceed first to discussion of the special mortgage — there is a fact stated in Oppn that Oppt should be entitled to claim the Capital of the Lods & Ventes were not paid in one month by the Defdt the purchasers of the lots. but this was a penal clause & could not be enforced as third persons — Poth Obl. N° 349. — Jd. N°. 146.

—

N° 2036

Bender & Durand &c

action under Subrogation of Jerome Durand as Defendt to render acct of his right of Succn —

Beaubien for Pltff. Domat. liv. 2. tit. 1. Sec 5. p. 183 Jd. p. 184 —

Mondelet for Defendt — Pltff has no right to the Subrogation

№1600.
Brown.
ñ
Millar
&
Burton
Gar.

Compt

№810
Hubert ux
&
Cartier

Que Plff - motion for an allowance by provision -

№898
Stewart
&
Nichols
&
Charlegny
Gar

Debb

№331
Sleigh
&
Casgrenve

Action for false Imprisonment - on Exp.

Rolland for Defend - No right of action - It is for advising one Lepine to prosecute an action of Plff before a Magistrate - & thereupon obtaining an order under which Plff was arrested and committed to Gaol -

Papineau in Cause of Lepine - This cause still more irregular than the other, as all the proceedings before the Magistrate are stated to have been had against the will & consent of the Defend - & the conclusions are Latter of Defend -

Friday 19th April. 1822.

Present

Justices Reid Foucher & Pyke.

No 1100
Main
vs
Roi — } Judgt for Pltff.

No 1116
Main
vs
Roi. — } Judgt for Pltff.

No 353.
Dingwall
vs
Forbes } Judgt of Separation.

No 22
Whitaker
vs
Beckwith
& contra } Judgt

No 2048.
Cadieux
&
Durand
vs. — } K Dismissed

No 1737
Bagg
vs
Bouc
& contra } Judgt on award

No 1532
Ayers
&
Menard } Judgt

Perrault. & Fraser. & E contra. } Interlocutor —

Archambault dal' & Tullum dal } Exceptions dismissed

No 311
Haliburton & Holt. } Rule for attachment absolute. —

No 1878
Cuyler & Holt & Johnson Gar } Rule absolute for attacht. agt. the Guardien

No 71
Lacroix & Grattons } Judgt on both motions. —

No 53.
Jackson dal & Clarke } Judgt for £20 damages. —

No 312
Labruere & Roi } Defendt exceptions dismissed

No 747
Classon & Healey } Rule to set-aside Report discharged

Raymond & Leclerc & Leclerc Oppt } Judgt. on Opposition. —

Saturday 20th April 1822.

Present

Justices Reid, Foucher & Pyke.—

No 1486
Hart
&
Raymond } W Action dismissed.—

Driver & Storrs
vs
Scott } Award Confirmed

Levieau
&
Birch } W Plff allowed to amend.—

Aylwin
&
Cuvillier } Opposition dismissed in so far as regards
Cuvillier & al the moyens de nullité.—

Smith
vs
Aylwin et al
&
Cuvillier opt
and
Aylwin Intvs } Opposition dismissed

No 1060
Taylor
Smith
&
Econtra } Interlocs —

No 1575.
Millar
vs
Thayer } Judt—

No 1081
Deronville
&
Jourdain } W Action dismissed —

McDonell v. McKenzie } Judgt

Ansell ad. v. Delorme } Dismissed

Langburn v. Jeremie } Motion rejected. a

Regulations of Police confirmed

Rule of Practice regulating admission of advocates. a

Wednesday 24th April 1822.—

Before

Justices Reid & Pyke.—

T. Pothier.— vs Fourcher dit Henry. Interv.

On Continuation of argument, ordered for this day.—

Mr Bidard for Plff.— observed it was necessary that he should take notice of the exceptions pleaded, as they were pleaded in such manner that he could not well understand their meaning, and therefore necessary he should take notice of the whole of them —

It cannot be denied that the faculté de tester comes from the law of nations — which is the great basis of the law of testaments & is the foundation of this argument here — A will made thus has the force of the law which authorises it — all laws which restrain the liberty of testaments are therefore in contradiction to the droit des gens — when these laws are abrogated, the original right of testr is re-established — The law of 74 revokes all former laws contrary to its disposition in Canada viz. art. 295 of Custom — & 318. in regard of the Saisine of the heir — When all the property is willed away, what right can remain to the heir? the Testator has ordered that the Exr shall be seized of the real Estate, this is part of his will, shall this will have effect, the St. 74 says it shall & consequently abrogates the 318. art. of Custom — The St. of 74 is a Stat. réel — The St. of 1774 abrogats the 295. art of Custom in regard of the power of the Exr over the property, when the will of the Testator directs so — If the Testator could by an acte entre vifs have so disposed of his property, he can do it by will — The Laws of France cannot now be referred to as regulating the difficulties of may arise on Wills, the Laws of England must be looked to — but the Civil or Roman Law, which is not even so favorable as the St. of 1774 — because there existed under Roman Law restrictions of we cannot here admit —

By the Roman Law, there was no right of Saisine in the heir, he had it only in so far as the will gave it — In France the Roman law was considered as raison ecrite, and where there was no other law in France, this would be followed as the rule. —

The Exor here has the right to sell the succession of Mr F— without the consent of the heirs — and this according to principles of law — Digeste. liv. 27. tit. 9. in regard of alienation of the property of Minors, when owned by Testator — Poth. 2. Pand. liv. 27. tit. 9. art. 1er §. 3. — Poth. ib. p. 162. Were even the testament declared null, the Tutor a Exor in this case would have done nothing contrary to law, had he even disposed of the property thus to shew that even if will here null. Pltff entitled to his Costs — Code liv. 5. tit. 72. Godefroi — on same title —

Here Mr Bedard begged a little repose & that Mr Vigé might proceed to answer to the arguments he had addressed

Vigé for Defdt — quest. as to Saisine is not before the Court the heirs have the Saisine de fait. et de droit — they are in actual possn of what is their own, the Succn of their mother. of which Testator could not dispossess them — The action by Pltff ought to have been en partage, so as to distinguish what belonged to Mr Fonteir, over qt Pltff could have claimed right & possn & alienation — I oppose the 297e art of Custom is abrogative — why then does Pltff institute his action on this very article — he ought to have been instituted as fidei-commissaire of Testator — but how it could not have been supported without concurrence of Attorney —

It is pd Exor here can sell the Succ. of Mr F— but it must be first ascertained what is the Succ. of Mr F— before he can sell it — he cannot pretend a right to sell what never belonged to Mr F—

Mr B— alledged by Defdt that Pltff has utter contradictory authorities — Poth. 365. Don. Testre this on obje. that Maynard ought to have been sued with other heirs — if heirs not obliged to call Maynard to Inventary, neither was Pltff bound to join him in this action — The Saisine of the Exor does not depend upon the making the Inventary, if the Saisine is given him by the will

the Inventory only shews what the effets the Exor got possn of under his right of Saisine —

The Defendts have cited authorities in this way — Lacombe. vo Test. Sec. 3. No 7. the consequence wished to be established by this because Mr F. had made his will in a french form, the french laws ought to be looked to in explaining his intentions — but this is a false conclusion, as appears by the author from qt Lacombe cites Disp. Des Don. Test. Tit. 1. Sec. 4. No 128. —

2 Disp. p. 92 Des Test. Tit. 1 Sec. 4. No 128.

How Vizé explained his meaning —

Bedard — The case of Forbes & Atkinson has been referred to by Defts in same manner — in regard of pleadings — but Pltffs pleadings here are regular, and the authority must be used at Defts — It has been contended that because the Scellé has been set aside the action here must fails as there remains no other conclusions in the action — but the object of this action is to obtain the execution of the Testament, and the conclusions of the declaration tend to that effect — Code Lec. 6. tit. 42. Loix 32. The Defendts have pleaded many exceptions unintelligible i.e. 8. 9. & 10th — and after pleads to the action have pleaded to the sufficiency of the Declaration by the 12th moyens d'Exceptions — which is irregular —

There is a distinction to be taken in the authorities between the Testator bequeathing the property of the heir & of a third person — he can dispose of the property of the heir on condition, & if the heir accepts the condition, he is bound by the will & must execute it — That the heirs here are bound by the transaction entered into by them, and they have thereby consented to the execution of the will & cannot be allowed to come at it — & altho' it is not binding on the Exor, yet it must bind the heirs as affecting their rights —

Here Mr Bedard agreed to put down the rest of the points he had to insist upon with the authorities & communicate them to the Defendts —

Vizé in reply — It is necessary that all the heirs should have been parties in this suit, & therefore that action is irregular as Maynard is not before the Court — he ought to have been represented by a Curator if not within the Jurisdiction of Court —
It is Pltff is fidei commissaire — not pretended by declaration he claims the property under the will — but he is entitled to the Saisine only by making the Inventory — refers to Potht —

1 Pezeau. 278. 287. 289 — with reference to widows of Mr Guy — Nots

June Term. 1822.

Saturday 1st. June 1822.

Present.

Justices Reid & Foucher.

No 279
Frost & Porter } action of Defend[r] as security —
M[r]. McKenzie } Exc[p] — that action is premature — as there has been no discussion —

Rolland for Defend[r] — Pltff can have no action until he has established his debt of the principal debtor — as debtor may have a discharge in his pocket for the debt — there may be imputations of pay[t]. of pr. Defend[r] cannot avail himself, without a proceeding being had of the principal debtor —

Gale for Pltff — the Creditor has a right to prosecute in the first instance the Caution cites.

No 71
Lacroix & Gattons } On Pltff's mo. to reject the plea secondly pleaded by the Defendant — as being no plea to the action

Beaubien for pltff — this plea forms no answer to the action it goes merely to the general issue —

Vizé for Defend[r] — the action req[s]. that Defend[r] should shew the right in which he acted, to avoid the action — and altho' the fact here stated by Defd[r]. might be proved under the general issue, yet according to the laws of this Country, the points of defence ought to be set out to enable the party to make proof thereon —

№1881

Valliere & ux
vs
Cameron
&
Clarke Gar

action en dedt d'hypothèque
Gar. makes default — Inf. prayed —

Aylwin.
&
Cuvillier
&
Cuvillier ctr

On oppos. motion for a Com. Rog. to ex. the pltff residing at Boston on faits & articles. —

Rolland for pltff opposes the motion, on 3 grounds 1st Because application is made too late, and not within 4 days after issue joined — 2d because there is no affidavit produced in support of demand, to shew the necessity of the application & 3d If granted it ought to be sans retardation du proces — as was done in the Case of Burton. & Yule. —

Beaubien for Opp.t — The delay of the 4 days for sueing out the Com. Rog.t applies only to the Case of the examination of Wits — but not to ex.n of the party himself — and even in the Case of Wits — it has been held by the Court that where any plea of exap.n is pleaded to the action, that a party is in time to apply for a Com. Rog.t within 4 days after Judg.t on such plea — that is so soon as it is ascertained that an enquête must be had in the Cause — That no affidavit is necessary to enable Opp.t to ex. Pltff on faits & articles, this is required only in the Case of Witnesses — That a reasonable delay ought to be granted for the return of the Commission which cannot be sooner than the first day of October next. —

Dorions
vs.
Dorions
Val

On plff's mo. to reject a pleading filed by the Defendants, the same being an exception peremptoire en droit, and not specifying any reasons upon which the same is founded.

Beaubien for Defend^{ts} This plea is in the nature of a general demurrer which goes to the right of action and no reasons can be shewn in support of it, the only reason that can be alledged is the insufficiency of the plaintiff's demand — it is the defense au fond en droit, where no reason is requisite to be stated any more than on the defense au fond en fait. The case is different where the exception regards the form and not the right of the action, here special reasons in support of it must be alledged, as in the case of a special demurrer, and to this latter kind of exception only do the rules of practice apply requiring such reasons, as has been frequently held by the Court —

Stuart in support of the motion, stated, that his application was founded on the rules of practice, Sec. 11. § 3. which regards exceptions of every description that by adopting the distinctions adopted by the rules of practice at Quebec, of defense au fond en droit, the Defend^{ts} had overlooked the legal definition of Except^{n} peremptoire en droit, to which the Court here looked in making the rule, which was done in order to prevent evasion and delay — and a contrary decision would wholly annul the rule of practice —

N°1974

Archambault & al! — vs — Fullum & al

On pltff's motion for enquête on 7th inst.

Stuart for Defendt objects to the motion being granted to the full extent as made, inasmuchas no issue has been taken upon several of the pleas pleaded by the Defendrs and therefore the motion ought to be granted only in so far as the issues have been completed That Defendrs have pleaded several pleas of exception peremptoire en droit in avoidance of the Pltffs demand- matters which occurred since the making of the Contract between the parties, to these pleas no answer has been made, and therefore in regard of these pleas the pltff are in default, and the Defendts are entitled to proceed thereon ex parte, which Defendrs intend to do by making a motion for this purpose.—

Rolland for Pltffs contends that his replication contains a complete answer to all the pleas pleaded by the Defendants—

Monday 3. June 1822.–

Present

Justices Reid, Foucher & Pyke.

Froste & Porter vs McKenzie.– } Exceptions dismissed– The Court considered that they could make no distinction between this cause, on account of the debt not being liquidated by obligation or Judgment, and where it was liquated because in either Case the Caution had a right to contest it– if there was no debt established there could be no caution– and the debt must be established as the Caution to render him liable as such– and if so liable he cannot claim the discussion of the principal debtor without pointing out property and advancing the Costs.+

Lacroix vs Grattons } Rule absolute– pleading rejected– as coming in under the general issue.–

Dorions & al vs Dorions & al } Motion rejected– the pleading being in the nature of a general demurrer, which the Court does not consider to require special grounds to be assigned–

Archambault & al' vs Tullum– } The Court considering the pleads filed by the Defend. to be a defense au fond considered Plff's Replication to contain a sufficient answer and therefore grantes motion for enquete.+

McGillveray & al vs McKenzie & McTavish Intervs } This cause came on to be heard, in which being a party I did not sit–

Tuesday 4th June 1822.

Present

Justices, Reid Foucher & Pyke. dis

M.Gillivray dal
vs
McKenzie das
& McTavish Intervs

This cause was further argued this day

Wednesday 5th June 1822

Present

Justices Reid Foucher

No 1868
Gurlack dem
vs
Perrault dem

Action on Pty note –

L. Vigé for Defdt no Judgt can be given agt Defdt Perrault – note given by wife as marchde publique but there is no promise or obligation by agt Defdt her husband can be bound – not proved that wife was marchande publique when she made the note – on the Contrary she had ceased to carry on business in that capacity –

Borron for Plff. both Defdts are bound – note made for goods sold to her as marchande pub. –

No 65
Abbot
vs
Welsh

On Plffs. mo. for hearg on merits on

Sewell for Defdt. opposes it on grounds of an affidavit, for wanty of w

№10
Portelance
vs
Duchesne

Rule absolute.—

№1663
Hart
vs
Warwick
& al.

On Pltff's mo. to discharge rule for enquete and to hear parties on exceptions filed by Defts.—
Stuart for Defts. The pltff has proceeded at his own risk & set down his Cause for enquete generally & case might have been so heard as plea of exc. fs. goes to deny the contract, as having been entered into by 8 individuals intitled of 7 who are sued. Exc. is a plea to the merits — Pltff cannot be allowed to take a new course by proceeding to a hearg on exc. fs. this is contrary to the rules of prac. art. 9. Sec. 11. p. 48—

Ross for Pltff. the Cause was set down improvidently and all the expenses of that act must be pd. by the party

№245
Pepin
vs
Colineau

action ex vendito.—

Papineau for Pltff opened the Case — The land in question came from one Almotte & wife, who conveyed to one Archambault from whom Pltff purchased. — Almotte & wife reserved certain articles to be P'd by them during their lives — & were to be delivd. to the d. Archambault after their death — Almotte is dead — his wife is still alive & who has a right of enjoyment of these articles — these articles Defts. now claim & pretend an amount of them should be given to him — as he pretends they have been dissipated — but of this Pltff cannot be personally responsible — the sale to be made to Defts is complete in all its parts — Defts. pretend that the deeds of the land have not been delivd. to him — but

it

it appears that two deeds of the land from almotte & archambault have been delivd and Defdt was satisfied therewith at time of the sale & no more was demanded— he now claims the Contract de Concession, but does not allege that ever any such exists—

Bedard for Defdt— Defdt willing to pay— made a Depot w. Notary, on condition that Plff would render an acct of the effects of widow almotte— the Plff must be condemned to do so, and also to deliver certain articles on death of the hon reserved by Donors— & oblgn on Plff to deliver them to Defdt. — Plff cannot obtain execution of his contract without shewing he had done his part— the titles produced by Plff cannot be considered as anciens titres as only of 7 or 8 years standing, and cannot be considered as anciens titres. Dic. For. vo antiquité au fait de preuve— an ancien titre must remount to 40 years at least— Lacombe vo preuve Sec 2. No 1—

No 2080
Haight
vs
Barnard
et al

action ag Defdt for building a Team boat—

Boston for Defdt— the 2 Defdts Hall & widow Ouimet have pd all they owed on this Contract to Defdt. Barnard — Defdts were not concerned w Barnard at time he made the Contract w Plff — to build boat— that Barnard is alone liable to Plff. but not the other Defdts as Plff made his contract w. Barnard alone & when other Defdts had no share in it.—

Lewell for Plff — Barnard was the proposé of the other Defendts in the building of this boat, & the Defdts rec. from Plff— Barnard transfered the agreement to other Defdts. Poth. Doc. p. 84. 1 Obl. p. 481.—

№ 258
Gibert
&
Pickle

On hears on exceps
Gale for Pltff - exceptions not founded in fact as the declaration contradicts them all -
Stuart for Defendr action on Promy note - not in assumpt. but in factum - 1 exp: not alledged that payt was demanded of the maker - Poser - words then & there wants - 2d Exp no notice given to Defendr of non payt by Poser - 3d The conclusions do not apply to any particular Count in the declaration -

Gale for Pltff - the conclusions in declr conclude to payt of a certain sum of money which apply to every Count in declr -

—

№ 1594
Lemieux
&
Thayer -

action for wages as captn of a vessel belong to Defdt & money laid out -

Morrogh for Defendr - no proof to support the demand -

—

№ 1821
Forand
&
Vincelette
&
Garants

On rule to shew cause why certain papers filed by Pltff -

—

№ 293
Lussier
&
Ainse -

action for Loss & Varnes - exhibt de Contract & amende - & damages -

Vigé for Defdt not bound to pay the fine, as he exhibts his contract to Pltff in 1818 - since wh time Pltff has had the contract in his possn - The amende is not due only

in

in case Lods & Ventes are due — but here Defdt contends that none were due — That Pltff retains the deed given in communication to him by Defdt — & has produced it as an exh. in support of the Cause in a Mutilated state by with drawing a part of it, an act of resiliation of the said deed of — was at the bottom of it — & the Court ought to order Pltff to produce this act to enable the Defendt to defend action. Syn Com ou l'art. 73 — p 109 & Pothier. p. 374. No 10

No 1534

Frost fals
vs
Armstrong

Action on transfer of a debt by Hunter to Pltff —

Ogden for Defend — he took pairs articles were served on Mr Frost, he was said to be absent at time but he was not discharge from answering — therefore action must be dismissed on motion Defdt now makes that these pairs Articles be declared confessés, as Frost was never excused from answering the pairs Articles.

—

No 1500

Sexton
vs
Marshall

Action for board & lodging &c

Sewell for Defdt — There is only verbal testimony to support the demand of — is not sufficient

Objects to the testimony of pltffs servant, called a house keeper

Monday 10th June 1822.

Present

Justices Reed, Foucher & Rost

No 810
Hubert
&
Cartier

action for a compte & partage of the ~~Succession~~ Community that subsisted between them father & mother —

Bedard for Plff. Father & Mr. of Plff married in 1772 — on death of the mother, no Inventory was made whereby the Comts was cont. & Mr Cartier cont. in poss. till 1809 when it is alledged Plff's sold their right to Mr Cartier. In 1814 Cartier died — till q. time the Comts cont. —

The act of 1809 is null & void in law — the cont. of Comts could be closed only by an Inventory — so held in case of Drouin. vs Melanche 1811 — Here C. was Tutor of his children by law 1 Desp. p. 588. tit. des contrats de Tut & Cur. sec. 7. — Arrêts de Lamet. vol. 2. lett. T. vo Tuteur — p. 736. 7. — Domat des Engagemens ~~de~~ du Tuteur sec. 3. art. 41. p. 180 — Repre vo Compte. p. 32 — Poth. des Personnes. tit. 6. art. 6. p. 622. Lacombe. vo Tuteur sec. 11. dist. 1. No 6. — The Plff. produce a copy of the act rendered by Mr C. in 1809. to shew its insufficiency — refer Mr statement here to the testament. 2d p. 12th line — 4th clause to shew that C. took away from the ~~shares of the~~ mass a sum of 80,000t. beyond his sisters — which deprived Plff's of 41.000t wt interest from 1809. to which they were evidently entitled —

Ross for Defend. The late Mr. C. did render an act to Plff. in 1809 of q. they had communication, and were satisfied with it — the authorities of law apply only when no act has been rendered — there is no law establishing the form of the act

and here the parties had all the necessary information before them as if more formally rendered — Rep^re v^o decision. p. 329. — the party ought to have brot an action to set aside the account. if — his aff^n — the present action does not amount to such rescision. —

Rolland for Defend^r — The action is of the Exec^n of Mr. C — & cannot be maintained in that capacity for property & succession of their mother — the Exec^r can answer only as Exec^r, but not in his own proper name as heir of his father — this action cannot bring the nullity of the act of 1809 in question, as it regards the inheritance of the late Jac. Cartier of w^ch Def^r is in poss^n — this is an action en reddition de compte — The sale made, vis à vis labulis made, or not, must submit till an action is brot. to set it aside — the act is not void, but void able — Rep^re v^o Rescision. p. 329. — Mild. 289 — 2^e. Vol. Dd. p. 46 — the act may be liable to rescision but an action must be brot. for this purpose — Lacombe. v^o Restitution en Entier. N^o. 4 — Rep^re v^o Transaction. p. 244. — 3^e. Gr. Com. p. 593. . 1 Duplessis. 480 — The act here filed is sufficient — and it is not stating in general terms the act is null —

Bedard in reply — when the act is absolutely null, no action is necessary to annul it — the act here of 1809 is in law a nullity — therefore no demand of rescision is necessary — but supposing this act were not null. yet the present action is a demand en rescision, & may be demanded as well by action as by exception. Rep^re de droit par d'antoine. 156. §. 1. — this action is a demande en rescision. 2 Pothier p. 96 — 2 kinds of demand en rescision, principal & incidental — 1 Vol. 338 — The Def^rs has demanded sufficiently the rescision of this act — This action is prosecuted agt Def^r as heir at law & en possession of all the property of the Succ^n of Def^rs. mother

and

and the action could not be brot. agt. the Defend. as Executrix of a will of wch Plff. were ignorant — the Defend. is heir of his mother & his death is accountable —

—

№ 1784
Ormet dit Tetro dux

On Report of Experts —
Bedard for Plff. asks for hom. of Report —
indepndant of monies of Plff advanced on Sale —

—

№ 80 —
Chalifoux
&
Marotte

On Report of Experts —
Bedard for Plff asks for hom. of award —
objects that the advances made should be imputed upon the interest of her rights. Rép. Vo Intérêts p. 467 § 60. and not on the principal — the interest on the dot fm are dus de plein droit — 2d. Vo Imputation — dans les dettes qui produisent des intérêts, les payements doivent s'imputer sur les intérêts —

—

№ 1978
Pierson
dit
Charles
&
Lebrun
Intervt

On Plff's mo. to reject Deposition of N. Charles the son of Defend. & Interv. Parties —
Gale for Plff. The son is an inadmissible W. in this case — & is brot. by the mother to charge the father with fraud — & is besides interested —
Sewell for Interv. Party — The W. is not interested this is case of fraude, & is like case of delit, where even Children may be witnesses — the W. here is besides a témoin nécessaire — Dunty. p. 216. 17. 235. 236 —

№ 335
Dumas fils
to
Amazon —

on action to amount
Case submitted —

—

№ 1538
Pardy —
to
Bruneau
sal —

action on deed of sale — over

№ 2085
Sanborn
vs
Domet
Cur —

action for work done —

Mondelet for Defend — there has been a novation of the debt — cites Domet. cit. Novation. as Pltff accepted a note of hand in payment — and on ofr — Pltff ought to prosecute —

Dyde. cites J. T. Rep. Ownson v Morse —

—

Cuyler
vs
Holt

action of Separation —

Bolton for Defdr — There is no proof to substantiate the demand 2 Pigeau 201. 202 —

Tuesday 11th June 1822.

Present.—

Justices Reid Foucher & Pyke.—

Letourneau & St Denis — Trial by Special Jury.—
Verdict for Pltff. £15.— & Costs.—

Davis & Orkney — On Pltff's mo. that Defendt. be held to change conclusions of his plea from Country to the Court action on a promissory note payable to order & parties merchants— Motion rejected.—

Molson & Deshautels — Hearing on exceptions.—

Wednesday 12th June 1822

Present.—

Justices Reid Foucher & Pyke

Raymond & Bisson — On Pltff's mo. for Ven. exp. to sell effects seized, notwithstanding any opposition to be made on the part of the Defendant The Court granted the first part of motion but rejected the latter part.—

Bisson opt.—

M^c Cullum
Stein — } on quest. as to insc^n in faux
Coth. Proc. Court — Dem^t — Faux. and
Rep^n Inscip^n en faux. upon to case of
Grant v. Millar at Quebec — Prac. Lange. 1 Vol. 464 —

Bolton for Def^t — The application too late, the Cause at issue, and Cause set down for heard last Term — by Pltff himself — That this inscip^n on a note of hand or other sous seing privé, will be productive of great delay in proceedings —

—

N^o 1866.

Jas. Perrault
& Mcallum } action for money had & rec^d —

Vigé as amicus Curiæ — action is supported on deeds & papers which ought to have been stated in the declaration — the proof does not correspond w^t demand — upon to case of ~~Tessier~~ Blanchette & Fortier —

—

N^o 2125.

Durocher
& Beaubien } action en redition de Compte de tutelle & to be put in poss^n of Pltff share of proprets
et al

Beaubien for Def^t — exceptions are raised to the sufficiency of the declaration — and au fond en droit — The decl^n is insuff^t — to maintain demande en petition d'heredité — Does not shew that Pltff are the heirs of the persons in whose right they claim — nothing that states the Pltff state their right by genealogical description of their proximity to late M^r B^n Durocher —

Rep^n V^o demand
1 Jousse Tit. 5. art 5
1 Pigeau 140 note
128 —
Douglas 683 —
Rushton v Aspinall
Jousse Tit 2 art 1 no
Tit 1 art 1 d^o

2^d. Does not shew that Pltff are habiles à se porter heritiers de Dlle Durocher — Should have shewn that father & mother of Dlle Durocher are dead to entitle Pltffs as aimés to claim as her heirs —

4

1 Louis. Tit 8. art 1. 7th
1 Pig. 161 —
1 Borm. 10
Pro. Civ. Pothe
p. 15. 4th —
P. Verbal des Confs
p. 7. 8. 85 —

4. Does not shew in what part & share they are heirs in the succ: of Mr D— they say they are heirs for 1/3. but they establish no facts to found this conclusion

5. Decl: states conflicting rights by stating that Dlle D. succeed to Mr Durocher as heir and Legatee, which is impossible & contrary to law— by this means they wish to introduce the Testament of Jn Bte Durocher— of qt no question can arise here—

7. suppos: Mlle D. heir in part & Legatee in part of her father, in this case the pltff ought to have distinguished what she held as heir & what as legatee—

8. Not stated whether Pltff demand an act: of the Estate of Dlle D. as legatee or as heir—

9.— There is a contradiction of facts in decl: it is stated that Mr D. died before his daughter in one part and in another that he died after her— if Durocher died after his daughter the Pltff cannot be her heirs.—

10. The conclusions are founded upon contradictory facts Defend: are stated to possess as Executors and as Tutors—

11 Not stated in decl: that Defdt: ever took poss: of real property, and yet Pltff's conclude for an act: of such posts

12 Because Pltff demand an act: from Defdt as Tutors of Dlle Durocher, and also of her succession—

~~Mr Holland for Pltff.~~

Mr Bidard of Counsel for Defdt The decl: is defective in alleging that Dlle C. succeed as heir & as Legatee of the late Jn Bte D— these two qualities are contradictory. The testamentary succession necessary excludes the ~~legitimate~~ hereditary Succn. Gr. Com. on 299th art. 5 Low unique No. 2.—

That it is clearly stated in the decln that Bte Durocher died after his daughter, which is contradictory & destroys right of Pltff— this may be amended—

That the conclusions are not certain & cannot be granted in the terms demanded, as to the part & portion claimed by the Pltff in the property in question —

Rolland for Pltff –

The title claimed by Pltff. is Paternal uncle & heir of the party whose property is in question – this is suffte –

The allegation that Mr Bruocha was heir at law as well as Legatee of her father, is stated to shew right of Pltff. in the succession of Dec'd D – whether in one capacity or the other –

Mr Papineau of counsel for Pltff. – contends that Decln is good and sufficient –

Bedard in reply – the action en petition d'heredité is a demande en revendication – and the property claimed ought to have been particularly described, as any other debt which a person claims – the conclusions here not certain, no certain portion is claimed as the share of the Pltffs. in the succession –

—

No 606

Thayer & Peacedal & Contra

Action on 2 promy notes – of Defts as indorsers

Dewell for Pltff – notis given as accommodation note & Pltff has been paid – this has not been proved – case left to arbitration – with instructions to take down the evidence and return it to the Court – & it was to give the parties an opportunity to see that arbitrators have given a right Judgt and done Justice between the parties – The arbitrators have done wrong and have given an award in favor of the Defendrs on both demands in the face of the evidence before them and more upon the Court –

O Sullivan for Defts Pltff was concerned in business wt H. & E. Curtis at time these notes were drawn – Defts owed them such, on the Contrary H. & E. Curtis owed Defts refer to evidence adduced – the notes were accommodation notes, see answers of Pltff – & of Defts before arbitrators to withdraw certain notes from the Banks –

The

The rule of reference to arbitrators although it requires them to take down the evidence, yet this cannot enable this Court to look at this evidence or form any diffl opinion from this, nor to take up the Cause in any way further than to enquire if they have proceeded regularly — That there is a variance between part note produced & laid in Declr in first Count — on the 2d Count the variance is still greater it does not appear that the 2d note was protested at all. — The notes are proved to have been made for accommodation of Pltff — no value was given for them — Pltff in his answers admits that no value was given for this — It is not shewn that Pltff paid the notes for wh the present note was given — The arbitrators have examined the books of amount of the parties & have with the other evidence addduced allowed to Defendr their Incidental demand

Sewell in reply — by the evidence adduced it will appear that Pltff has paid the amount of the notes at the Banks by taking up these notes. — The Defds was bound to shew that no value was given by them for the note & was an accommodation note — refers to Chitty on bills & Bailey — also Grant. v Vaughan — Blosson. v Wilson — Kyd on bills. p. 35 —

—

No 127

Galusha
vs
Jesmen

Action on Promy note —

Beaubien for Defendt The note is not a mercantile transaction — The note was made in State of N. York — the parties are foreigners — Defendt called a meeting of his creditors in that State according to wh under the laws of that State he would be entitled to a discharge from all proceedings at law in regard of this note — This is a bar to the present action & this is a question arising on a Statut personnel, which attaches to person wherever he goes — The laws of the Country must govern when the Contract was made — Wh. C. art 8 wh. Tit. 3. Sect. 20me Chopin on this title — Lacombe. vo Statut Rel & Personnel — No 4

That Defendt by contracting in the State of N. York did not mean to bind himself by the Laws of another Country, nor to exclude himself from the benefit of the laws of the Country when the contract was made & was to be executed — Nor the Defendt shews enough to entitle himself to a discharge under the Laws of N. York —

Henshaw for Plff. Defendt was resident in Canada when arrested, he withdrew privately from his Creditors & came to Canada — The exemption set up by Defendt he obtained only after the institution of the action — & cannot exonerate him from the consequences of this action — The Defendt wishing to avoid the payt of this debt runs back to State of N. York & there obtains proceedings to exonerate his person from arrest, but this does not exonerate his property —

—

No 180

Russell & al
vs
Riddell & al

on Plff's mo. for Com. Rogr

Thursday 13th June 1822.

Present

Justices Reed Foucher & Pyke

№ 1581
Peddie
vs
M^cNiderdal

action for recovery damage by fire on a Policy of Insurance –

Hearing on merits –

Ogden for Pltff – Plea set up, that only part of the property was lost, and that there should be an average deduction according to amt. of property saved – The amt. lost exceeds $ 460. – & all that is usually req^d is that party give in a statement of the loss The Agent of the Phoenix Insurance Office states what is the Custom in regard of payt of loss at other fire offices –

Papineau for Defend^t – The Defend^t pleaded to excep^s to sufficiency of declar & to the Jurisdiction, but they have not admitted the partnership alleged in the declaration – The title produced by the pltff shews the Contract to have been signed by two persons only & ~~not~~ ~~of~~ the Defend^s of ~~which~~ ~~whom~~ only the action ought to have been directed – The service of faits & art. is not a service on the parties who signed the Contract and his answers as his acts can affect himself only – The policy was made & signed at Quebec, when the demand should have been formed, and it is there they elect their domicile for the purposes of the execution of the act – That the parties who are not legally called before the Court cannot be prejudiced by the faits & articles – The Contract between the parties must be regulated by the proceedings to be had on it –

Moves to reject the depos: of Gov. Audijo – because it is a deposition unique – cannot consider this a matter of a commercial nature, but is no more so than a company for lending money, or doing many other things which are not in law Commercial – It is different from maritime Insurance which concerns goods or ships only & are declared by law to be Mercantile – but the Policies of Insurance on land regard houses as well as goods – M. Audijo cannot be admitted by his evidence to give an interpretation to the Contract between the parties –

As there is no solidité among the Defts: those not sued cannot be implicated in this action nor bound to answer to the faits & articles. –

The Plff had property in his house to extent of £700 – and the Insurance went only to cover £350 In Maritime Insurance, the parties whose goods are saved contribute low and the upper damage of what is damaged, and same principle ought to hold here. & what has been saved ought to contribute in the same proportion – this proportion of this contribution is established by Domat & Pothier in his Contract of Insurance –

Ogden for Plff – The question of Jurisdiction ought not now to be mentioned – it has been determined, and if it had not, the motion made by Defend: to the Court admitted this Jurisdiction – That service of the process has been made upon some of the Defend: personally which is sufficient at all – and they are jointly and severally bound – the service of fait & articles is made in same manner and ought also to bind all – The principle of marine Insurance cannot apply – on board a ship, often a large part of goods is thrown over board to save the rest – this is a different

rule

risk from that occurring at land — That ch^d even the depos^n of M. Auldjo be set aside, the evidence is still sufficient —

—

N^o 17

Valcin
vs
David dab
&
Clarke G^t

Action hypothecaire
Lacroix for Defd^t — The conclusions in defence are insufficient — Pltff demands that the property be sold — The act produced is not made between Pltff and Defd^t but between pltff & Gar^t — which could not bind Defend^t —.

Lacroix for Pltff. The debt was created on a deed between Pltff & Gar^t out of which pltff's right arises — The plea is insufficient —

—

N^o 5

Knower dal
vs
Grezzos

action of defamation —
pleas on exceptions

Sewell for Defd^t The pltffs cannot join in this action, the words spoken must apply to each individually & the damages apportioned to the injury — 1 Dyer N^o 112. 28 Hen. 8. — 1. Com. Dig. 276 — This action may be maintained by Partners where there is a special injury done to them in their trade & dealing & so stated in declaration 3 Bos. & Pul. p. 105. — Watson on Partnership. Where no special damage is laid — Chitty on Pleads 2 East Rep 426 —

2. Dareau 349
1 Chitty 54. 55.

O Sullivan for Pltff. action by Partners can be maintained. Hand on actions — here the interest is joint & to which an injury has been done — Partners must join in this action. Wm Saunders Rep. p. 116. letter A note 2.

№ 937.
Farran
& ~~Farrean~~
Colburn et al } action for value of pine timber —

O Sullivan for Defend — The action is wrong brot — the timber was left in the poss. of Defd. ~~Colburn~~ campbell by Pluff with power to sell it. — Defd. pd. expense of drawing timber out of water — Pluff gave a draft on Campbell in favor of Colburn who was the person employed to haul the timber out of the water — the pine timber was not worth above £. ℔ port. — Campbell pd. this draft to Colburn as acting for Pluff & had no other funds but this timber of Campbell sold for this purpose —

Rossiter for Pluff — The timber was never delivd to Campbell to be sold or taken charge of, and the draft was made under particular circumstances on Campbell, as a friend which he might pay or not as he might think fit —

—

№ 434
Beaubien
& } on question touching pertinency of testimony
Morley — } adduced by Defendt

Rolland for Pluff — action in Disp. de biens for Services the Defend. has pleaded the general issue, and under this plea has adduced evidence of particular facts not pleaded by him, and which ought to be rejected as not coming within the Interlocutor rendered in this cause — and therefore moves that all such evidence be struck out & taken from the Cause —

Mondelet for Defendt — has conformed to the Interlocutor

No 101.

Smith
vs
Aylwin et al
&
Cuvillier
Oppt

On Pltff's mo. that Sheriff be enjoined to proceed to the sale of the property seized, & that he ought not to have delayed the sale, nor to have received the said opposition.

Rolland for Pltff. cites l'art. 11. of ch. 7. Prov. St. 1801 — the Realty here had been seized before, and all the previous notices given, & after this no opposn ought to be received afterwards on the writ of Venditioni Exp.

Stuart for Oppt — This mo. ought to be rejected as excluding the hearing of the merits of the opposn it is irregular & novel — The Court can determine only on the merits of the oppn before adjudging on it however ill founded it may be — it is the usual mode of proceeding and according to the rules of practice — there may be a summary hearing on the opposn but there must be a hearing on it — There are many material questions which may be raised on this opposition, in regard of the rights of Aylwin to have execution the same as Smith could have had as subrogated in the rights of Mad. Perrault —

Rolland in answer — If the reasons now given by opt shall be considered as not sufficient, there can be no further hearing — if this rule does not obtain there will be no execution put into effect, as upon every writ there will be a new opposition of some kind — & this is contrary to the express terms of the St. 41. Geo. 3.

№ 993
Bachand ab
& Beausoleil

On rule to shew cause why Contrainte par corps shd. not be granted pn opposns seizure & effets —
Defdt. made default

—

Chapman
vs
Taylor
& Rolland opp.

On Plffs' motion —

—

№ 1522
Lewis —
& Hart —

Action of damages pn

Bdeary pn Plff — the Defend. obt. a warrant from a magistrate to search the house of one Wilcocks pn certain stolen bills of Montreal Bank &c. were numbered in the warrant — the Defendt. went forcibly into ~~house~~ the rooms which she occupied in that house, threw down all her effects and carries away her monies to a considerable amount — but not satisfied with this he decided this money to be employed to his own proper use without any authority, and contrary to his duty —

Rolland pn Defdt. — action to recover back certain monies of Plff, a cetain bill in favor of Mr Wilcocks certain papers — there are no damages proved only claims certain monies belonging to her — she lived in the same house, was the housekeeper & the evidence shews the money was the property of Wilcocks &c. has been since seized in hands of Defdt —

Then

there were certain other effects in same trunk, which belonged to Wilcocke, which she does not claim. She was acting for Wilcocke who had them run off

No 389
Masson
Taillon

Action petitoire. —

Roi for Pltff — the lot of land claimed is in front of the pltff's land adjoining the river which extends to about 50 feet at the highest water the Defend. claims a right to use this lot for the purpose of a ferry which he holds opposite Pltff's land. —

Lacroix for Defend — The pltff ought to have brot an action negatoire on the facts he complains of — but Defend. shews that the spot in question belongs neither to Pltff nor to any other person. — That the place where Defs. crosses the line between him and pltff. there are not above 4 or 5 feet of the road made on Pltff's side & always under water at high water — Lacombe. Vo Fleuve — shews this to belong to the public in communicating with a navigable River — River Jesus is a navigable River. Dec. Dout Vo Riviere. Dennt. Vo Riviere — Independent of this being public property. the Defend — has proved that the road in question was made with consent of Pltff. and Pltff has had no possn of this spot at any time for 40 years past —

Roi in reply — The action is right as the property is in the Pltff as he shews by his title —

№669
Calvin Fuller
v
Johnson
&
Strayner Gar.

action petitoire. — re-hearing —

Stenshaw for Pltff — states that he has made out his action & asks Judgt

Stuart for Defend — the evidence adduced by Pltff has been prematurely taken — the question en garantie must be first determined — On 13 Nov 1819. Strayner sold lands claimed by Pltff to the Defr with a larger quantity — this fact has been made out — The Gar. alledges that Defr had imposed upon him & led him into an error — that here the sale was suffr to compel Gar to defend Defend at this action — there was dole, pris & consentment on both sides — the only allegation of the sale is an alledged fraud in the Defendt — The Gar. cannot avail himself of any fraud in this Case without an express demand for this purpose. Poth. Vente. № 325. nowas Gar has taken no conclusions for setting aside & having the act declared fraudulent — There is no evidence however to shew that any fraud had been committed — to say that a Stranger had deceived Gar as to the extent of Garants own property is not credible without strong circumstances to support it — Gar on faits & artr. says that were no such lots as № 10 & 11 & therefore he sold nothing to Defr — but this was a common understanding that there did exist such lots among all the persons resident on the land —

Ogden for Gar — The Defend. knew that Pltff was the propr of the lots of land in question. he had a lease of them from Pltff, & having quarrelled wr Pltff. Defr comes to Gar in order to procure a means to plague Pltff & to entrap Defend — he called on one Masson & took him to house of Gar — who was understood to be the agent for

the

the sale of these Lands — as Gar. was uncertain as to his right of property, upon this doubt being suggested the Defr. assured Gar. that the lots in question were his property upon this Gar. agreed to sell, & Defr. was to return in one month to get a title, in the mean time however Gar. found he had been imposed upon, & refused a title as he sd. he could give none — Yet the Defr. after this went & took possession of the lots of land knows he had no right to do so, and that he never could obtain such right from Gar. — The Contract of Sale was never perfected between the parties in such manner as to compel the Gar. to take fait & Cause in this Cause — The Defend. knew the real state of these lots from having lived on them, the Gar. did not, he had never been there, and as a certain block B cut in upon the 4th Range of the township of Chatham, the Gar. holds no such lots as No. 9. 10 & 11 in the 4th Range — he therefore really sold nothing to Defend. he meant to sell, but this was never carried into effect —

Smart in reply. There was no misrepresentation on the part of Defend. who pointed out to Gar. the particular lots he wanted & which he intimated to Gar. the pltff in this Cause claimed as Propr. in applying to Gar. — who had all the titles he expected to get correct information as to this title —

Fisher
Lacasse
& Lacasse
Appt

On rule obtd by Pltff at Defr. to shew Cause why an attach. should not issue at Defr. for having made a frivolous oppos. to sale of his effects —

Boston for Pltff obs. Stile Dr. Chabitt has to shew that summary proceedings should be had in regard of oppositions Cobr Cord. tit. 27. art. 7. —

2 Wirgent Wilson — 1 Pigeau. 727 Mepris

Com. Dig. Vo attachment A. No. 1. 2 — Attorney. B. No. 13. 4. Bl. Com. 286 — practising fraud under a legal proceeding —

Friday 14th - June 1822

Present

Justices Reid Foucher & Pyke

Enquete - days

Saturday 15th June 1822.

Enquete day

Chamberlain vr Stern. — The Court admitted Plff to make an Inscription en faux agt an acte sous seing privé filed by Defendt being a receipt for the money demanded by the Declaration.

Monday 17th June 1822

Present

Justices Reid Fowler & Pyke.

No. 1552.

The King
vs
A. Cuvillier et al

action on bond to postmaster General that one Williams should faithfully account for monies coming to his hands as Deputy Post master at Montreal —

Ross for Pltff — action on merits — prays Judt —

Stuart for Deferdts — The Information is filed by Mr Ross as Kings Counsl only, a right he cannot hold as it belongs to the attorney & Solr Genl only — refers to authorities already cited —

1 Nil. debet — puts plea — the bond stated & bond produced not same, there is such variance that Pltff cannot recover — the words "of our Lord the King in North America" — when Pltff describes the bond, are not to be found in the bond, although stated in the declaration — also that Defdts became bound to pay to D. S.a "to our Lord the King" are here again, not found in the bond — and in several other instances of recital of the Bond, the words "of our Lord the King" are introduced as being part of the bond, which are not found in it — this variance is fatal

2. The bond here produced, is a private bond to Mr S. personally & in wh the Crown can maintain no action — Mr S — is described merely as Deputy Post Master Genl which can be construed only as descriptive of his person — this was res inter alios acta, in wh Crown can have no interest —

3 Comn. Dig. p. 344 — tit. Debt to the King — the bond should have been made to the King — see St. 33 Hen. 8. ch 39. §55. see also Sec. 50. & seq.

3? a great many payments have been made on acct the postage also on American letters cannot besides be considered as coming within the Scope of the bond. —

Beaubien for Defd. On exam? the account of Williams comprehends many articles not within this bond, as appears by exh. N? That is the articles charged as United States Postage, for which the King can have no claim — That Mr S. has given receipts & discharges to Williams which shews he had discharged him — & took new acknowledg? from Williams — Exh. N? 3 of Defd. shews, a receipt of all that was due 3 May 1817 — That Mr S. took this Debt on himself — and he besides took notes of hand from Williams. see exh. N? 24 — dated 3 may 1817 — and by Mr S. answers to 10th Interrog? it appears he did not consider that Williams as a defaulter until 24? April 1820 — till then all monies due by Williams had been accounted for to the King — It appears it was a personal debt between Sutherland & Williams —

That on 6? July 1817. Mr S. settled acct. w? Williams & gave a receipt to him & took a note for the balance then due — this note & others were afterwards given back to Williams & a new Security taken — so that a sum of £231 — must be deducted also from the present demand —

That there has been paid a sum of upwards of £3000 by Mr Williams to Mr. S — on g? the Caution is entitled to have any debt he became answerable for under this bound payed by right of imputation, as the hardest debt —

Mr Ross for Crown —

Grounds stated by Mr Stuart on 2. — The bond varies from the declaration, by adding the words of our Sov. to the King — The bond is not mis-recited, but the inference drawn by the Declaration that the debt became due to the King —

2. That the bond is not given to the King & this action cannot be maintained — It is a bond given to D. S. as Postmaster General, as such a public officer, in g? the Crown has an interest —

and

and the consideration was for portages due to the King and the King can maintain this action in consequence on that bond — cite. Repre vs Roi. p. 21. first Col. — Poth. Obl. Nº 74 82. — Mr S. could be considered only as the préposé of the King in this business. — Nº 447. 8.

That Mr S. never released Mr Williams — the receipts given by Mr S — was only on Williams's acknowledging the balances due at the different periods — That ~~a receipt~~ a note given by Williams if not paid did not satisfy the debt for which the note was given —

—

Nº 46

Guibert & Murphy dal' & Sabourin Garnie

On rule on the gardien to shew Cause why a contrainte should not be granted against him

L. Vezé for Gardien — In the exon sued out there is nothing said about seizing & selling the effects in the hands of the gardien — It refers to a Procès Verbal of one Boudon, of wh the Court can know nothing — The exon is irregular, as the Judgt does not declare the Saisie arrêt valable & says nothing of it — the Exon is in the usual form & says nothing of the effects seized in the hands of the Gardien, and the annexing the P. Verbal of Boudon is irregular —

Bourret for Plff — The gardien is responsible to the Shff on his demand for the effects, & the omission in the Judgt cannot prejudice the Plff — the gardien is not discharged altho' the Court has not pronounced on the validity of the Saisie - arrêt —

—

Nº 411

McLeish & Bethune

On action of account — on Excep.

Gale for Dft contends that there should be an order for an account

Stuart — the exceptions ought to be dismissed

№ 66
Douglass
&
Morin
&
Robert Intervt

Action pétitoire.—
Stuart for Pltff— Pltff claims under letters patent from the Crown — not alleged by Defendt that the King was not the Propr at the time of the issuing of the letters patent— motion before the Court to delay Judgt—

over till to morrow

№ 578
Brousseau
&
Cartier val

Action of account
heard on exceptions —

Rolland for Defendt The Defendt said to have been the agents appointed by several persons to pursue an action agt. Baronne de Longueuil — There is here an act of procuration on qt. the action should have been instituted and not on a general demand by a verbal agreement between the parties, when there is a writing to this effect — this procuration was afterwards rescinded by the mutual consent of the parties —

Mondelet for Pltff — there has been an enquete, and the Defendt have not proved the procuration on qt. they founds their exception — there is a procuration revoked in the Cause, but not the procuration qt. Pltff gave to the Defendants —

—

№ 1852
Turner
&
McNider et al

action on policy of Insurance —

Papineau for Defdt The contract is produced in this cause on qt. the action is brought — by this Contract the Defdt make election of domicile at Quebec for all matters touching

touching the matters of the Comps — It is stated that all matters to be transacted by the Co are to be done by a ~~President~~ Directors ~~& others~~ specially named — and no other individual had any right to bind the partnership That the fact & articles here cannot avail, either as to those who have answered, who could not bind but themselves, nor can it avail as to those who did not appear as they were not legally called — That it would be dangerous to admit that every individual who can become a partner on subscribing £25 to the Common funds, should have it in his power to bind the whole Concern —

The Policy of Insurance contains a condition that no part of the premises insured shall be occupied by the Messrs Scotts the tenants of last year — It has been admitted that these men did occupy the premises when the fire happened. It is said by Mr M'Nair in his answers to fact & articles had the right to give policies of Insurance on such terms as he pleased, and that in consequence he struck out the above clause out of the Policy in regard of the Scotts but he does not produce the authority from the Comps to this effect, although thereunto required — but if he had this authority, he could not contravene to a special clause in the articles of association — in this respect he could act only as the agent or attorney of the Cos. he cannot bind them —

Mr Stuart for Defendr The declinatory plea has been over-ruled & the parties are now on the merits — the election of domicile in the policy is meant only to extend the recovery of the Pursr & the persons & not to limit it — The service of the fact & articles has been made at the domicile at one of the parties and at the Comptoir of one of them — The obliterated memorandum touching the Scotts, cannot be considered to make any part of the policy — it is not verified by any signature — and Defendrs have

not

not ascertained in such way that this Court can take notice of it — such a vendance of the contract ought to have been pleaded and proved —

The public not bound to take notice of the particular covenants of the Partners in their articles of association but every partner by his act may bind the Partnership

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No. 474
Hibbard & Barnard & Opposs.

over —

No. 1349
Leroux & Trottier dal & Trottier dal & Garants

On question whether this Cause be set down on the principal Cause before the Incident in the Cause is settled who shall take up the question of garantie.

No. 212
Cardinal & Allaire

Cause re-heard —

Vigna for Defd. Action a general demand for goods sold & delivd — Pltff makes no proof, but exams. Defd. on facts & articles — whose answers cannot be divided, & by them it appears the demand is premature

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No. 314
Barnard & Wallis

Action for balce of house rent

Sewell for Defd. Pltff agreed to diminish the rent — on facts & articles. Pltff does not answer precisely —

№ 238

Blennerhasset
& Throop

action for fees. —
submitted — on motn deduction of some item

№ 546

Labelle.
&
Labelle

Action on deed of sale —
Bleury for Defdt sets up claim for mortgages
on the land & asks security for them —

Laurin for Pltff denies part —

№ 1661

Roussy dit
&
Roi. —

On mo. for Exon on Judgt in appeal —

Rolland for Pltff — has rec'd a notice of giving security
for an allowance of an appeal to the King in Council —
but this cannot prevent the exon, as the appeal must be
allowed to have the effect to suspend the proceedings —
The notice is signed by a person who is not known as
the attorney of the party —

Roi for Defendt The Pltff cannot have exon here on a
Judgt in Court of appeals — That party is entitled to an
appeal to the King in Council, on giving security to this
effect, which security has been given —

№ 279

Jos. Donegany
&
Therrien —
&
Rollot opp.

On oppos. to sale of certain moveables —
Rolland for Pltff — contends that there is no proof of
the property in oppos. the articles were found in the
poss. of Defendt. & is suffit to rebut the presumption
of property in oppos. who may have sold the effects
to Defdt — at all events the identity of a small
part of effects only is made out — only 2 of the legatees

Jos. Donegany & Jos. Hernandez & Jacob Pozzi ptes } On oppn. à fin de distraire — some boxes of tea — stone whiskey —

Rolland for Pltff — contends that no title has been made out by Oppt —

—

No 2002
Kuhn & Lefevre — } Action for damages arising from fire — Report of Experts —

Bourret for Pltff demands hom. of report & Judgt for damages allowed by two of the Experts —

Vigé for Defts — The Exps. made a report last term asked for delay till the thaws of the snow to visit the wood — when this was done they differed in opinion and named a third who unites with one of them, but the third exps. did not hear the parties nor the tests but was called to be present at the visit of the wood merely — this is irregular —

—

On Petition of Gust. Serres et al } For destitution of
vs. } as Tutor —
Jo. Connoissant

Bender for Defendt — no facts made out at Defendt sufficient to support the petition — The only fact proved is that Defendt is addicted to liquor but this not alone a sufficient cause of destitution

—

Gibert vs. Pickle — } On Pltffs mo. to amend, by adding the word pounds in conclusion of Dcln

Stuart — The amendt can be allowed only on payt of costs & allowing Defendt to plead anew —

No 397
Larose
Duprat

On Defendr mo. that proof made by him be considered a commencement de preuve par ecrit, and that he be thereupon permitted to addure verbal testimony in support of his plea

L. Vizé for Defdr — action on Obligr & note, prior to 15 March 1820 — on that day a deed of exchange was made between the parties in which the amount of this Obligr & note was included as a part of the soulte & retour paid by the Plaintiff to the Defendr — this was not mentd in the deed in order to avoid Lods & Ventes — but it is in evidence that another sum of 2000tt — the Capital of a rente constituée which the Defendr owed to the pltff, was not included in this deed although it made a part of the transaction as appears by a receipt which pltff gave afterwards to the Defendr — The Defendr has also exam. the Pltff on faits & articles and by his answers shews, that in consequence of the information obtained by the Seignior of these transactions the Pltff agreed to pay the Lods & Ventes on the whole, and altho' it does not appear what the quantum of Lods & Ventes paid was, yet it shews that Pltff admitted there was concealment in the deed of Exchange in regard of the true value paid by him to Defendr on that deed — and the Defendr is ready to prove the quantum of Lods et Ventes paid —

Roi for Pltff — If there was concealment in the transaction between the parties to deprive the Seignior of his rights, it was a fraud, and the Deftr cannot be admitted to allege his own turpitude & thereby to better his situation — That there is no ground shewn which can constitute a commencement de preuve par ecrit. —

Knowers & Haven
v
Gregory

Defend^s Exceptions dismissed

Dubord, Vve
Eno
v
Armstrong
&
Legrand oppt

The claim fa privilege of oppt disallowed as not being the Domestic Servant within the meaning of the Law

Irvine & al
v
McDonald
&
Raymond
oppt

The Court permitted the party last allowed to take the balce of the money levied, on giving security to return it — admitting claim of oppt after discussion of the special mortgage

Tuesday 18th June 1822.—

Present
Justices Reed Fourcher & Pyke.—

№ 20
Clarke.
v
Forrest

hearing on law
Gale fa Defts pleads is to the merits & parties ought to go to proof & hear the law with the merits—

Archambault
v
Fullum

On question touching the admissibility of evidence—

Rolland fa Pltff. action agt Defts as Cautions

receiving obt. Judgt. agt. the principal Debtor — The Defendt. now wish to adduce evidence on facts proved between Pltff & Principal Debtor — Poth. Obl. Nº 908. the Caution cannot set up other defence than Debtor could. Stuart for Defendt. — The Pltff has not availed himself of the authority cited in the way he ought — the issue raised between the parties preclude the objection, as the parties are at issue upon the fact to be now proved, and Pltff ought to have pleaded the Judgt. already rendered agt. the pleas in bar set up by the Defendt. — But even in this Case the Caution could not be bound by any Judgt. given agt. the principal debtor —

Rolland — This is not case of an action on the Contract of the Caution, but on a Judgt. vt. the principal by which the Caution is bound — That the Pltff replication negatives the Defendt. right to set up such a defence, by stating that such defence is not founded either in fact or in law.

Nº 1817.
Shuter
vs
Sharger

On motion to shew Cause why an attachment should not issue for a contempt agt. Defdt. by his making unfounded oppositions to the Sale of his effects on a Judgt. obtained agt. him. —

Rolland for Pltff — This case presents an instance of the abuse of legal proceedings to pervert Justice — and the Court must have the means to execute their Judgt, without this remedy oppositions will have no end — Poth. Proc. Civ. 233. —

Sewell for Defdt. There is no law to support this motion 1 Com. Dig. Attachment for Contempt. Letter A. 595. — produces affidavit of Defendt. to shew there was no intention on his part to commit a contempt. — King v. Vaughan Doug. Rep. —

N°366.

Cadieux
vs
Auclair
&
E. Coutlee

On Report of Experts.

Beaubien for Defd^t states that Pltff complains of work yet to be done & which were necessarily delayed — demands that report of Experts be set aside — as to the report of the architects, cannot be hom. as the parties never had in contemplation the Corinthian order, as by the contract, this was left to the opinion & taste of Defend^t — as corniche may be without sculptured ornaments such as he now shews — this corniche was to cost only £50 — whereas a sculptured corniche wd cost upwards of £500. — as to the report of the Bourgeois, it must be set aside as they never visited the premises that by their report they oblige Defend^t to provide semelle for the floors — this Defend^t is contrary to the contract — The Pltff does not demand that Defend^t be held to complete what is still wants of the work but asks damages — as to the sum of £3 — for a door of vault — is wrong, as the door was put in the kitchen instead of the vault at the instance of Pltff — They have allowed three polished Chimnies, whereas Defend^t is bound to make two only — The experts have allowed damages for lowering the roof; of — was occasioned by a wall erected by Pltff upon the Defd^ts work. — That £7 — is allowed for want of gouttes of the house, whereas it appears by depos^ns of several wits that this was entirely completed by Defend^t — That Pltff has demanded £100 because work was not finished in time — but this was occasioned by the delay of Pltff who was absent — The house was ready & delivered 23^d Oct. last — That an allowance of £18 — for a chimney that is wants is wrong, as the quantity of toises of workmanship ought to have guided them accord^g to the terms of the Rule of prud'homme — The cadres occupy 170

Feb

fut off the wall. for which Pltff has obt. a diminution of the toisage —

Rolland for Pltff — The Court cannot enter into the particulars of the report; they can look only to the regularity of them — and all is regular —

№ 128

Brackenridge
v
Hervey

action on Promy Note
Walker for Defr — Pltff has no right of action as another person gave his note in pay.t of it

—

№ 241

Guezon
Poirier
Jos. Poirier T.S

On contest on declaration of Tiers Saisi —
Roi for Pltff — The T. Saisi has set up an excep to Pltff's demand for 1500# — more than he says he has on his hands — and also to other sums demanded in consequence of agreement between Pltff & Defendt — This agreement the T. S. has no right to avail himself of nor set up any defence which would not be good agt his Creditor the Defdt — That as to one of Conditions pleaded that T. S. sh.d keep the monies in his hands till the Pltff's rights were open — that condition has now happened. —

Lacroix for T. S. By agreement between pltff & Defendt she agrees to take 2700# — which she was to receive from the T. S. — this the T. S says he is willing to pay according to this agreement — she has no right to more, she can claim only on the terms of this Contract. —

№ 2076

Prince.
Scott sol.

action for assault & battery —
Sewell for Defr — If Pltff has been beaten, it was Pltff own fault — That as to Scott there is no evidence —

№ 274
Pardy
&
Robitaille
vs.

action on deed of sale —
hears on exceptions —

Bedard for Defdt — pleads that the Obst. delay from Mr Henry to whom she was bound to pay the money — If Plff has allowed himself to be condemned to pay the money, it is his own fault — she ought to have called in Defdt. who would have used the same reasons as he now employs as to the delay —

Mr. Rolland for Plff, the delay pleaded cannot bind the Plff — That any agreement between Defdt. and Mr Henry does not hinder the proceedings of Henry agt Plff.

№ 105.
Dunning
&
Chamberlin
&
Thayer opt

Ore opposition afin d'annuller —

Walker for oppos. The Schooner altho' seized in hands of Defdt. was the property of oppost —

№ 289
Tabeau
&
Desforges

action of Debt on Obligation —
hears on Exceps
Pelletier — no date given of oblign. in Declr —

№ 1630
Hall, Tutr
&
Lacroix —

action for medicines & attendances —
Beaubien for Defendt — There is no proof in the Cause —

No. 1853

Leclerc & Dame Frejo. Part } action on deed of sale —
L. M Vezé on plea filed by Defend— this pltff has called in Frejo as his garant. —
Nothing was said on part of the Garant —

M. Pherson & Wm Abp. White — & Fellows Opp^t } Our Oppos^n à fin d'annuller —
Bender for Oppos^t — claims that the purchase of certain effets made by Austin Adams the bailiff charged with the execution in this Cause be set aside and the s^d effects resold & sold anew
also Rep^n vs Huissier — Id. adjudicataire —

Mr Bender moves that certain monies ordered to be paid to Pltff be brot back, & paid over to oppos^t in satisfaction of his debt &c was for house rent —

—

No. 111

Main. & Towns — } action of revendication —
Ross for Pltff contends that the case is made out

—

No. 66.

Douglass & Mooney & Robert, Int^r } action petitoire —
Sewell for Inter^s pants — no evidence before the court to shew that original Pltff is dead & that the reprise d'instance is regularly taken up — The only papers filed in support of the Cause were filed w^th Olea to the Intervention —

Stuart in answer — The reprise d'instance was made without opposition of any of the papers — The titles put in in the first instance were suff^t to maintain the action — the Grant from the Crown came in w^th Rep^n to controvert the right set up by Defend^s —

Wednesday 19th June 1822

Present

Justices Reid Foucher & Pyke.—

No 40
Guibert
vs
Murphy & ux
&
Sabourin Gard

Rule absolute for an attachmt. agt. Gardien.

No 289
Tabeau
&
Desforges

Excep. dism. no demand being considered as necessary to be specially laid in the declr in order to entitle pltff to maintain the action.

No 241.
Gougeon
&
Poirrier
&
Poirrier T.S.

Judgt. direct. payt. of monies in the hands of T. Saisi.—

No 245.
Pepin
&
Laurier.

Judgt. the pleas set up, held not sufficient answer to the demand.—

No 2085
Sandborn
vs
Doucet, Curr

Judgt

No
Vve Kuhn
"
Lefevre.—

Judgt. confirming award

No 1522.
Lewis.—
&
Hart.—

Judgt. £35.— damages.—

№ 1980. Smith vs Beers.	W	Judgt dismissing the action.
№ 1962 Lusignan vs Pickle	W	action dismissed.
№ 1740 Henderson vs Babcock.	W	Judgt.
№ 1515 Ferguson vs Millar.		Judgt.
№ 35. Pangborn vs Denau.		Judgt on motion for sale of certain shares in steam boat
№ 1022 Arnoldi vs Brown	W	Dismissed
McPherson vs White & al & Fellows opp^t. & Adams a bailiff mis en cause	W	On rule obt^d by the opp^t. on Adams the bailiff to shew cause why the adjudication made to him of sundry articles at the Sale of the Defend^ts effects with which execution the said bailiff was charged — c

Thursday 20th June 1822.

Present

Justices Reid Foucher & Pyke.

McPherson vs Whiteoak & Adams, Sheriff's bailiff. — Judgt on motion as the bailiff.

No 2080.
Haight vs Barnard val. — action dismissed as to all the parties except Barnard.

Hubert & Cartier. — Action dismissed

Cuyler & Holt. — Judgt of Separation.

Smith & Cuvillier & Cuvillier opp. — Motion granted for dismissing opp.

Roussil vs Roi. — Motion for Execution granted

Vacation –

Tuesday 9th July 1822. –

Before

Justices Reid & Boucher.

No 433
Scott & Co
v
Phonix In. Co

On rule to shew Cause obt. by Defendts why matters in dispute should not be referred to arbitrators. –

Ross for Defts in support of the rule, stated, that the action was brought to recover from the Defendrs the damages alledged by the Plffs to have been sustained by fire, founded on a policy of Insurance – In this policy, as in all others of a similar kind there is a clause by which it is agreed that all matters of this kind in regard of the extent of the injury sustained shall be submitted to arbitrators to be named by the parties – this was in order to prevent litigation between the parties, and instead of bringing an action, a reference ought to have been made to arbitrators agreeably to St. 9 Wm 3. ch. 15 which might have been made a rule of Court if necessary – To this action the Defendrs have stated this agreement in their plea, and contend that they are entitled to compel the Plffs to name arbitrators in conformity to their said agreement. This is an equitable application to the Court and ought to be granted both according to the principles of English & French Law – where parties by their own act have appointed a certain course of deciding their differences this Court is thereby ousted of its Jurisdiction – refers to Case in 2. Atkyns Rep. p. 569. – +
The same principle is also held by the French law writers. Poth. Cont. d'assurance. No 197. – and more especially in Contracts between partners, where there is a submission to arbitrators, the parties refusing can be held to comply. + Code Mark. ordn 1673. Tit. 4. art. 9.

+ Wellington & Mc Intosh

Stuart for Plffs The power and authority of Courts to delegate to others a jurisdiction over matters in litigation between parties, is a question of public law, and must be governed by principles

of

of English Law – this was held in the case of Wilson v^s Dow in appeal, and is also laid down by Domat tit. 7. Des arbitres. to be a matter of public law – In looking at the English authorities it is clear the present rule must be discharged, because the matter pleaded by the Defend^rs even if regularly pleaded, cannot oust the Court here of its jurisdiction. Thompson et al. v^s Charnock 8. T. Rep. 139. – it is no bar to the action – Tattersall v^s Groote 2. Bos: & Pull. 131. – And by the Fr. Law, after plea pleaded the application is too late, because the jurisdiction of the Court being once admitted, Defend^r cannot afterwards withdraw themselves from that Jurisdiction or demand to have his plea transfered to the decision of another – Now. Denis^t vol. 11. v^o arbitrage. p. 56 – in speaking of a Policy of Insurance under the Code Marine, according to ph were it even law in Canada, the parties cannot after contestation en Cause, demand a reference to arbitrators – But what is stated in the plea touching a reference to the arbitrators cannot be considered as a bar to the action, nor any plea whatever, as it concludes to nothing, and the Court can take no notice of it nor adjudge any thing to the Defend^r thereon – It is therefor evident that neither according to the French or English Law can this rule be maintained –

Mitchell v^s Harris A. Br. Ch. Rep. 311.

S. C. 2 Ves. J^r. 129.

The Court granted the Defendants motion and directed the matters in contest –

—

October Term. 1822.

Tuesday 1st October

Present.

Justices Reid, Foucher & Pyke.—

Taillefer vs Truchon & Leveille

On Pltffs mo. to dismiss opposition for want of moyens—

The Sheriff made his return in vacation and on the Plaintiff notified the opposant to file his moyens d'opposition this not having been done, the Pltff now moved that the opposition should be dismissed.—

Lacroix for Defendt contended that the time for filing his moyens had not yet expired, as by the rules of prac. he had 20 days in vacation after June Term to plead—

No 1063.
Loisel dux vs Lacoste—

Lacroix for Defendt moved, that action be dismissed as Defendt is sued as being of the parish of St Cesarée while on the contrary he lives in the parish of St Damas and never lived in the said parish of St Cesarée.—

But it appearing to the Court that the process in this cause had been served on the defendt personally at his domicile at that part of the Seigniory of St Hyacinthe S. Yamaska, called, parish of St Cesarée — it was held a sufficient service on Defendt who was thereby bound to answer to the action.— Rule obtd by Defdt discharged

Wednesday 2d October 1822.—

Present

Justices Reid Foucher & Pyke

No 1821.

Forand
&
Vincelet & wife
&
Johnson Gar

on exception

Mr. Mondelet for the Garant — says he is not bound to answer to Plff — demand as it is insufficient, and contains no legal ground of action — the right & titles of the party are not set out — The action is to compel Defendts to acquit the land purchased by him of certain hypothecs on the land — The facts are so vaguely stated that Garant cannot plead thereto — Cens & rentes and lods & ventes are said to be due without shewing at what time, or under what titles — But facts stated even if true & well stated contain no ground of garantie, as there is no allegation that the plff has ever been troubled Cod. liv. 8. tit. 45. Dic. de arrêts. vo Eviction & trouble — Garantie. — Nouv. Denist. vo Eviction — The charge grants wager, is not a charge nulle. Poth. Vente. No. 201. Rep. vo eviction & garantie — case of Rollot & Garcin.

Bleury for Plff. — The exception ought to be considered as having been determined by plea already pleaded by party — The Plff is entitled to his action — & is founded on the existence of right by wh he may be troubled and trouble or peril de trouble is suffit. maintain this action Domat liv. 1. Sec. 12. No 3 — It is enough that Plff shews there exists debts & incumbrances on the land he purchased without even shewing trouble or fear of trouble —

Vigie for Plff — This is an action of damages for a trouble not arrived — but not in conformity to the principle laid

laid down by the authorities cited by Defts. from Domat & even according to Pothier — Poth. Vente. № 201 — But the exploit is not sufficiently libellé to enable Defendt to plead to it. ∴ not said by what title the 45 bushels of wheat are due

№ 6
Blache
&
Wisely

action for house rent —
hears on exceps —

Bleury for Defend — action instituted 19 April 1821 — yet rent demanded for 3 months rent not then due and the conclusions are irregular —

Mc donell for Pltff — The demurrer is a general one and insufficient — the Defendt ought to have pleaded the special matter & grounds of the Order —

№ 1651
Roussy
&
Roi
&
Roi oppt

On oppn afin d'annuller —
summary hears —

Rolland for Pltff — after Judt. in appeal. Defendt moved for an appeal & opposed rule for Exon thereon this application has also been disallowed in appeal — the oppn is of 13th July an opposition made, by which he says he had appealed to the King in Council, & it was impossible as in June last this Court determined that Defendt. has not then any such right of appeal.

Roi for Oppost — The Oppt. ought to be allowed to shew that an appeal has been instituted before the King in Council — the Record is not before the Court but transmitted to Court of Appeals under a writ of

of Certiorari, and the present execution ought also to have accompanied the record —

Rolland in reply — it is not necessary that the record should be before the Court, to determine upon the opposition to an execution —

№ 47
Cartier
vs
Delongueuil
et al

On rule nisi. for putting in suit the heirs of a deceased Defendt —

Sewell for Defendt cannot be made parties to the suit by the rule, but by the Kings writ — the Proceedt according to french law. 1 Pig. 145:6 2 Jousse. 453 are same in this case as on the original action

Bedard for Pltff. The action en reprise d'instance cannot be considered as an original action or coming within the ordre of 1785 — 1 Pig. 346.7 The law says, he must assist in it, and the heirs as such are considered amenable upon the notice given to take up the rights of the deceased — This is not a demand as an original action — Rule withdrawn —

№ 550
Vandenslays
vs
Delaney

on plea of Exception
Action for false imprisont — & damages —

Stuart for Defendt — This action is irregular as a malicious prosecution or for false imprisonment as no such action can lie — There can be no action vs the attorney because an action has been wrongfully sued out — he is the mere instrument of the party who sued out the writ & who only is liable — all here stated can amount only to an omission of duty, but not an act of Commission of the Pltff —

Gt

It was not requisite under the Cap. sued out here to have for the Defendt to have put the formula on the back of the affidavit, as req^d by the rules of practice in cases of debt — if anything ought to have been endorsed was the order of the Judge. for q^t there is no provision by the rules of practice — There is no malpraesumere here Selwyn N.P. p. 996. 7 — refers to modern times — that case is in 1766 — the mere omission not suffic^t Skewal v. Fairbain Bos. & Pul.

Rollard for Plff — The name of action not material, here a debt is complained of, and where there is a debt, there is a remedy — the Plff has been injured by the act of the Defendt — The rule of practice requires that the attorney should endorse the writ with the sum for which bail should be taken this is the act complained of that the Defendt endorsed the writ for a greater sum than that directed by the Judge —

—

No. 20
Clarke
vs
Forrest

Action agt Defendt as carrier —
Noth^g said —

—

No. 1663
Hart
vs
Warwick
Lal —

Ar Plff. mo. that he be permitted to ex. Defts on part part. Calls a Witness subpoenaed who did not attend —

Ross for Plff — cites Rules Pract. p. 49. Sec. 11 — it is enough to shew that a Wit^s has been summoned, & does attend on the day of the inquiete. —

Stuart for Defendt. the state of this Cause must preclude the ex. of the Wit^s in question — as Defendt is now going on with his evidence, the Plff must be considered as having closed the inquiete on his part —

№ 534.
Lambdale
Haven vals

On Defendr mo. to quash process for irregular service —

Stuart for Defd. The writ of Ca. was served on Haven, but no copy of the Saisie annexed — The affidavits also of Pltff are insufficient. In regard of the affidavit for the attachment it ought to state that Defendrs are indebted, and the debt must be shown to exist both Defendrs which is not case, but only of one of them, Haven, & an attachment prayed agt both Defdrs, Ordr requires that both Defendrs should be indebted to the Pltff — The forms of this Law ought to be strictly adhered to — the words whereby Pltff may be deprived of his remedy agt the Defendrs are essential in suing out a Capias, but not in case of attachment when it is said Pltff will sustain damage —

Grant for Pltff By the Sheriff's return it appears that the process was has been sufficiently served — which is correct in fact — The writ of Ca. was served without any copy of Decl. which was not then ready — & was filed at the office within the time prescribed by the rules — besides a copy of the Decl. & process was served at the domicile of the Defendr which was more than required — The affidavits are sufficient —

№ 1640
Thompson
& Gale
vs
Econtra

action on Promy Note —
Beauchein for Defd. There is no proof of the Note — the affs. do not speak sufficiently to the signature of Defd —

Thursday 3d. October 1822.

Present

Justices Reid Foucher & Pyke.

Burnet
vs
Hall

Qu Defendr motion to be permitted to file a certain receipt of Pltffs as evidence in the Cause

Ogden for Pltff objects to no. as it comes too late, he having closed his enquete, and refers to opinion of Court in case of Warwick dat. vs Nevels & Sanford

Henshaw, for Defendr states that the receipt in question was not within Kn. of Defdr when plea was filed

No 65
Abbott
vs
Welsh

action on Promy Note
Sewell for Defdr — note given for Cattle of wch delivd by Pltff to Defendr, which Cattle were afterwds taken back by Pltff — which must avoid the note

No 97
Youngdale
vs
Delaney

action on a promy note — Aban —
Borton — for Defdr no proof of ban.
Walker for Pltff demand dismd. as to ban

No 793
Thirkell
vs
Perham
& contra

action for work and labor
Beaubien for Defdr The Pltff has not proved any demand beyond 33 dolls Defendr has set up an Incidental demand & has also contested the Pltffs right to have sued out a Saisie-arret — & ought to be set aside —

The work q^t. Pluff undertook was never finished he on the contrary appears to have burnt in the workshop of Def^dt some wood fit for being worked up, & this maliciously & claims a sum of £14 Dam. for the neglect of Pluff

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№106
Hildretts
v.
Mitchells

Action en separation de corps & de biens

Sewell for Pluff says he has not proved all the facts alledged by him, but enough to entitle her to obtain a maintenance from her husband, as it impossible they can live together

Henshaw for Defend^t The conduct of the Pluff and her character as such, that she is entitled to no maintenance whatever.

№397
Larose
v.
Duprat

Action on obligation & on promissory note

Roi for Pluff The second W^m can only sign his name, but cannot read writing, nor did he read over the note in question to Defend^t but the Defend^t acknowledged he owed the amount to Pluff, q^t is enough at all events Pluff would be admitted to his Serment Judiciaire. Pluff desists from using the Defend^ts answers on faits & articles

L. Vigé for Defend^t admits he has not proved part of the obligation as to the note, contents it is not proved — one W^m speaks to it but does not say that another W^m was present. The other witness does not identify the billet, but says Defend^t acknowledged he owed the amount to Pluff

509.

№ 2059

Ward
vs
Casimire
dal —

On Pltff's mo. to reject Defdr's plea — as filed too late —
Borlon for Pltff refers to Rules of Prac. regulating filing of pleas. — Rule discharged —

№ 68

Douglass
&
Campbell
dal. &
campbell
dal — opps

On Pltff's mo. to reject the opposition as Defdrs have filed no moyen —
Quesnel for Oppts notice served on 6th Sept last, but this ought to be considered as no notice as Oppt is not oblized to take notice of any notice of returns made by the Sheriff in vacations —
Stuart for Pltff contends that this point has been frequently determined refers to rules of Prac. p. 77 —
The Court granted Pltff's motion

Friday 4th October 1822.

Present

Justices Reid, Foucher & Pyke

№ 2014

Alsopp
vs
Throop

action for goods sold
Henshaw for Defdr pleads payt — this he contends he has made out beyond demand proved by Pltff

№ 26

Audaire
Audaire
&
Lemidal
T.S.

action for work and labor as masons —
Roi for Pltff — The Defendrs were the Contractors

and

and made over their contract to Plffs— who have completed the work according to that agreement— except the plastering, which was not done from the default of Defts Carpenters, who did not provide the Carpenter work in time— The Defendts alledge to have paid more money to Plffs. than they have rec— the exhibit № 4 contains a double employ— this appears by exh. № 7— which is a statement dated 8 Oct. 1821 of the Defts. monies pd. up to that day to Plffs— in wch all the monies pd. are mentd except that in exh. № 4 which was to have been destroyed on Plffs signing the receipt № 5— — from exh. № 17. to 29 inclusively being bons or audr which Plffs owed to different persons, not transferred to Defts— and wch Defendants cannot set up against the Plffs demand— Since the action was commenced the mason work has been rec. by the Syndics, & Plffs right in this respect is established— the only question now before the Court is in regard of plastering, and the payts. made by Defendts—

Beaubien for Defendts. The Plffs have prosecuted their action for £200— when it is clear so much was not due to them— nor were they warranted to sue out an attachment in this Cause— The Plffs. admit that the endits were not done by them, wch must be deducted from the demand— as they have established no default against Defts— The Defendts have since made the endits— Defendts prove payts. of £647. 8. 3 to Plffs— so that a balce of £22. 5. 5. wd be due to Plffs on the supposn they had made the endits, wch they have not made— The bons, exh. № 17 to 29. have been proved by Defts— there are monies paid by Defendts for & on acct of—

647. 8. 3

The

the Pltffs. The Pltffs are not entitled to be paid for the enduits as it was too late to make it, when the mason work was done — which it was in October when the Wrs say it was too late to make the plastering The Pltffs make a protest on 22d October to intimate that they were ready for the plastering — it was too late.

No 1878
Cuyler
Holt

On Pltffs mo. for hom. of report of arbitrators
Boston for Defendt — opposes hom. of the
report — as the Experts were not enabled to estimate a
revenue so great to Pltff without having had before
them a regular statement of Defdt's property before them —
The Court cannot delegate such authority to experts. —
The Experts were not all qualified to determine upon the
point — There was no notice given to the Counsel
for the Defendt of the proceedings of the Experts —
There appears to be no appointment by the Court of
Gen Davis as the Expert for the Pltff —

No 2059
Talon
vs
Talon

Action on obligation pt had been given by
Pltff & Defdt to one Bass & Co — to recover from
Defdt his proportion of the amount pd by Pltff

Blenny for Defdt — There is no proof that Pltff has
paid the debt in question — no return of Sheriff to
show the seizure of Pltffs property &c

No. 951
Guillaume
&
Prevost

On Pltffs mo. for hom. of report of Experts —
Blenny for Pltff — submits to Court whether

Pltff

Pliff should be bound to take the house in question
L. Vezi for Defdt— There is no demand for taking the
house in the action— the only question is to ascertain
what the Pliffs damages were for not having built the
house according to agreement— Objects to hom.r
of award— the Experts make no mention of the
Incidental demand which was referred to them—

—

№ 772
Herrieus
vs
Decarry
&
Herrieus
vs
Leclaire

On Pliff's mo. for hom. of report of Experts—
Rossiter for Defendt— objects to hom. of report, as it does not comprehend all the issues in the Cause—
Bedard for Pliff— The defendt. Decarry is no ways interested in this question, the damages must be given as Leclaire who is proprietor of the land

—

№ 6
Blache
vs
Wisely

Pliff was allowed to amend his declaration on payt. of 20/ Costs.—

—

№ 402
Burnet
&
Halbert

Defendts mo. granted.—

—

№ 534
Lamboal
vs
Haverval

Rule discharged as to writ of Capias—

—

Fellows
vs
Munn.
&
Contra—

Judgt. confirming report—

Nº 207 Masson vs Taillon	Interlocutor ordering a survey & plan. —
Nº 1594 Lemieux vs Thayer	Judgt for Plff — wages —
Nº 322. Dubord & Armstrong & Legueltys	Judgt of distribution. —

Saturday 5th October.

Present

Justices Reid, Foucher, & Pyke.

Nº 426 Maitland & al vs Deschenbeault	Plea of exceptions pleaded by Defendt dismissed —
Nº 1878 Cuyler & Holt	Interlocutor —
Nº 550 Vandeslays & Bleury	Exceptions dismissed —
Nº 772 Hervieux & Decarry & al	P. Verbal homologated

Ex parte
John S. Hutchins
ad ——

On application of Mr O'Sullivan on behalf of ~~the~~ for that the opinion of the friends or relations of the minor be had, as there has been no regular opinion taken under the order of the Court of 20 June last. —

—

№ 1772
Gay
~
Johnson

On defendt motion to quash process as in the Copy there is no addition given to the Defendt —

Grant for Pleff. It is only in the writ the addition is necessary —

—

№ 632.
Kendall
~
Lambert

On defendt mo. that Pleff's action be dismissed for want of security

—

№ 154.
Pothier
~
Foucher
&
Henry &c

Bedard in answer — The only question now before the Court is in regard of the administration of the property of Mde Foucher — The Pleff has established the proposition beyond a doubt that the faculté de tester est de droit Naturel. Pothier. ch. 1. p. 3 — arrêts de Lamb. p. 610. ch. 52. — Lepretre — 1 Cent. Ch 50. p. 157 — all laws made against the liberty to dispose by will are therefore considered as infringing the natural liberty of man — and when they are removed this natural liberty is re-established — The laws made in restriction are made more to prevent surprise, than restrain the right of testing. — It is a question here also whether

Mr 7

Mr F. could testify in regard of the chose de l'heritier but the Court cannot determine finally on this, as the parties interested are not before the Court — particularly under the substitutions of his will — The Pltff as Exor is not bound even to dispute this point with the heirs nor call them into the Cause for this purpose — he claims the execution of the will only —

Mr F. had by the power to give to Mad Exor the administration of Mad Veuve's property — but this cannot be doubted, there is no law ag[ain]st it — & he could dispose of this property in this way —

The transaction between heirs Fortier, 6 June 1816, tends to simplify this Cause — as in regard of Pltff. it ought to be carried into effect except as to the administration of Mad[e] Veuve's property — Pltff has pleaded the nullity of this transaction as in regard of Pltff it could not affect him who claims the exec[ution] of the will — it ought to be considered as loi de famille Domat. liv. 1. tit 13 Sec. 1. pa 146. des transactions N[o] 1. 3. 9 & 16 — Rep[ertoire] vo transaction — p. 241 — §. 4. p. 238 §. 2. — p. 243. §. 5 — Pigeau des transactions. to shew wa[y] matters the heirs could transact upon their matters, they must be bound by it — This transa[ction] tends to shew that the Succ. Fortier is entirely testamentary — & Mad Veuve by excepting the Legacy made to her, has become heritier testamentaire & to submit to all the conditions attending the bequest made to her, that is in regard of the administration — Mr. Fortier as Tutor to his daughter has transige in the name of the minor — no aut. was demanded by M Fortier of Mr Fortier during his life time in regard of the rights of her mother in the estate Comty between her & the Testator — as the fruits wd have fallen into the Community of M Fortier & his wife — M Baron has also transacted in regard of his rights as heir of his mother — Now all is united in one mass to make a division among the heirs — The transaction contains a formal acknowledgment of the will —

the F. by his will revokes his Sec. without that of his wife and of this the heirs were well satisfied as appears by the transaction itself —

As to the Inventory, is willing to take it as sufficient an moyen d'un recollement qu. ought to be ordered by the Court — consents to accept the sale as made to the best advantage —

As to the conclusions in the decln the Pltff could take none other they ought to be granted in a summary manner —

The only question is whether Pltff ought to have the administration right of sale of Made Vigé's property —

M. Vigé. The Pltff is contradicting by his arguments the conclusions he has taken, in regard of the Inventory as he by his declaration contends for a right to make the Inventory himself — & that made by the Heirs was illegal and void — The declaration contains no conclusion for the administration of the property of M. Fortier — and therefore cannot be granted by the Court — nor can any Judg. be rendered on this declaration which can be executed. —

The transaction cannot be invoked by Pltff, nor the execution of it demanded by him, as he has asserted on the nullity of it — he cannot avail himself of a part & reject the rest without the consent of the parties. —

Monday 7th October 1822

Enquete day

Tuesday 8th October.—

Present

Justices Reid & Foucher.—

Harbec. }
Papineau }

On Pltffs motion for hearing instanter on plea of exception per. à la forme filed by Defendt

Sewell for Defendt The Defendt is sued on an obligⁿ said to be passed before Mᵉ Boileau & Confrere, Notaires— this is insufficient, as the christian names of the Notaries ought to be given, the title Mᵉ, contains nothing definite or descriptive of any particular person, and there may be many Mᵉ Boileaus, and the pltff ought to be held to describe with certainty which of them he means — The word confrere is also uncertain, whether it be meant by the Pltff that Mᵉ Confrere was one of the notarys who passed the obligation, or whether the word be applicable to any other person or thing, cannot be understood, from the loose manner in q/h it is expressed — The pltff prosecutes on an obligation for old Currency, or so many livres ancien cours, without shewing what this antient Currency was, or its value accords to the actual Currency of money in the Province as established by law — no Judgment can therefore be given for the pltff on this form of a declaration.—

Mᵉ Bender for Pltff contended that the exception was frivolous and contained no sufficient ground of defence to the action.—

Wednesday 9th October 1822.

Present

Justices Reid, Foucher & Pyke

No 951. Guillaume vs Prevost & Contra.	Judgt Report homologated
No 937. Farran vs Colburn & al'	action dismissed
No 63. Gibb & al vs McPherson	Judgt for Plff
No 1542 Langlois vs Wagner	Judgt for Plff
No 26 Auclaire vs Auclaire & Contra	Principal demand dismissed & Judgt for Plff on Incidental demand
McGillivray & al' vs McKenzie & McTavish Intervs	Bentz interested in this Cause, I withdrew from the Bench. — Cause argued in part — Cont'd till to morrow for further argt —

Thursday 10th October 1822.

Present

Justices Reid Foucher & Pyke.

Dalrymple v. Beaubien & } On action on promy note, made by one Jr Hallowell to Defendt and by him indorsed to the Pltff — Plea + non assumpt + and that note was an accommodation note —

Defendt moved for a Com. Rogy to examine the drawer of the note resident at New York. —

Gale for Pltff opposed the motion, as the Witness is interested and cannot be examined. +

Friday 11th October.

Present

Justices Reid, Foucher & Pyke.

Dalrymple v. Beaubien } The Court granted the Defendants motion. —

see auths cited in Case of Donegani v Pickle. Note book. p. 6. —

Saturday 12th October 1822.

Present

Justices Reid Foucher & Pyke.

Webster vs Toupin

On plaintiffs motion to ex. Defendr on faits & articles, before plea pleaded —

L. M. Vezé for Defendt contended that the motion was premature, and could not be granted until after issue joined —

Sewell for Pltff referred to the general principle of law as contained in the Code Civil, and as adopted by the rules of practice —

Lewis vs Eissenhart

On rule obtained by the Plaintiff against a witness to shew cause why a contrainte par corps should not be granted against him for not attending to give evidence as a witness for the plaintiff after having been duly summoned — The Rule being returned and the said called, did not appear — whereupon McBlenny for the pltff moved that the rule be made absolute —

Monday 14th October.

Present

Justices Reid, Foucher, & Pyke.

Lewis. v. Eissenhart } Rule discharged. the Court will not proceed against a witness by attachment in the first instance without proof of marked contempt or disobedience to its orders, (manifeste disobeissance) but by fine only, in the terms of the Ord. 1667. tit. 22. art. 8. des Enquetes. where the fine was limited to 10 livres — but by the Prov. Ord. of 32. Geo. 3. ch. 2. s. 4. which seems to have had this course of proceed under the Code Civil in contemplation, the fine is made arbitrary to the extent of £10. See Case. Warwick & Co. v. Yule & al. 10 June 1820 — on rule agt. one Hudson a witness. —

Webster. — Toupin. } Motion granted —
see Case of Jetté v. Deshautels. 2 Feb. 1815.
Poth. Proc. Civ. —
N. Denizt. vo Faits & art. § 1. No. 6. —
Stile de Gauret. —

Robert Wood
& Vs
J. Vandersluys

On trial by Sp. Jury.—
Rule for trial discharged.

No 404.
Letourneau
& Vs
St. Denis.

On Defendt motion for a new trial.—

1st— Because vabal testimony was allowed to be produced in proof of promise of marriage—

2. Because witness allied within the prohibited degrees were allowed to be examined.—

1st— The proof of promise of marriage was allowed to be made by witness— by allowing proof of the publication of bans, and of the Defendt appearing before the Curé & consenting to the marriage— her Defendt was taken by surprise, and the minds of the Jury led away by an undue influence arising out of illegal testimony—

2d Refers to Poth. who lays it down that relations cannot be heard as wits— What the Defendt stated certain words in regard of Pltff's character, it was in the presence of his family, when he conceived himself in safety to explain his sentiments.— Denizt. Vo Temoignage. No 6. & 10. a bastard even cannot be heard— Rpse vs Lemst. p. 65. 66—

3d The verdict contrary to evidence— that is legal evidence—

4 Damages are excessive —

Mr Roi for Pltff. There is no question before the court touching the first Count in declaration as the verdict is not founded on it — but on 2d Count—

2d There are exceptions to the rule that relations of the parties cannot be heard as wit, particularly the case of what passes in secret, and in the interior of the family — Louis de Bonnier. Lit. 22. art. 11. of Ord. 1667 — Here the wits produced were the relations of Defend. — which is more favorable. adv. Bonnier —

Viger in reply, this exception to the means of relations to facts in the interior of a house or family, extends only to acts of violence vrais de fait, but not to matters of contract between parties. —

No. 11A
Jones, Cur
" }
Armour }

Action of assumpsit —
Walker for Pltff asks for Judgt — on verdict addmd

No. 13
Bridge
Jul. }
Sheldon }

Action for goods sold & monies advanced —
Walker for Pltff. action partly for merchandises sold & for monies advanced to Defend. on contract for delivery of staves, which Defd never delivered. —
The Pltff relies on the 2d. Count in the declaration — which shews a species of fraud in Defend. who was never in poss. of any staves at Prescott. —

su. 1 Phillips Ev. 585. & seq.

Bleury for Defd. This is a vexatious action — it is premature — as appears by Pltff's own exhib. sur memorial — exh. No 1. by wh. Defend. was bound to deliver on 10 Dec. inst. 1822, the staves in question — a writ has been produced to say that this was an error in Contract, as it ought to have been Dec. inst. that is, 1821 — But there is no proof besides this to support the action — There is no fraud proved as Defend — or that he was in default to deliver the staves —

Walker for Pltff — It is an error in the agreement the 10th Dec. rejd, it was drawn up in Nov. by Dfts and not executed till Dec. without correcting the other parts of the agreement — refers to the evidence adduced to shew the error — If the Pltff should fail on other counts in decln he will be entitled to recover on the 3d & 4th as Defdt has pleaded the general issue to all the Counts —

No. 1889
Desjardins
&
Gendron
&
Gendron
opps

Pltff moves that oppos^n be dismissed as ~~Defdt~~ oppt has made no proof of the allegation

No 88
Patenaude
Ayet dt
Malo —
&
E contra

action for work & labor as a Carpenter —
Hears on report of Expts —
L. N. Vezi for Pltff — there are 2 Reports moves for hom^n of report of one of Expts as the opinion of the two others —

Bleury — the Exps. have taken no notice of the Incidental demand — in this report both reports are informal — but ob^s this not be sufft^t conclude to hom. of report of the 2 Experts — adding a sum of 80 dollars costs in favor of Defdt allowed by the report of the Expert whose Report is demanded to be homologated by Pltff

Vezi in answer, the Experts have examined the demands of both the parties —

№139
Gray
Hart

on hears on Exceptions — action for goods sold & delivd
Mr Aspinwall for Defts ~~did not appear to support~~
Exceptions —
Exceptions dismissed —

№1994
Peru dab
Brush

action on a bill of Exchange —
Boston for Defendt — action agt Defendt as Capt. of Steam boat Co of Commerce — on a bill
Plea. gen. issue — by proof it appears that Defendt is
not Capt. of that vessel, in qr capacity only it can be
maintained — bill for articles furnished for the Boat,
for qrs. Defendt not personally liable — Defendt has
shewn payt by Nicols & Sanford of this debt — the action
must fail, because no diligence done on the bill in
question, by protest, qr was not done till a 12 month
after the date of bill — Defendt has brot up several
wits to prove this demand — as appears by the acct
filed — Defendt has pleaded the general issue under
which he has introduced proof of payt — this he contends
was regular — the rule of practice for pleading in
cases of ~~pleading~~ assumpsit does not apply here —
Grant for Pltff — The Defendt is proved to be the Capt
of the Vessel — as such he is bound on his Contract —
The ~~plea~~ proof of payt — ought not to be admitted, as Defendt
has not pleaded it. — refers to rules of practice —
the testimony has been objected to by Pltff on this acct —
The demands of Pltff — vs the Nicols & Sanford cannot
be gone into in this case —

№ 284

Bastable & Bridges dat

Action to recover value of Jewellry put into hands of Defendr for Sale —

Gale for Pltff — matters were submitted to arbiter who made their award — there was not consent in writing for a reference, and therefore the action is brought for the value of the articles — but Defendr plead the award and claim a new reference, on the principle that the articles of Jewellry lost should be estimated according to the value of the trinkets remaining — There has been a tender of a sum less than that due after allowing a certain deduction as stated in their Incidental but same sum being pleaded by set off admitted an Incidental demand became unnecessary —

Walker for Defendr — The Jewellrs appointed to appreciate the value of the Jewellry lost attached themselves entirely to the value of the single article of Jewellry remaining and not to the value of the Inventary at large — The Replication admits the terms of the Submission, and the award shews that the valuation was not made in conformity to this submission — & therefore Defendr not bound by it —

№ 47

May dat & Wife

Lampman

Action on a Promy Note —

Ross for Defendr The note has been paid to the late M Ruiter — only question as to Costs —

Nickless
v
Brown

On demurrer to Defendt plea of Justification
Grant for Pltff — The truth of words used cannot be admitted to be proved — cites, case of M'Kay. v. St Germain cites also Repn v. Injne. —

Stuart for Defend — The French Courts held a Criminal & Civil Jurisdiction over libel — & there did not admit the truth of the libel to be given in evidence — but the principle in a case merely Civil seems not to be clearly settled, as by the laws of England — By the Roman law this proof would be admitted —

No 623
M'Gale
q.t
Gillon

Action q.t. for practising physic without licence — on Exps

Gale for Defend — The declarations mentions no day when medicines were sold, nor the names of persons to whom administered — but a vague statement that between such a day & such a day Defend did vend medicines but this is no certainty of time, place, person & circumstance a departure from the rule in this instance would be permitting a departure from it in every case — Defr cannot shew an alibi here —

Lussier for Pltff, declaration is sufficient —

No 1650
Hall. Intr
v
Lacroix

on hears on answers of one of pltffs on Serment Judiciaire —

Beaubien for Defendt The Pltff by his oath cannot justify the quantum of his demand — the Pltff ought to have established this by other proof —

№1807
Menard
Niven

on report of Practicers to ascertain the matrimonial rights of Plff —

Notts said —

№199
Graham
Morton

action for goods sold & delivered —

Buchanan for Plff — action supported under the evidence adduced — The Defendt made a compromise of plffs debt wrongfully — & besides took an assignment of all the debtors property — this was not the conduct proper for an agent — Paley p. 5. — 7. 1. Com. on Contracts p. 236 — Jones on bailments. p. 61 — Cod. lw. 34. tit. 35. law 1 — & law 21. — Poth. Mandat. 46. 47 — Repse vo Mandat. — Domat. lw. lt. 15. Sec 3. —

Rossiter for Defd. The Defd has exercised a sound discretion for the interest of Plff by — according to the accommodation with the debtor Newton — There is no proof made out of the demand —

—

№252
Belouin
Pilotte

on report of arbitrators —
Plff moves for hom. —
submitted —

—

Tuesday 15th October

Present

Justices Reid Boucher & Ryan

Nickless
vs
Brown

action for defamation —
Trial by 4 ps. Jury. —

The Court were of opinion that the matters in law pleaded by Defendt. that the plea of Justification in regard of the words first spoken touching the Plff having set fire to the house, was, inadmissible, but admitted the plea of Justification in regard of the words secondly spoken touching the Court Martial of Plff for embezzling the Kings Stores as secondly pleaded by Defendt

Mr Grant for Plff opened the Case —

William Annesley — ex. 22. Dec. 1821 — was who had left the Province — about 15 July 1821. at Mr Gibbs. where he dined w Defs. heard Defts say, that he had no doubt but fire at Nicklss & Mr D — was not accidental but by design — states. his being arbtr. calling on Plff to produce documents who s? they were all burnt — made and a statement — gave it to Plff to copy — signed the fair copy, wh they delivd. & agrd — it was rept from England as fraudulent — Mr Auldjo obt the original statement & shewed. that figures had been scratched out — Plff confessed the fraud & forgery — Before this he knew Plff to be a thief & a Rascal as he had embezzled the Kings Stores — was punished for it. — drew money from Defts — wrongfully —

The evening after Defts repeated nearly the same words — often spoke of it to Wr — this was injurious P. in opinion of Wr — the report became general —

X.

Cross. that the Wr did not hear all the above words on 15 July '21, but at different times when he met with Defendt —

Edward Clarke was at house of Mr Gibbs in July 1821 — Mr Annesley was there & Mr Lushington & Dr Lloyd — the conversation turned upon a number of fires wh had taken place — upon this Dt observed, that he had

no

no doubt that the fire of pt. had taken place at N. & Mr D. was not the effect of accident, but of design — Mr. asked if he was sure — D. he was not, as he had not seen them set fire, but from circumstances, he was satisfied it was the Case — that he & Mr Bowmen had been called upon as Arbitrators. the Counsel asked them to produce documents to shew the no value of articles lost, Duff D. he could not find them or that they were destroyed — Defts Letter arbitrators then proceeded to take down articles &c to judge of their value — when Inventory was completed gave it to D. to make a fair copy — sometime after Pl gave him a fair copies &c — he Letter Arbits certified & gave to Mr Audley to be forwarded home — that Mr Audley some time after shewd Defts. a letter by pt. it appeared there was a complaint of an overcharge in the statement of the arbitrators Mr A. called on D — Letter from him the original list of pts had been delivd to by arbitrators, & upon exp: it was found erasures had been made Letter figures written to encrease the amount in quantity & value — Mr A. shewed list to D — who confessed he had altered it, & he that it would be no harm to do it in order to make up for articles which had been omitted in the Inventory — Defts. also made some observations as to Duffs character that he had been in Duffs employ & had not dealt fairly with him — also that Duff had

bun

~~been guilty of embezzling~~ had made use of the Sheep Skins &c. had been put under his charge to his own use — W. understood by Dfs. saying the Ruff had scratched out figures & put in others was to ensnare Pfs's loss and defraud the Insurance office — That part of this conversation took place at Mr Gibbs' table & part on the sofa — 1 Q. That Pfs house was destroyed by fire — That he did not hear this report till two months afterwards —

X^d —

By this conversation, it was observed that fires had been very frequent, & fell principally on houses insured — the observations of Dfs. were made upon this — there was a good deal of alarm among the Citizens about this time occasioned by the frequency of fires — and W has heard suspicions expressed in regard of these fires — that all Dfs. &c seemed to arise from circumstances w.h. &c he was acquainted with — but did not say by &c the act had been done — that Df. seemed more interested in this from the truth of the statement he had made having come in question &c as to implicate his own character that to best of W.m Annesley was not present the whole of the conversation —
By Jury — never heard any surmises in regard of this fire from any other person. —

William Wilcock Sworn — Sworn K. Pfs till yesterday That in Sumr 1821, he dined at Mr Gibbs — did not hear Dfs. use any language to prejudice of Pfs. — Both before & after this he has heard D. speak of P — at one time say, that a man who would commit

commit forgery would not hesitate to set fire to his house — from gt. W. understood that P. had committed forgery & set fire to his house — this he never heard from any other person —

x

The language of Dft. was in the abstract — that a man who would commit forgery wd. set fire to his house — has had some disputes with Dfts —

John Ivy. resides in Montreal — had a rumor prejudicial to character of Nichols & McDonnell, — met Mr. Ault & told him of circumstance — he seemed to think that Dffs were not so culpable as supposed — the rumor he heard was that N & McD had committed forgery & had set fire to their house to defraud the Insurance office — he had a high respect for the integrity of Mr McD — & this induced him to speak to Mr. A — never supposed that the crime of setting fire to their house would attach to N. & McD — this was subsequent to the first to month July 1821 — Mr. Dft — who is considered to be in good circumstances — Has considered Duff as a respectable man. —

x

Wd be rather inclined to believe what was good than what is bad of Duff — Does not ken. with gt. the rumour in question originated — at time great alarm was excited by frequent fires in town — a persons were alarmed lest if their premises caught fire by accident their character might suffer —

a1

far as Wr knew or heard, he considered the fire purely accidental — Previous to this time the he never heard of any rumours prejudicial to character of Plff, but this he heard after the fire — considered it without foundation —

Here the Plff closed the evidence, but the Plaintiff not having produced the testimony of one Lusher a witness examined in vacation who was about to leave the province, which had been filed in the Cause, the Court was of opinion that this testimony must necessarily be laid before the Jury, or they would not compel the Defendt to go upon his defence — Whereupon the Plaintiff consented to a non suit

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№ 1572.

Brouillet vs Leclaire } On report of Experts

Bourret for Plff — Exps. warned to ascertain the amount of lods & rentes on the rente & pension viagere — the rule to ascertain the amount of Lods, is not by valuing the fond but the value of the rente & pension viagere —

Viger for Defdt the Defendt not heard nor called before the Experts —

№ 1589

Freleighsburg vs Bowker } Hears on Exceptn Defendt did not appear

Exptn dismissed

№ 137
Dufour
& Bro

On action hypothecaire. —
Rolland for Pltff — Defts set up a defence which he has not proved —
The Defts counsel, Farrinault did not appear.

№ 1878
Blackwood
et al
vs
Pasteur

On rule on Defendt — to shew cause why a contrainte par corps should not be granted for having made a frivolous opposition to the Sale of his property

Lussier for Deft — That an oppn is like a new action, by which a party is entitled to have his rights are discussed — That opposns are often made in a hurry without establishing all the grounds from the want of time or instructions. —

Rolland for Pltff — it is a contempt to stop the regular course of Justice, after Judgt has been rendered — there is fraud in the conduct of Oppost — to make such opposn — and means ought to be found to arrest this practice —

Fisher
vs
Lacasse
&
Lacasse opt

on same question. —
St. 41. Geo. has provided for cases of oppos3 in cases of real property —
art. 7. Tit. 27. Ordr 27 — cases of vove de fait —
Com. Dig. v° attachment. p. 573 — this oppsn may be considered as a fictitious action —

Id. vs Attorney. — attachment may go against him for knowingly his ministry to an improper act. — how the Costs accrued amount to more than the original debt
1 Ble. Com. p. 286. — Tit. 35. art. 3. —

No. 268
Savage
vs
Holt

Action for house rent —

Borton for Dfdt The house was occupied by the ~~Pltff.~~ Dfdt wife & without Dfdt consent —
Poth. Puss: de mari. No. 78.
1 Bony. p. 44. 578. 581 Cout. Par. art. 233. 234

Rossiter for Pltff — The lodgings were entered upon and possessed by Defendt himself — refers to depn of Mayor cité.

No 481
Chevrefils dat
vs
Chevrefils

Action of account

No. 1878
Cuyler
vs
Holt

On Report of the arbitrators —

Borton for Defendt — The statement made by the experts is altogether partial — states that Defendt has a revenue of £915 Sterl. — the sum of £500 stated to be in the hands of Mr Gatis, are not so, but were pd. by him to the late Curator of Dfdt to discharge Dfdt debts — The half pay of Defendt has been struck off since his Civil appointment The estimation of the rent of the houses is by far too high — Gives in a statement made by Dfdt — The Defendt is charged with maintenance of a family

by

by a former marriage, who have a claim for one half of his property as belonging to the Community —

No 416
Molson
Desbarats

Action for house rent —
Gale for Pltff — there is an error of ~~Defendt's~~ Pltff's clerk as to one quarter of rent — there being an error as to the quarter — this corrected by Clerks evidence

Mondelet for Defdt — this is no error, and cannot be changed by the evidence of the Clerk nor is his evidence satisfactory — the answer of Defendt. on facts & articles also shews that she has paid this quarter — value in suit will be about £62. —

see case of Bridge & Sheldon —

No 653.
Lacroix
vs
Lacroix
Hervieux
& David
oppts

1 Hurrys. p. 467.
Quest. whether the party here oppst to pay interest after the decret to the Creditor —

No 1864
Pigeon
vs
Whittycomb

Exapt dismissed —

№ 881.
Stuart
v
Beerworth
&
Garank

action petitoire. —
Grant for Pltff — asks Inst —
O'Sullivan for Gar has intervened & taken fact & cause for Defend — it appears that Sanguinet granted the lot of land to Nicols — who had possn — the Pltff afterwards obtd a deed of Concession of same lot from Sanguinet — he now claims the lot from Defend. who purchased from Nicols — The Pltff. therefore can obtain nothing from Defend — in this Cause who is prior in title —
Grant for Pltff — Defend. has made out no title whatever —

№ 898
Stuart
v
Nichols

Same question —

№ 234
Lafreniere
v
Warwick
&
Sheriff —

art. 172. Coutume

On Rule on Sheriff to return & deliver up the effects seized by him in this Cause —
Rolland for Sheriff — The Sheriff has executed the writ by appointing gardiens, who are alone liable — This action was instituted in 1818 & was dismissed in 1819 — and the laches of Pltff. must attach to himself, as the gardiens are discharged after 3 months as well as the Sheriff —
Bowen for Pltff — cites Proc. Civ. p. 178. 179 — the Sheriff is liable if he had appointed Gardiens, but by his return it does not appear that he has appointed any Gardiens

and the pltff can have no recourse agt them — and Pltff is entitled to his rule agt the Sheriff &c —

No 1606
Miller
vs
Burton

On action en Garantie —
O'Sullivan for Pltff — the lot in question No 8. was conveyed by Defendt to pltff It appears that the Seigniory was divided between Generals Campbell & Christie, & by a line drawn to divide the Seigniory, the lot claimed by Brown the pltff is called No 8. and by the original concession it is called No 6 — Miller had possn under the act of his agent, Gunn — & by the concession of Defdt is entitled to his recourse agt him —

Rolland for Defdt — The Pltff is sued in an action en vove de fait by Brown, who has been in possession for years past — in this case the Pltff can have no right of warranty agt Defendt as never authorised Pltff to commit such vove de fait under any title he might give him — The Defendt by his letter authorised Warner to make a bargain only with Pltff for the 3 lots, but then was no delivery nor sale completed — Warner gave Pltff to understand the lots were theirs, but he had no power from Defendt to do so — there is no proof of delivery of Possn by Defendt nor by any person on his behalf legally authorised — Pltff knew that the Lot of land would not be found, as Derick possessed a part & Brown the other —

Wednesday 16th October

Present

Justices Reid & Fournier

The King
vs.
Fraser
&
Doucet
T.S.

On Pltff mo. for payt of remainder of monies in hands of T. Sasi

Rolland for T. S. — he had a transfer of all the property of Defdt in payt of his debt — Here the King has no privilege, at least none appears. — Here is a Judgt but it does not appear upon what it is founded —

Ross. for Pltff — The Subject must shew a privilege to entitle him to take the money in preference to the King. the transfer here is of no avail to the T. S. — as it was made for the benefit of all the Creditors. —

No. 1338
Fisher
&
Little

action by Pltffs as Indorsees of a Promy Note —

Grant. for Defdt — The Pltffs have been paid by anpts a bale of exchge in discharge of the debt. besides it appears that the amount were afterwards paid to the payees of the note —

Borton — Pltffs were the holders of the note when Defdt made the payt to the payees & not bound thereby —

No. 471
Harbec
&
Papineau

action on an obligation — hears on law

№ 412
Toddal
vs
Holt —

Action for goods sold & deliv.d to Defds wife —

Rossiter for Pltff. The goods were taken possn of by the Defend.t and claimed them as his property — which is enough to bind him. —

Boston for Defend.t The Defend.t is not bound for this debt — gave information to the public that he would not be bound for his wife's debts — and noticed this to Pltff.s who said they had secured themselves — Pltff.s have not even proved that the person to whom the goods were sold was the wife of the Defend.t —

—

№ 619
Gray
vs
Wisely

Action for work & labor as a printer & subscription to a gazette —

Blenny for Defd.t admits to owe £3. 2. 2 & has paid the balance — refers to exh.t № 3. 4 & 5 — The acts of Pltff is very irregular, as appears by exh.t № 1. & 2 —

Mondelet for Pltff — no proof of payt — nor that Langhorne was the clerk of Pltff

—

№ 1731
Lusignan
vs
Denis Benjn Viger
&
Lorimier.
mis en Cause

action on a transport. —
means on Lorimier plea. that he has proper to answer for Dower of his wife —

Blenny for mis en Cause, contends that he

has

has property sufficient to pay the dower in question

L. Vizé for Defendt — states by the deed of sale to him from Dilsonnier, he was bound to warrant him agt all mortgage claims, but did not state that he had stipulated a douaire prefix in favor of his wife for 12,000tt — agt the payt of which at a future day he prays security. — etc. case of Hughes &c.

—

№ 294.

Vezina et al
&
Piccard et ux

Action for goods sold —

McDonell for Defdt — The rule to interrogate the wife of Defendt on faits & articles was — but Piccard Defendt was never called & the Pltffs. no. to declare faits & articles avérés agt him cannot be received nor is any proof agt. him — the motion was agt Joutte Vallancourt originally, but has been since changed to the Defendants — other affidavits are produced —

Bleury for Pltff — There is evidence in the cause besides the faits & articles — The faits & articles were duly served —

—

Thibodeau
&
Bousquet
&
Dauphiné

An Opposition afin de conserver

Mondelet for Pltff — The Pltff oppt is now in poss. of the land exchanged, & agt the mortgage was created, & claims that he have security agt. a mortgage on this land, as he may be exposed to pay the amount — particularly as Defendt is in a state of deconfiture —

Bourret for Pltff — The oppn cannot be maintained as in this case no realty could be sold, this oppn has had the effect of stopping the sale — etc cites Archambault & Roi & Fullum oppt —

№1577
Fowke
v.
Hazard

action for money had & rec? & on acct stated

Walker for Pltff. The Defend? was employed by Pltff to collect some debts for him - & under this authority did recover several debts for him — and it is in evidence that defend? made arrangements with Pltff. debtors & Defend? offered a note to Pltff for the sum of £30 — on this account —

Boston for Pltff. action not founded, nor proof to support it — only one wit: adduced who speaks to a desultory conversation between Defd? and a third person which ought not to bind Defd? as words an acknowledg? of a debt, as Pltff was not present nor any question touching the amount of any debt Defend? owed to Pltff

—

№235
Lebrun
v.
Charles

On act? rendered by Defd?

Sewell for Pltff — there are debats de comptes and parties now heard thereon — by these it appears that Defend? is in poss? of much greater sums of money as well as real property beyond that cont? in the account —

Rossiter for Defend? — as to the real property it is so incumbered that it will not pay the debts due on it — there is no sufficient evidence to shew that Defend? was possessed of the property alledged

—

McNiderosh
v.
Fraser
&
Fraser & al
opps

On oppn afin d'annuller —
Marriott for oppn — admits proof is insuffe

№ 1889
Arnoldi
v.
Bellestre

action for medical attendances &c —
Bourret for Pltff — Defendt is precluded from pleading prescription by pleading other matters — 1 Pig can. p. 166. 6. 177. — cans. of Hall. vs Lauvis — 2 ap. Roi. —

Stuart for Defdt — if Defendt had not added the plea of prescription with the other pleas to the merits, the authority would apply — same form of pleading is adopted here the same as in England, in case of non assumpsit infra sex annos, is pleaded after a general plea of non assumpsit. —

№ 390
Holt
v.
Savage

action de revendication —
Bolton for Pltff — The wife of Pltff carried away certain of his effects into house of Defendt — part of which have been attached in his possession —

Rossiter for Defendt — The effects here claimed were sold to wife of Pltff, and possessed by her separate from the Pltff — The Pltff has forcibly carried away the property attached, but has not proved the property to be in him —

—

№ 425.
Brackenbridge
v.
Forrestal

action ag Defendt as Special bail —
Bolton for Pltff. a plea is set up by Defdt of a surrender, which Pltff contends is insuffit as not having been made in time — The surrender was made only on the 3d of August, whereas at latest it ought to have been made on 18 July —

Grant for Defdt — The surrender is always in time

time of made before any proceedings had upt them — the writ of Ca. Sa. having been sued out in this Cause, the Debtor surrendered himself to the Sheriff, who now holds him under that writ. —

Boston for Pltff — The Sheriff could not legally accept any surrender after the time limited by law —

—

N°

De Longueuil
&
Terrien — }

Ou moyens de faux. —
— Bedard for Defts. pltff in faux —

The answer of Pltff, that the act has been considered as a true act by one Prideaux, is of no value, and if the moyens now alledged be true, this will not prevent Court from declaring the acte faux, whatever the parties may have thought on the subject — The Defts. here is a third person & has not admitted the validity of that acte — The acte is stated as an acte executed before a public notary & witnesses but no witnesses are named in it, & the name of the notary is not certain — It is said that ~~Chas~~ D ~~Stuart~~ Alex Grant has signed the acte, but this does not appear to have been done — there is a signature after that of the notary, qui alone wd. void the acte qui to be made par procuration of ~~Chs. Stuart~~ Dan. Al. Grant —

Stuart for Pltff — This is an action for retrait Conventionnel, under the title or acte in question qui has been admitted to be good & valid by all the predecessors of the Defend — The Notary has stated nothing contrary to fact, but has not

bee

been particularly stating that D. A. Grant appeared by his attorney — The place of the signature of one of the parties to the act is not material, if the notary signed afterwards — That the defend. having admitted and received the acte in question as the title under which he holds his property, cannot now be admitted to contest it — The Defend. has not denied in sufficient form the truth of this allegation — N. Denis. Vo Faup. p. 452. 479. 488. 489 — & 447. —

Bedard — That a party when he has acknowledged an acte true, is not thereby precluded from proving the falsity of it — the poss. of the land in question by Predaie is no acknowledgment by the present Defendant — the Defend. is a third person — would not be bound by the acknowledgments of others — The signature of Wm Grant as Pr of D. A. Grant, after the signature of the notary is of itself a faux. — The act says that D. A. Grant was present — it appears by the act itself he was not — nor was Predaie himself present —

No 509
Ward
Denan

Hamm on the merits. —

Action on Caution Judiciaire —

Stuart for Defd — The authority of the Court here has been irregularly employed, and the condition upon which the Security was given had not happened, as a new award ought first to have been made, nor are there any sufficient obligation expressed in the rule produced to bind the Securities — nor there are no signatures of the parties — There is no evidence of any new award having been made & filed in conformity to the rule — Pltff has only filed a copy of the Judt of 19th April 1822.

Boston for Plff action is regular

No 402
Burnet
Halbert

action on special bail —
Ogden for Plff. Defdt has filed a receipt from Messrs Rodgerson & Co— at present the Plff cannot admit this receipt, the handwriting of the men is made but does not appear that Plff is one of that firm —

Thursday 17th October 1822.

Present

Justices Reid & Foucher

№ 1797

Dunn dat
vr
Mr Johnston

On Plff's mo. that defend. be held to change conclusions to the Country —

Plff. Copartners, and brewers — Defend. a tavernkeeper — transaction, a promissory note payable to order. —

The Court were of opinion that the parties might be considered as traders, in their respective departments of selling of beer, and as the note was on the face of it a commercial transaction, it was a legal presumn to have been given in the course of that commerce in which the parties were concerned —

№ 1882

Desrivieres
&
Durocher

On Report of Experts —

Rolland for Plff asks for hom. of Report & that parties be held to draw by lot as to the different lots —

Stuart for ~~Defend~~ Desriviers — objects to the principle of the Interlocutory Judgt — the Report is insufficient. The interests of Mrs Desrivieres & her sister, extends to every part of the land, & cannot be limited to any particular share or half, but is an undivided interest in the whole — and the whole ought to be sold — If the heir were to purchase of a coheir, the share so purchased as a part of the whole would

Rep. p. 529. 8° Licitation

would be a propre in his person, but if the division is made, the share afterwards acquired would be an acquet — The right of the heirs in this property is to enquire whether the property can be divided into as many parts as there are heirs to the claim — here the Experts have divided the whole into 2 halfs, & then subdivide those halfs between the heirs of the two families — the whole should have been divided into 7ths the right of the heirs would be greater — The Experts should have been ordered to have ascertained the value of the whole ~~should have~~ & in this respect the Interlocutor is defective — This shuts out facts to argue upon & shews the injury complained of, as it is impossible to say whether the experts have made a division of shares in equal value — There is also a dwelling house & store, which has been divided in halfs also, giving to the one family the house and the Store to the other —

Bourg. tit. 5. Ch. 1. Da 1. N. 8 —

Beaubien for the pltffs — The Report must be hom. — there cannot be a division into sevenths — the whole must be divided into two halfs giving to each family one half — this is according to Law — The heirs Durocher, claim a share as heirs of their brother, the husband — the heirs of Desrivieres claim as heirs of the wife — this divides the whole into 2 masses Paternal and maternal — The parties here not entitled to a division into sevenths — the Durochers are entitled to one half — & the Beaubiens the other — & they proceed to divide the whole into sevenths — the Beaubiens have no right to this —

Poth. Succ. Ab 4. art. 4.

№ 548.

Evans
v.
Huntoon

action for rent
Henshaw for Defendt gave two notes for rent. which notes are now filed, & shew the present demand to have been denatured —

Morrough for Plff — There is no novation created, neither by express contract nor by law. Both. Obl. №. 581–594.

Repue re novation.

Henshaw — the action ought to have been brought on the contract upon which the parties, by the notes were agreed to be taken —

№ 143

Forstersab
v.
J. M. Mondelet

Walker for Plff moves for Judt for £34 — the amount proved to be due with Costs — the parties will hereafter ascertain if there is any deduction to be made from this sum. —

№ 866

Derick
v.
Ginn

action for Rent
Grant for Defdt there is a lease dous seing privé but is not proved, nor is there any proof of the possession of the farm in question —

Boston for Plff, there is proof of possession of one Millar under the defendt

№ 572
Huntsval
Pirrancbsal

5. Jon Rep. 573
Kearsley v. magan

action for goods sold & delivd—
Rolland for Defts. Rodk. McKenzie, & contests the demand— the question here is whether there is novation— the Pltffs having taken notes for the debt— to constitute novation there must be an intention to create novation, cits. Poth. Obl. № 546— Evans Poth. p. 380. 381— the holds case where giving a bill or note is a satisfaction of the debt— Lawmbe. Vo. novation— a merch. takes an oblign for his debt changes the nature of it— How the Pltffs keep the notes and prosecute their action for an account— they say nothing about the notes in the declaration and the Defendt is not bound to take notice of them, the Pltff ought to render some account of the taking of these notes in his declaration so as to give the Defts an opportunity to answer— the answer or Replication to the plea, sets up the notes and states their insufficiency but still there is no offer made to return them to the Defendts nor can the Defendt touch them— the plea here has not therefore met with a sufficient answer and is within the case of the demurrer cits 5 J. Rep. 573— The depos: of Mr Allison cannot be received in regard of the novation, as it is a matter regarding him personally— it appears Allison consented to give delay, on the Defendts granting a note for the amount— as McKenzie was alone bound for the debts of the Partnership Pennell objected to giving a note, but agreed to guarantee the debt— it then was settled that this should be done,— and advice of an Attorney was taken, how this could be done

without

without creating novation — this was done by Perrault's signing a letter to make this guarantee — wh letter is now filed — it was settled that the notes were to be payable to Allison or order, whereby he became proprietor of the notes and wholly changed the nature of the debt, these notes are now the property of the Succession of Allison, they belong to his heirs & cannot be taken from them — The letter of Perrault is a convention wh cannot affect the Defds McKenzie, who cannot be bound by it, nor affected by the promise that the taking the notes from McKenzie should not operate a novation — but the taking these notes was in effect, changing the nature of the debt as to McKenzie who is entitled to avail himself thereof — The intention of McK — may have been to create novation altho' it was not that of Allison — this is indeed states that McK. consented to the arrangement not to create novation, but in this he is not a competent W. as it respects his own cause & his own responsibility — But at all events the novation has been effected, by the agreement being executed, and the original debt discharged — the notes so given are still in poss.n of Allison — he rec.d money on acct. of the first note, wh was executing the contract so entered into in taking the notes — The notes were sent to the Bank with Allison's endorsement, for collection, this was a transfer and negotiation of the notes, which shews with what intention the notes were taken. & that Allison meant to take his recourse thereon — The W. Allison, says he took no acknowledgment from McK — that he did not consider the debt as innovated, having McK's note, and Perrault's acknowledgment that in regard of him there continued the same liability & no novation —

Grant for Plff — The plea of novation cannot be supported, as both Perrault & McKenzie the Defds were well informed & intended there should be no novation. — There can be

be no novation by mere presumption, but it must be express and apparent; and this the defendt ought to have shewn — Poth. Obl. № 559. here there was no discharge of the original debt; the only object was to give delay to the debtor — the case from 5. Tom Rep. 573 — makes agt Defendt — The Pltffs have accounted for the notes. by filing them with the Replication, it was not necessary they should be noted sooner — and when the objection is raised the pltffs meet it by producing the notes and offering them back to Defendt which is all the Pltffs were bound to do — Taking obligs for notes no novation so held in case of Armour vs Pickersgal — Allison's a complaint lies to all the points on qt he has been exd — and his evidence shews the intention of the parties, and no writing was required from Allison to say that he agreed there should be no novation — The notes here were never negotiated — only sent to the Bank for collection —

—

№ 354
Perrault
vs
Hibbard

Action for Doubt on Exchange of Lands —
Boston for Defendt there are mortgages on the land agt which Pltff must secure him — for this purpose a day should be given to Defendt to shew monies he has pd. on acct of these mortgages —
Sewell for Pltff has given accounts for all the objects demanded — there is no question in the plea about the pay of money. —

—

№ 1716
Roi
vs
Smith

Action on promy Note — endorsed to Pltff
Rossiter for Defendt Note is not legally transferred — Defendt bare trustee — no value rec'd expressed in endorsment refers to St. 34 Geo. 3. ch. 2.

№ 434.

Beaubien
v
Morley

Action en separation de Corps & De biens —

Rolland for Pltff, contends that the evidence before the Court is sufficient to maintain the action refers to the evidence as containing the strongest proofs cites arrêt. 1 Journ. d'Aud. 1 fev. 1616 — 6 Vol. p. 134 — an accusation of adultery against the wife is alone sufficient to authorise the separation —

Mondelet for Defend[t] refers to the evidence also to shew the improper conduct of the pltff as not meriting any protection from this Court — the indecent conduct of the Pltff — her hatred and disrespect shewn to her husband, her want of care of her children & family concerns do not entitle her to any of the benefits she demands, either as to her share of the Community, or the care & education of her children she may be allowed a pension but no more

—

№ 1064

Warwick & al
v
Yule & al
&
Boudreau
mis en Cause

On Rule on the Gardien, for not delivering up the effects committed to his charge on exon —

Morrough for Gardien — the pltff did not sue out exon in the 2 months after the first seizure the Gardien is discharged, cite art. 172 Cout. — 1 Pigeau. p. 639. 640. Tit. 19. art. 20. Ord[e] 1667. —

—

№ 1585.

Bowhome
v
Desrivieres

Action for rente Constituée on a deed of sale by Pltff to Defend[t].

L. M. Vigé for Defend[t] Def[t]. bound to pay annually to one Jos. Blanchard a certain annuity of £4 — in lieu and place of Pltff — action for arrears of this rent. contends that pltff has no action on Defend[t] for these arrears, as Pltff does not shew he is troubled for this payt

of

of these arrears by Blanchard — Poth. Ob. 485. this is an indication of payt. and Pltff has no right to claim the money —

Bruneau for Pltff. as Blanchard was no party to this Contract he can have no action agt. Defendt. and the right of action must remain in the pltff wt. whom the contract was made — It was not necessary to state in the declaration that Defendt. should have the alternative to pay or produce the quittance of Blanchard —

No. 753
Vincent ux & Lambert & Dimeau Gar.

Action of account
on Report of Experts —
L. H. Vigé for Pltff. demands Judgt. for balance on the account —
cause goes over to Vacation.

No. 449
Rollaud & Scott & al

Action for fees & disbursement. —
Quesnel for Pltff. refers to statement filed.

Stuart for Defendt. The action for retaining and consultation fees does not lie — monies were at different times paid by the Defendts to the Pltff. wh ought to go on acct. of the legal fees due to pltff, & not applied to retainers — Pltff examd. on fact. & art. to ascertain the amount of the monies so paid, and all except a sum of £4. a £4.10 must be applied in this way as there was no special agreement that these monies should be otherwise applied — The tender will in consequence fall short of the sum due to the extent of the £4.10 — & costs ought to be regulated accordingly.

№ 335
Dumas
+
Surgeon

On action of account. débats de
Roi for Pltff, the account rendered is not suffe
The depense ought to be diminished —
Merlin ch. 8. §1. n. 31. 32 renders an act of interest of the money in his hands, as
well as the interest on the interest. —
a sum of 1200t. paid on rescinding a sale of mines property
ought also to be deducted —
demands that Defendt be held to render a new
act — of all the objects omitted. —

№ 428
Scott
Cassen

Action on Promissory Note

№ 1609
Hoofstetter
&
Fournier
&
Masson
Oppe

On opposition afin de distrain. —
Roi for Opposte faits & art. have been taken
on the Opposte to qt he has not answered, but
as these faits & art. tend to inculpate the Atts
they ought to be rejected as affecting the honor of the
Attorney concerned for the Opposte These faits & art. are
a disaveu of the Atts — & cannot be received — 1 Pigeau p. 350.
Denisart vo Desaveu. it is only the party himself that can
form the disaveu — The faits & art. are besides informal
they propose nothing on the subject of his name, age, place
of abode &c as required by the law — The party for this
cause must be considered as a Writ — abst. Pigeau 338 —

Ogden for Pltff — independant of the faits & articles
there is no proof in support of the opposition. — The
Opposte ought to take off the default be taken off & art. been
to answer or to oppose the faits & articles —

№ 1900
Jenkins & Mantagny } Mantagny appt

Oc oppos: afin d'annuller —
Morrough pr Oppot a delay given to pay debt — but this not made out —
Scott pr Pluff — oppos: ill founded — no proof —

№ 575
Foster } Ransom

action on Promt Note — hear 3 on Exceps
Mondelet pr Defdt The note not a joint and several note, & both makers ought to have been sued — Chitty on bills —

Rossin, it is alledged that note was made by Defend: jointly with another with whom he was in partnership —

Mondelet — the declaration does not contain such an allegation —

№ 1735
Allison } Turgeon & Gray en Rep. d'instn

action pr certain mill machinery made by Pltff pr Defend
Roi pr Defdt — proof made only for a part of the demand — a 3: maintd — not proved of — is an object of £13.10 — only proof is pr £7. 0. 10 — The defend: has made an incidental demand, pr the bad workmanship of the machinery furnished by Pltff — & damages arising therefrom —

Grant

Grant for Pltff — action for certain mill cranks made for Defendt according to the instructions of Defendt — rec the first found it too weak, got a 2d made of which was also too weak — the third was also made — Defdt kept the cranks never made any complaint till sued —

Friday 18th October 1822.—

Present.
Justices Reid & Foucher.

No 1878.
Cuyler
v
Holt. — } Judgt setting annuity to be paid by Defdt —

No 268.
Savage
v
Holt — } action for House Rent, dismissed

No 390
Holt.
v
Savage } Action dismissed —

No 412
Toddoal
v
Holt — } Judgt for Pltff —

No 425.
Brackenridge
v
Jones et al } Action agt Sps. Bail — Judgt for Pltff —

No 619
Gray
v
Wisely } Judgt for balce of acct costs as in the Inferior Court. —

No 1653.
The King vs Fraser & Doucet J.S — Rule absolute —

No 47
May & al vs Lampman — Action dismissed, each party to pay their own costs. —

No 416
Molson. vs Deshautels — W — Judgt for Plff — The Court allowed the clerk's evidence in regard of the error committed by him in one of the Receipts, considering it corresponded with the Statement filed & the other receipts produced by Defts —

No 1875
Trp. — vs Daubreville. — Plea of Justification over-ruled.

No 284
Bastable vs Bridges & Penn & Contra — Judgt for Plff

No 1994
Pearce & al vs Brush — Action dismissed —

No 13
Bridges & Penn vs Sheldon — W — Judgt for Plff — evidence to correct the error in Contract admitted —

No 2009
Letourneau v St Denis — Rule discharged

No 1769
Trim v Biache — Judgt en bornage.—

No 65
Abbot vs Welsh — Interlocutor, that Pltff be examd on his Serment Judiciaire.—

No 353
Dingwall v Forbes — Judgt. settling annuity to be paid to pltff.

No 1630
Hall val Lacroix — Judgt. for Pltff

No 178
Wood v Gent — Judgt. for Pltff.—

No 1585
Prudhome v Desilets — Action dismissed —

No 1821
Forand v Vincelet Johnson Garnt — action dismissed —

Graham v Morton — Judgt. for Pltff.—

N° 606 Thayer. vs Pierce et al & contra	W	Award confirmed
N° 294 Vegiard vs Piccard et ux		Action dismissed

Saturday 19th October 1822.

Present
Justices Reid & Foucher.

No 106.
Hildreth v Mitchell — Interlocutor ordering Experts to be named to estimate an allowance to be paid to Pltff

McLean v Trisdell & Culver oppts — Opposition dismissed — no delivery of goods on the sale made to Oppt.

No 551.
Boston v Bricaud & Bricaud Garden — Rule agt the Gardien — absolute —

No 1889
Arnoldi v Bellestre. — Plea of prescription rejected.

No 509
Ward v Jeremy tal — Judgt for the amount of the award — but not for Costs on the original suit, as not coming within the

No 143.
Forster & Ivy v Mondelet — Judgt for Pltff —

No 623. McGale q.t v Gillon. —	H	action dismissed — declaration insuff.t
No 354 Perrault v Hibbard		Judgt for Pltff — Pltff's security suff.t
No 1609 Hoofsteter v Fournier — Masson opp.t		Opposition dismissed — Rule to shew Cause discharged. —
No 1716 Roi & Laberge v Smith. —	H	action dismissed. — — Indorsement not suff.t
No 414 Evans v Huntoon —		Judgt. for 3 quarters rent
No 402 Burnet v Hall & al		Judgt for £160. 1. 2 w.t int. from date of demand — Dnd. —
No 515 Foster v Ransom		Exception reserved until hearg on merits
No 1808. Pirie & al v Smith		Defendr mo. overruled —

H Pme

№ 314
Barnard
v
Wallace

Judgt for Plff

№ 1900
Jenkins
v
DeMartigny
&
DeMartigny
oppts

Opposition dismissed —

№ 139
Gray
v
Hart

W
Brac

Defdt concluded to a Jury on some of Issues, Plff joined issue in same manner — Plff moved that Defendt be held to conclude to Country on the issue to the Court — and Defendt moved that Plff should be held to change his conclusions and conclude to the Court — The Plffs motion was granted —

№ 1600
Brown
v
Millar
&
Burton Gar

Judgt for Plff & action en Garantie dismissed

№ 577
Cartier
v
Normandin

Defendrs exceptions dismissed —

№ 161
Thibaudeau
Bousquet
Dauphiné
oppt

Judgt on oppos[n] that the purchaser retain 300[tt] in his hands to save harmless the oppt or that Plff give security to this effect —

La Pratique Judiciaire — tant Civile que Criminelle
reçue & observée par tout le Royaume de France
composée par M. Jean Imbert, Lieut. Criminel
au Siege Royal de Fontenay le Comte
Illustrée & enrichie par
M. Pierre Guenois — & M. Bernard Automne
Avt. au Parlement de Bordeaux —

Paris. 1616.