Kings Bench Montreal.—

Civil Pleas.—

February Term 1823.—

April Term — "

June Term — "

October Term — "

1823.

MOIS.	SEMS	JANVIER. S
1	Mercre	CIRCONCISION, (*Fête d'obliga-*
2	Jeudi	Octave de s. Etienne, [*gation.*
3	Vendre	Octave de st. Jean,
4	Samedi	Octave des ss Innocens,
5	DIM.	*Vacat* De la Vigile, M
6	Lundi	EPIPHANIE, (*d'obligation.*)
7	Mardi	du 2d jour dans l'Octave,
8	Mercre	du 3e jour dans l'Octave,
9	Jeudi	du 4e jour,
10	Vendre	du 5e jour,
11	Samedi	du 6e jour Mém. de St. Hygin.
12	DIM.	1 apres l'Epiph. *M. Incipit* 1 *Cor.*
13	Lundi	Octave de l'Ephiphanie
14	Mardi	s. Hilaire, évêq. (*Suff. Incipiunt*)
15	Mercre	s. Paul, hermite.
16	Jeudi	s. Marcel, pape, mart.
17	Vendre	s. Antoine, abbé,
18	Samedi	Chaire de St. Pierre à Rome,
19	DIM.	2 St. NOM DE JESUS, 2 M
20	Lundi	ss Fabien et Sébastien, m. *Incipit*
21	Mardi	ste. Agnès, vierge, mart.
22	Mercre	ss. Vincent et Anastase, mart.
23	Jeudi	s. Raimond de Pennafort (*Dom.* 3)
24	Vendre	s. Timothée, Evêq. mart. *Incipit.*
25	Samedi	Conv. de s. Paul, Ann. Cons. Ev.
26	DIM.	SEPTUAGESIME, (*com. Dom.* 3.)
27	Lundi	s. Jean Chrysostôme, év. docteur,
28	Mardi	s. Polycarpe, évêq. mart. (26) M
29	Mercre	s. François de Sales, évêque.
30	Jeudi	ste. Martine, vierge, mart.
31	Vendre	s. Pierre Nolasque.

MOIS.	SEMS	FEVRIER. S.
1	Samedi	s. Ignace, évêq mart.
2	DIM.	Sexagésime *Sol. Purific.*
3	Lundi	PURIFICATION (*d'hier*) M
4	Mardi	André Corsin,
5	Mercre	te. Agathe, vier. mart.
6	Jeudi	ste. Dorothée, vier. mart. *Or. Fid.*
7	Vendre	s. Romuald abbé,
8	Samedi	s. Jean de Matha,
9	DIM.	Quinquagesime. M
10	Lundi	ste. Scholastique, vierge,
11	Mardi	*Id Magn. Ant. propr. Missa sine*
12	Mercre	*Les Cendres.* [*Tractu.*
13	Jeudi	
14	Vendre	M
15	Samedi	M
16	DIM.	1 du Carême.
17	Lundi	
18	Mardi	M
19	Mercre	4 *Temps.*
20	Jeudi	
21	Vendre	4 *Temps.*
22	Samedi	Chaire de s. Pierre à Antioche. 2 M
23	DIM.	2 Sol. Mathias.
24	Lundi	s. Mathias, apôtre. M
25	Mardi	
26	Mercre	
27	Jeudi	
28	Vendre	

MOIS.	SEMS.	MARS. LE S.
1	Samedi	
2	DIM.	3 du Carême.
3	Lundi	
4	Mardi	s. Casimir, prince, 2 M
5	Mercre	
6	Jeudi	
7	Vendre	s. Thomas d'Aquin, docteur, 2M
8	Samedi	s. Jean de Dieu, M
9	DIM.	4
10	Lundi	ss. Quarante Martyrs, M
11	Mardi	ste. Françoise, veuve. (9) M
12	Mercre	s. Grégoire, pape, doct. M
13	Jeudi	
14	Vendre	
15	Samedi	*Cessant Suffragia*
16	DIM.	De la Passion. Sol. ST. JOSEPH.
17	Lundi	st. Patrice, évêq. M
18	Mardi	
19	Mercre	s. Joseph, 1 *cl. M. Credo.*
20	Jeudi	
21	Vendre	N. D de Pitié. M
22	Samedi	s. Benoît, abbé, (hier) M
23	DIM.	Rameaux.
24	Lundi	
25	Mardi	*Ad Laud. et Hor. Ant. propria*
26	Mercre	
27	Jeudi	Jeudi Saint,
28	Vendre	Vendredi Saint,
29	Samedi	Samedi Saint, 1 cl.
30	DIM.	PAQUES,
31	Lundi	(Fête de dévotion)

MOIS.	SEMS.	AVRIL.
	Mardi	(Fête de dévotion) 1 cl.
	Mercre	De l'Octave, *Semid.*
	Jeudi	De l'Octave,
4	Vendre	De l'Octave,
5	Samed.	De l'Octave,
6	DIM.	1. QUASIMODO,
7	Lundi	Annonciation, (25 *Mars*)
8	Mardi	s. François de Paule, (2) *Incipit.*
9	Mercre	s. Isidore, évêque. (4)
10	Jeudi	s. Vincent Ferrier, (5)
11	Vendre	s. Léon, pape,
12	Samedi	De la ste. Vierge. *Com. Crucis.*
13	DIM.	2. après Pâques,
14	Lundi	s. Herménégilde martyr (*hier*) M
15	Mardi	
16	Mercre	
17	Jeudi	s. Anicet, pape, mart.
18	Vendre	
19	Samedi	De la ste. Vierge.
20	DIM.	3. ste. Famille,
21	Lundi	s. Anselme, évê. *Incipit. Dom.* 3
22	Mardi	ss. Soter et Caïus, martyrs
23	Mercre	s. George, mart.
24	Jeudi	
25	Vendre	s. Marc, évang. *Procession.*
26	Samedi	ss. Clet et Marcellin, papes, mart.
27	DIM.	4
28	Lundi	s. Vital, *Mart.*
29	Mardi	s. Pierre, martyr.
30	Mercre	ste. Catherine de Sienne, vierge.

MOIS.	SEMS.	MAI. S.
1	Jeudi	ss. Philippe et Jacques, apôtres.
2	Vendre	s. Athanase, evêque. doct.
3	Samedi	Invention de la Ste Croix,
4	DIM.	5 ste. Moni. veuve. Sol. Philip. M
5	Lundi	*Rogat.* s. Pie V. Pape,
6	Mardi	*Rogat.* s. Jean Porte Latine, [*Vig.*
7	Mercre	*Rogat.* s. Stanislas, év mart. *Com.*
8	Jeudi	ASCENSION, [*d'obligation*]
9	Vendre	s. Grégoire de Nazianze, ev. M
10	Samedi	s. Antonin, évêq. 2 M
11	DIM.	6 Aprés Paques, *De Dom infra Oct.*
12	Lundi	ss. Nerée; &c. mart. M
13	Mardi	Apparition de s. Michel, (8) M
14	Mercre	De l'Octave, M
15	Jeudi	Octave de l'Ascension,
16	Vendre	s. Ubald évêq.
17	Samedi	*Jeûne.* De la Vigile,
18	DIM.	PENTECOTE.
19	Lundi	(Fête de dévotion) 1 cl.
20	Mardi	(Fête de dévotion) 1 cl.
21	Mercre	*Jeûne des* 4 *Temps.* Semid.
22	Jeudi	De l'Octave,
23	Vendre	*Jeûne des* 4 *Tems.*
24	Samedi	*Jeûne des* 4 *Tems.*
25	DIM.	1. STE. TRINITE', 2 M
26	Lundi	s. Philippe de Néri,
27	Mardi	ste Magdl. de Pazzis, v. *Suffragia*
28	Mercre	s. Pierre Célestin. pape. (19)
29	Jeudi	FETE-DIEU, [*d'obligation*]
30	Vendre	De l'Octave, *M. sine* 9 *lect.*
31	Samedi	De l'Octave,

MOIS.	SEMS.	JUIN. LS.
1	DIM.	2. après la Pentecôte. M *Proces.*
2	Lundi	De l'Octave, M *sine* 9 *lect.*
3	Mardi	De l'Octave,
4	Mercre	De l'Octave,
5	Jeudi	Octave de la Fête-Dieu,
6	Vendre	s. Norbert, évêq.
7	Samedi	s. Grégoire, VII. pape, M (25 Mai)
8	DIM.	3 après la Pentecôte
9	Lundi	s. Venant, mart. (18 Mai) M
10	Mardi	ste. Marguerite, reine,
11	Mercre	s. Barnabé, apôtre,
12	Jeudi	s. Jean de s. Facond,
13	Vendre	s. Antoine de Pade,
14	Samedi	s. Basile, évêq. doct.
15	DIM.	4 M
16	Lundi	s. Bernardin, (20 Mai)
17	Mardi	*Or. Fidelium*
18	Mercre	s. Marc, &c. mart.
19	Jeudi	ste Julienne, vierge,
20	Vendre	s. Silvère, pape, mart.
21	Samedi	*Jeûne.* De la Ste. Vierge
22	DIM.	5. Sol. s. Jean Baptiste, M
23	Lundi	De la Vigile. *Or. Fidel.*
24	Mardi	s. Jean Baptiste,
25	Mercre	De l'Octave,
26	Jeudi	ss Jean et Paul, martyrs
27	Vendre	De l'Octave,
28	Samedi	*Jeûne.* s. Léon, II pape,
29	DIM.	6. ss. PIERRE et PAUL, (*d'oblig*
30	Lundi	Commémoration de s. Paul, apôt

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Armour. — — & Peddie. — —	67	80	120	195	
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Allison & al^{l} & Jurgeon. —	119	233			
Arnoldi. — — & Bellestre. —	121	147	200		
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Brown. — — & Smith. — —	137	195			
Bouthillier — & Preston. —	152	190	199		
Beique. — — & Labelle. — —	179	251			
Barsaloue & & Orkney & al	189	198			
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V. U.

Vincent & ux.	& Lambert & al.	92	200		
Vegiant.	& Thetro.	115			
Vever & ux.	& Beauprés	127	146	192	250
Vegiard.	& Piccard.	129	176	197	
Vaillancour	& Piccard.	170	190		

W. X. Y.

Warwick & al	& Vicol & al.	13	41		
Woods.	& Vandersluys	33	113	169	
Warwick.	& Pomeroy.	77			
Warwick.	& Yule & al'.	124	180	197	
Ward.	& Goodsell & al	127			
Warwick & al'.	& Jones.	138	170		
Warwick & al'	& Wilcocke & al	141	189	200	
Wilson.	& Wisely & Econtra	179	201		
Wilcocke.	& Hart & al'.	180			
Wilson.	& Thayer & al'	194	215	251	
Willing.	& Johnson.	216			
Williams.	& Ross. & Ross of'	235			

BROADWAY
118 21

February Term. 1823.

Saturday 1st. February.

Present. —
Justices Reid & Foucher.

Ex Parte
On Petition of Simon McGillivray & others
in matter of
Voyageurs Fund

On motion on behalf of the Petitioners that the Court would direct the future application and distribution of the said Fund to be made in the manner prayed by the said Petition, on the reasons and grounds therein stated. —

Davenport
&
Thayer & al
Divers Opp.ts

Mr Rossiter moved on behalf of one of the opposants that he might be permitted to ex. — Kay, one of the Defts upon faits & articles in support of his said Opposition —

Mr Rolland for Plff opposed motion, as irregular and too late, the evidence being closed and the parties heard en droit upon their respective claims.

Hart
&
Warwick & al

The Court were of opinion that the intimation of the reserve made by the Plff for ex. the absent Witt. of qu. Defr. had a Ken. ought to be suffr. to bring Plff within the rule to admit his exn.

Monday 3d Febr. 1823.

Present

Justices Reid Foucher & Pyke.

№ 1764
Castello
vs
Slack et al

On defendts mo. to quash process from irregular service —

Grant for Pltff — Defendts have entered appe without any reserve — no affidavits produced when rule was granted — cites Hart. v Raymond —

Keith for Defdts — affidavits are in time & shew the irregularity of service —

№ 2125
Durocher dit
vs
Beaubien
et al
&
Bouthillier
et al Intervts

On defdts mo. to reject part of replid filed by Pltff. and also to a replication filed by Pltff to the Intervention —

Rolland for Pltff. Defdts have pleaded an exception to Intervention and are entitled to last pleading thereon —

Beaubien for Defendt. Pltff has added new matter in his replication which is irregular. —

№ 132
Boston
vs
Stevenson
&
Stevenson opps

On oppos[e] motion to be permitted to amend
Boston for Pltff — mo. irregular — and no motion can be granted to allow an amendment of what is wholly insuffit. —

Tuesday 4th Febv. 1823.—

Present

Justices Reid, Foucher & Pyke

No 1844

Prior
vs
Gillespie

} action on Promy Note —

Rossiter for Defr — The action ought to have been instituted in the Inferior Court, as the note is only for £10. 10 — the other part of demand for £2. 10 for money lent is not proved does not appear whether the transaction took place before or after the making of the note. —

Mondelet for Plff, contends that evidence is made out of all the demand —

No 1924

Warwick & al
vs
Nicols —

} Ogden for Plff demands Judgt for sum admitted by Defr. to be due by his answers on fait & art.

Boston for Defr — action on note — notes set up in compensation — difference as to a balce on an act. for gds there is no demand in the declaration. —

No 1853

Leclerc
&
Darre
&
Leclerc
vs
Frejeau —

} Interlocutor, directing that the defend. en garantie shall produce and file in Court a suffl. discharge from the payt. of the Rente Constituée on the land by him sold to the Plff —

No 94.

Lemoine de Longueuil
vs
Terrien. —

} The moyens de faux admitted as pertinens, except as to the 4th Art. and proof admitted thereon. —

№ 455
Fisher et al
vs
Lacasse
&
Lacasse
opp^t

Pl^ffs motion for a Contrainte par corps ag^t the Defend^r discharged.—

—

№ 674
Pichet
vs
Manenger

Rolland for Defend^r moved that he might be permitted to take new conclusions in the place filed by him in this Cause, and instead of denying the Pl^ffs right of action, he might be permitted to demand that as the Defend^r was a possesseur de bonne foi under both he should be considered to be entitled to keep and retain the issues and profits of the lot of land in question as his own during all the time of his possession until the time of the institution of the Pl^ffs action.—

M^r Ross for Pl^ff objected to the motion, and contended that according to the rules of practice no such course of proceeding could be allowed.—

—

Wednesday 5th Febr. 1823.

Present

Justices Reid, Foucher, & Pyke

Pichet & Maninzer } Defendts motion rejected.—
su Rg. Proc. Sec. 11. No 5.—

No 1888

Jos. Nicholls & Jas. Brown } On trial by Special Jury.—

Wm Annesley, Ks. parties, was at Mr Benaud Gobb in Montreal in July 1821.— That previous to this the Dwelling h. of Pliff had been destroyed by fire, the Revd Mr Esten. Dr Sharp. B. Gobb Mr Clarke the Defts. &c were then present— it was after the cloth was removed, heard Defts say— that the fire at N. & Mc. he did not sup. to be accidental, but in design to defraud the Insurance Co— as we understood by the occupiers— that Pliff. when in his employ had robbed Defts by charging Defts we term he Pliff had been employed by Mr Cunningham & drawing money for & from Defts— Said that he D— had been appointed Arbitrator to estimate loss at fire— that Pliff & McD— had com. a forgery in altering the original paper counts to statement of articles had been altered by them, qr had been proved, & that they wd not receive 1/ for their loss— That the paper had been delivd into hands of M & McD. to make out

out a fair copy that been altered by them so as to augment the no— drafts — that Mr Andrews had detected the fraud, & that either Pliff or Mr D — had admitted it — that the augmentation on value of entire lot had been made to a considerable amount — that N. & Mr. had produced documents which they at first had sworn to be burnt — That Defd. appeared animated, and as if he had animosity ag[ainst] Plff. — this made impression on mind of W. as he had never heard any thing before ag[ainst] Plff — heard this report common afterwards, & produced a different opinion of Plff —

That part of this conversation was on 15 July & part next day. & Defd. spoke to W. in same manner at diff[t] times, & W. attached weight to what was said —

Never heard any thing detrimental to Plff's character before — Defd. seemed anxious to injure the Plff's character, by the manner he spoke —

X-

Did not hear whole of the above conversation at Mr Gibbs table on 15 July, heard part of it next day — heard Defd. say at table that fire did not happen by accident — That fires were frequent in Montreal about that time — was not present at Mr Gibbs during all the conversation — cannot say how it was communicated — That Defd. & that Phonix Co — had obtained that sum of articles had been overcharged by them. —

Edward Adams Clarke — was at Mr Gibbs on 15 July 21 in Mr Annesley. Rev. Mr Lusher & Defd — were there heard that house of Plff had been destroyed by fire

the conversation turned on the fugement fires
wh they happd — when D. & he had no doubt in
his own mind but that fire at Puff was the
effect of design & not of accident — & that in
order to defraud the Insurance Co that he at first
he had had suspicions of it, but from further
circumstances he was now convinced of it — that
he had been named wh Mr Bowman to estimate
the loss, and had requested Mr Puffer to produce
documents to ascertain value of articles lost, but
that Mr N. had sworn they had been destroyed
so that he & Bowman were obliged to take down
the articles as Mr N. mentd them to them — that
at end of each days work Defd signed the estimate
& when finished delivd it to P. to make fair copy
that sometimes after P. gave a paper as the fair
copy & D. signed accordingly — & gave it to Mr
Audops — three months afterwards was surprised
when Mr. A. called upon him to say that he
was surprised that D. as a workman had over
charged many of the articles — on seeing D's name
the paper shewn him by Mr. A. — he saw that the
articles had been changed in value — told Mr. A.
not to say any thing but to obtain the original
from Puff — that Mr. A. obtd it & on exd it.
was found that Nos of articles left in Nos & values
had been changed — and that upon this A —
had threatened P — wh a criminal prosn unless
he produced those original documents which

he

he first swore had been lost — That P— being alarmed, produced the original paper — and that P— had confessed he had altered some of the articles — That P— had charged D. with certain sums of money for work done for D— while he was at work for Mr Cunningham — That this conversation made an impression on W's mind as he never heard any thing of Pluff before — That Defd. carries on considerable business. and is supposed to be a wealthy man — The Pluff is a married man. and carries on business as a — Stationer & book seller —

X—

That conversation was not general touching this fire — that soon after it commenced the Defd. M Lusher & W. retired to a Sopha & the conversation was particularly addressed to M Lusher & W — other persons might have heard it — That soon after the cloth was removed thinks that Mr Annesley retired — so did Dr Sleigh also — That about this time a number of fires had taken place in Montreal, some which were attributed to design — That Defd. did not appear to express himself w. anamosity of Pluff — That Dr had had a suspicion, & from circumstances of. had happened since this suspicion was further confirmed that Pluffs house had been burnt by design That there was a proclamation & reward offered to detect persons concerned in setting fire to houses — He afterwards never heard anything said derogatory to the character of Pluff — Is ignorant whether what Defd o. in regard of how Pluff made him pay for was true or not —

Wm Wilcoke Sleigh, Physician in Montreal — was at house of Mr G. U. in Sumr. 1821 — that Mr Clarke the rev. Mr Usher & Dfts. were there — that during the dinner there was conversation introduced by D. relating to Plff. but does not recollect it — has heard D. say, that he had no hesitation in saying that an Individual who had committed forgery & had injured himself would set his house on fire — this was in speaking of Plff. & from the character he knew of him. he truly believed he had set fire to his house — this was alluding to the fire of. took place at house of Medlers of Mr D — this was often said by D — not in secret — That the forgery had been committed on the papers which D — & Mr Bowman in regard of the value of the articles lost by fire — Was not acquainted w. P — before, this did not impress him w. a good opinion of him — considered him to be a very despicable character — That W has heard D. repeat this language both before & after the day he met D. at Mr Gibbs — That D. is an extensive trader & considered a wealthy man — That from the character D. gave him of P — he was determined never to go to his store —

X.

That he has had some difficulty w. Dft — he has had a feeling of contempt of D. but none of animosity — That he may have related the conversation he heard Mr Brown mentd to some persons — The words he has used as coming from D — he was stated — States cause of misunderstanding between him & D — in regard of a draft from Mr Chester

Defence

Geo. Moffat – Ks Pltff – has had dealings w him – has very little kn. of his character –

John Ashworth – Ks P – kn' nothg of his general character – thing's seven –

Ebenezer Tuttle – Ks parties – some people express different characters of him – always found him honest in his dealings

John Baird – Ks P – Ks nothg as to his general reputation –

Wm Greives – Dept Commissy – Pltff was Dr not to be a fit person to be in His Majestys employ –

Wm Christie – "that Dr Slight was employed by him to amputate his leg – W. offered him £25 – that it not enough but that his circumstances did not allow him to give more – W. did not attach any blame to Mr Brown for not allowg Dr Slight more than £30 – as his means did not permit of more –

Gwyn Allen Radford – Ks parties –

Price Bowman. Ks Parties – some speak well of Pltff & some ill of him –

has had some difficulties w Pltff – & a paper war w him –

Alex Hart produced by Pltff – Ks Pltff for several years – never heard anything said of his character –

Wm Robertson – Ks P – since 1814 – always bore a good character as far as he knows – Verdict for Pltff. £100 damages & Costs.

№ 35.
Pangborne
vs
Denaut
&
Goodsell
oppt

On the oppos.n of Goodsell to validity of Seizure.

M.r Buchanan objects to seizure as there can be no seizure of an immaterial thing—

1 Pigeau, 666.—

№ 536
Saurion
vs
Chandler

On defend.r mo. for delay to Defend.t to plead till the 10.th instant.—

Hunter et al
vs
Brown

The defend.t was arrested and gave bail to the Sheriff— He did not appear on the return of the writ, nor on the 4.th when a second default was entered against him— This day Pliff moved to proceed ex parte agt Defend.t— which was allowed The Defend.t now came in and moved to be allowed to give special bail, ~~and~~ to enter appearance in the action.— This was opposed by M.r Ross for the Plaintiff, who contended that Defend.t was too late and could not be admitted to give bail or enter appearance after two defaults had been entered against him.—

Beaubien for defend.t argued that as Defendant could not be considered to be regularly before the Court before surrender or giving bail, the plaintiff could take no proceedings agt him, and at all events not without notice to him, the same as if he were in gaol.— That Court has in practice admitted Defend.ts to come in and give special under circumstances similar to the present— cites. Galusha vs Jeemen Febv Term 1822— & Culver vs Woolsey in 1810.

№ 1748

Bowman &al vs Reid — } On defendts motion for security for Costs. Defend: took off default vent: appce yesterday

Ogden for Pltff, Defend: is too late, as motion ought to have been made yesterday. —

№ 659

Scott &al vs Driscoll } On defendts motion to dismiss Cause from want of proceedings for 2 Terms. —

The Cause was set down for trial by Jury on 11th April 1822 — on the 8th of that month the Pltff's attorney moved to withdraw his appearance as their attorney in the Cause, which was granted no diligence having been done to bring on the Cause the Defend: on 11th moved for a non-suit of the Pltff — but the Court considering the shortness of time that had elapsed between the time of the attys for the Plaintiff having withdrawn his appearance from the record and the day of trial refused to grant the motion — The Cause then stood over, the Plaintiff not having in the mean time substituted any attorney to act for them in the place and stead of Mr Rolland, when the Defendt on the 4th inst obtd the present rule on the Pltff to shew Cause why the action should not be dismissed — The Pltff appeared in person and said they were willing to appoint an att: and to proceed in the Cause — and thereupon Messrs Stuart & Buchanan entered appearance for them

No 14
Manchester & Labelle

On Pltff's motion to reject a pleading filed by the defendt as regarding merely the sufficiency and service of the writ & process which ought to have been brought before the Court by motion.—

Bender for Defendt the pleading is right as it regards the irregularity which ought to be pleaded

Thursday 6th Febry 1823.

Present

Justices Reid Fletcher & Pyke

No 18.
Black vs Willard

Mr Ogden for Pltff moved to reject from the proceedings a motion made by Mr Sewell on behalf of the defendt to take off the default entered against the defendant on the 4th inst— and an appearce filed by the said S. Sewell, the said motion & appce having been made and filed improperly without the knowledge or consent of the plaintiff and without payment of the costs granted in such cases.—

Mr Sewell for the Defendt stated, that the motion and appearance made and filed by him, were made in Court on the 4th inst— after the Causes in default had been called, that not having heard this Cause called he gave in the same to the Prothe— and under an impression that Messrs Sullivan & Grant were the attornies of the Pltff he mentioned to Mr Grant that he had done so— that this morng he discovered that Mr Ogden was the Attr of the Pltff, when he went to inform him of his having entered appce— as above, and offered to pay him 10/— the

usual

usual costs in such Cases, which Mr Ogden refused to accept on the score that the proceeding was irregular and too late. —

Mr Ogden for Plff. stated, that having in consequence of the default entered on the 4th inst. the defendt. obtained an order of this Court on his motion of yesterday to proceed ex parte, he ought now to be delayed in his Cause — and further that he has been given to understand that when Mr Sewell applied to Mr Grant on the subject of the said motion and appearance, he was told by Mr Grant, that Messrs O'Sullivan & Grant were not the Attorneys of the Plff and it therefore became the duty of Mr Sewell to have ascertained who was the Attorney of the Plaintiff and to have given him notice. —

The Court directed Mr Sewell to give in his affidavits of the Circumstances. —

Pirie. vs Smith } On motion of Counsel for the plaintiff that Defendt be held to change the conclusions of her Plea and conclude to the Country —

Mr Gale for Defendt. The action is not of a nature to be tried by a Jury, as the parties are not Merchants, the defendt is Tutrix to her Minor child and is not a Merchant or Trader, and accordg to ordr not bound to conclude to a Jury. —

Mr Boston for. The action is by Plff who are manufacturers and merchants for goods sold to the late Mr Gray in the way of the trade & business he carried on in his life time, and as his widow as Tutrix to his Minor child now represents him, they must be bound by the same Jurisdiction as Mr Gray would have been, and in France would have been subject to the Jurisdiction Consulaire —

Friday 7th Febry. 1823.

Present. –

Justices Reid Foucher & Pyke.

No 18.

Black & Willard } The Court permitted the Defendr motion and appearance to remain of record, upon his paying the Costs thereon, and also the Plaintiffs costs accrued on the motion for enquête ex parte. –

Perrault & McKenzie & McKenzie qar } On Pltff mo. for hearing on 17th – And on Dfdt mo. to ex. Pltff on faits & art. on the 13th inst. – It having been represented to the Court that the Plaintiff is absent at Quebec on public business it was allowed to the Defendr to do diligence by Com. Rog. to procure the ex. of the Pltff, so that the Cause should be argued on the merits on the 17th inst. –

Saturday 8th Febr. 1823.

Present.-

Justices Reid Foucher & Pyke.-

Manchester vs Labelle — } On hearing on exception à la forme pleaded by Defendt instanter. —

Bender for Defendt. The Defendt lives and resides at the parish of St. Vincent de Paul Isle Jesus, but has been sued as residing at Blainville parish of Ste Therese, where he did not reside, and this fact being admitted. —

No. 187
Caldwell vs Bryne — } on mo. by Pltff that a plea pleaded by Deft of compensation be rejected as insufficiently pleaded —

Mr Gugy for Pltff. a plea of compensation should be pleaded with equal certainty as an action — Polth. Obl. No. 590 — 591. — 592. 3. the manner of alledging the compensation here is insufficient and not within any of the rules of law laid down touching compensation — That the fact afterwards stated of an agreement that in consideration of a reduction of 10/ the Pltff was to attend the Defendt. gratis is not made to apply to the particular demand —

Mr Boston for Defendt — The plea here pleaded must be considered as a plea of payment — The manner in which the payment is meant to be proved is the agreement which is set up, — admits not clearly made to apply to the particular demand, but must be so understood —

№2110.
Groulx vs Laviolette } action on a Promt note — submission to arbitre on Rule to shew Cause by Pltff why the report of the Experts should not be set aside.—

Bourgouin for Pltff. the conduct of experts appears to have been so improper that the report must be set aside and cause heard before the Court.—

L. Vigé for Defendt— The parties named competent persons to judge of the sufficiency of the work in question That if the Court saw reason to order a new examination of the work in question it can be only at the expense of the Pltff, and at all events the Cause must be determined by experts and not by the Court.—

—

№256.
Cadieux vs Bourg. & Cartier opp.ts } The papers wanting — over to Monday —

—

№402
Bond vs Johnson } On defendt mo. for time to plead. — Mondelet for Defendt demands ~~grants~~ delay to 17th — granted by consent.—

№1755
Riccard vs Fraser } On question as to amount of sum to be allowed in discussion of property of the principal debtor.

Ross for Pltff asks for £25. —

—

№409
Letourneau vs St. Denis } on Defendt mo. in arrest of Judgt on Verdict

Vigé for Defdt There are not two Counts in the declaration — ~~two~~ separate conclusions — only one Count in declaration and as there is but one conclusion, there can be no Judgt as Jury do not find any verdict on one Count —

Roi for Pltff - The Jury under the direction of the Court distinguished very clearly on different counts in the declr between the non-performance of the Contract — and for the words alledged in the declr, and gave their verdict accordingly

No 105
Gates & al.
Hall. —

On defendt mo. to set aside the attachment inasmuch as Defendt was under the protection of the law at the time. —

No 674
Pichet & al
Manning & al

on action to rescind several acts passed by the parties & Pltff restored to possession of their property

Ross for Pltff The Pltff left the Province several years ago and left his wife in poss. of two farms. — that the wife afterwards left the poss. of these farms and went out of the Province — The relations of the parties then proceeded to name a Curator to the Pltff as absentee and this Curator obtained an order for the sale of these two farms, under an avis de parens — under false pretences and without observing the usual formalities, the property was sold under its value to one Eno, and it was afterwards taken back by pretext convenc by Mr Cuthbert the Seignior, who sold a part of it to one of the Defts — These facts are made out in proof, and the conclusions taken are that all the deeds and acts so executed be declared null and void and the property restored to the Pltff

Rolland for Manning & Cuthbert — The Pltff's found their action on a want of formality, as there was only one Criée instead of three — there were three criées, but two of them before the homologation of the avis de parens this was an error, but this not material in substance

as

as there was a necessity for the Sale, and the property sold at its full value.— But the only question is as to the fruits & revenus of Defendt— ought not to be held to pay as he was a possesseur de bonne foi.—

Vigé for Inft Bte Arbour, who made the sale as Curator the first Curator appointed was Ignace Piché— he died after having obtained an order for the Sale of the two farms and after a criée had been made— The Deft. was afterwards appointed who followed up the same proceedings, and on 3d May 1811 he was authorised by the hom. of an avis de parens to sell the property, and on the 5th & 6th May the farms were sold after one criée, as the two former had been made before the hom. of the avis de parens.— The principle upon of this action is founded, is, that the formalities were not complied with, admitts thereby, that if these formalities had been observed ale would be right.—

That a Curator has a right to sell the property of an absentee— refers to case of arguments in Blackwood & Guy— If the Court or Judge can authorise a Curator to alienate the realty, the only question here is whether the Curator has failed in complying with the formalities required— It is certain that three criées were made, and the intention in the eye of the law was equally complied with if these criées were made before or after the homologation of the avis de parens as the public were equally apprized of the sale.—

That at all events the fruits & revenus ought not to be allowed to Pltff— as the Defendts are ale in good faith.—

MR Ross in reply.— The whole proceedings on the part of the Defendts were not only irregular but fraudulent 2 Gr. C. which is proved by conjectures and circumstances which appear in the Cause—

№ 1977
Menard
Charlebois

Action of damages for taking poss.n of Plff property and disposing thereof.
Report of arbitrators.

Sewell for Plff, demands hom. of report — demands also that Defend.t do pay all costs — it is s.d that the sum allowed was offered by Defd.t — but this not suff.t as there was no tender ever made. —

Vigé for Defend.t — the sum allowed by the Arbitrators is not founded on the action of the plff, but on the amendment by the Defend.t which shows that he administered faithfully the property of the Plff — this sum the Defd.t was always ready to pay and now offers — and had he been sued to render an account he would always have been ready to do so —

—v—

№ 293
Lussier
Ainse —

Ore objection to the pertinency of 3.e 4.5.6.7 & 8.e Interrogs submitted by Plff to Defd.t —

Vigé for Defd.t — action for exh. of titles & loss & rents on a sale by one Massue to Defend.t The Defd.t pleads that he does not possess under the title stated in the declr inasmuch the same was rescinded before poss.n taken, but that he possesses under a deed of exchange with S.d Massue —

as to 3.e Interrogs In which view the Defend.t rescinded the deed of sale between him & massue — not bound to answer

as to 4.e Interrog — This question has no bearing on the Case

as to 5.e — do — same reason applies —

As to 6.e — do — do —

As to 7.e — do — do —

as to 8 — do — it is not a matter in contest between the parties and no more pertinent than the others — as there is no question touching the Isle aux Vaches before the Court. —

Mr Lussier for Pltff — The Pltff alledges that the acts of resiliation and act of exchange are acts purely factitious and made to conceal the true transaction which was the sale made between the parties, & this done to deprive the Seignior of his rights — and to shew this the Pltff wishes to establish that the act of exchange was followed with no effect. —

—

N°281
Massé fils
vs
Racine

Action on obligation transferred to Pltff

Vizé for Defdt — The act produced is not the first but a second copy of the obligation made by Defendt — that the transport is an acte simulé — The Defendt produces the first copy of the Obligation, which in law is a proof of pay — That the second copy has been granted by the Notary without any cause or necessity having been assigned or any authority obtained from a Judge to this effect — That the Defendt has paid the debt to his Creditor and is ready to add his oath to the possession of the first copy of the Obligation — The Pltff alledges that the first copy has been extorted from the Creditor by fraud — but this ought to have been stated in the Declr and not in the replication, as the poss. of the first copy by the Debtor is a fin de non recevoir to all other proof Fer. Vt Obligation. in fine — Rep. Vo Expedition — Vo Grosse. —

see Poth. Obl. N°608. N°846.

Berthier for Pltff. cites Dunty. fo. 385. & 386. — to shew that there are circumstances which will permit the Creditor to shew that the obligation has not been paid and particularly as in the present case when the Oblige came by error, if not by fraud into the possession of the first copy of the Oblign — Fer. Com. 2d Vol. fo. 1083 som. 3. — Denis. Vo Grosse. The Defdt ought still to be bound to prove payment —

№ 14
Manchester vs Labelle — On the Plaintiffs motion of the 5th inst. the Court were of opinion that as the matters pleaded by the defend. did not regard the regularity of service of the process, the same might be pleaded by exception, & therefore dismissed the motion

№ 1808.
Pirie & al vs Smith. — The Court granted the Plaintiffs motion

№ 1748
Bowman & al vs Reid — The Court granted the Defends motion for security for costs —

№ 1780
Mc donell vs Logan & Co — Same motion & order

№ 271
Hunter & al vs Brown — The Court rejected the Defend. motion

№ 35
Pangborne vs Denaud & Goodsell opp. — The Court were of opinion that the seizure of a right in moveables could not be considered regular, as without attaching the moveable itself, a sale might be made of a right in a thing not within the Jurisdiction of the Court — but by the oppn made here it appeared that the Defendt had a right in a thing within the Jurisdiction, the question being in regard of that right being transferred to the oppt — which induced the Court to maintain the seizure & determine the right between the parties

& paper dismissed but without costs. —

Monday 10th Febv. 1823.

Present.

Justices Reid Foucher & Rykert.

Woods v. Vanderslurys

On trial by Jury. — on action for malicious prosn —

John Delisle, is Dfts Chr Montreal — was so in Nov 1820. and in poss. of records of Crim Court of the District and of certain papers & proceedings at instance of Defe ag Pltff — the bill of Indictment now produced —

Objects to production of papers by Defe — as not officer legally authorised to possess them or to produce them. —

Ovr-ruled —

Affidavit of Defe — admitted & read — that he saw at house of Wilcocke the watch in question — which he believes to have been stolen by him — & believes that Pltff was aiding Wilcocke to escape —

Indictment — ag. S. H. Wilcocke for stealg a silver watch the property of Wm McGillivray — at Court of Oyer & Ter. held in Nov. 1820 — this Court was adjd to 23d Dec. 1820, when it expired —

Proves Recog. entered into by Pltff to appear at Court of Oyer & Ter —

That he holds a deputation from the Atk of the Crown who he believes is resident at Dublin — Cannot speak to the fact whether the Indictment now produced was ever before the Court — that the handwg of McAuslin is upon the bill. —

Exam. of S. W. Wilcocke. at Burlington under a Com. Rogy —

7th Intend. had in his poss. the Silver watch of Jos. B. Forbes & was deld. to Wr. by Mr Mc'd. to draw up a narrative Defdt. saw sd watch in poss. of Wr — When he left Brantford — left watch wd a envelope — at his house to be returned —

8 Defendt. did ken. by whom sd. watch was deld. to Wr —

10 If the watch charged in the Indictment was the same as that of belonged to Estate of Jos. B. Forbes —

Objected to — objection over — ruled —

On cross-exam^n admits conversation w^t Pliff before going away —

Peter Holt. gaoler since May 1821 — has in his poss^n a warr^t of Commitment of Pliff — & of arrest of Pliff — dated 24th Oct. 1820 — Recog. 28 Oct. when he was discharged —

Franc. Rolland. Lieut. Peace, proves warr^t to be issued by the Pliff as magistrate — and the oath given in consequence

That the word — Robert ~~Wood~~ was been added in the warrant when he signed it — That it was not at the request of Defdt was granted — That Mr Wilson Mr Thain Mr Mc'd. & Tait were present when the warrant was demanded — That Mr. Mc'd & Mr Thain particularly req. Defdt to give his deposition of the circumstances touching the watch — That the two blanks in the depos^n warrant granted accordingly the blank is before name of Woods — That a search had been made, in consequence of depositions of Mr Tait &c had made in morn^g. — he had also the letter ment^d in dep^n of Defdt &c of Wilson to Mrs Lewis &c induced him to grant the warr^t &c Pliff —

That

That Defdt was much pressed & solicited by Mr M'L. & Mr Thain to give his depos.n and the reason given to him to induce him to give his depos.n was that he was the person was present when the watch was found — That Defdt never asked for warrant he even signed his depos.n wt much regret and reluctance, and want — was granted to Mr. M'Leod & Mr Thain. —

Richard Hart — High Constable, in Nov.r 1820, was Police Constable was at Mr Rollands when a warrant was delv.d to him to arrest several persons among whom was Pltff. he arrested him & carried him to Gaol —

That Mr M'Leod, Mr Thain & some others were present at magistrates — That Defdt had been present at a search that had been made before when a watch was found — several letters were also found at house of Woodes — That Mr Tait was also at the search — believes that Mr Thain & Mr K — asked Defdt to assist at the search — The search-warrant was delv.d to him by one of gentlemen of N. W. Co — dont by Defdt — went along wt him & they pointed out some articles wch were claimed by them as property of N. W Co among other things a watch in one of the drawers of Mrs Lewis — all furniture seemed in a state of being removed —

The watch was in a drawer wt some silver plate which Mr Lewis claimed as hers —

George Owen Radford — was Gaoler in ~~Nov.r~~ Oct.r 1820 — on 24th Oct. 1820 — the pltff was committed & discharged on 28th same month —

Geo: Moffat, was foreman of the Grand Jury in Nov. 1820—

Henry McKenzie, is one of Partners in firm of McT. & Co— the late B. Frobisher was a partner in N. W. Co— heard he died in 1820— the circumstances of his death were communicated to him— & sundry papers were found on his person, particularly a Journal written by himself, a Pocket book & Silver watch & seals— S. Wilcocke was employed to draw up a narrative of his death— that Wilcocke was charged with stealing that watch, that was before the Gr. Jury on the Indictment charging this offence— and on ~~same~~ a Indictment ~~now shown~~— believes Wilcocke was charged with steals a watch belonging to Mr. McG— and believes same watch afs— belonged to Mr Frobisher—

was in the habit of calling on Mr Wilcocke & prod. him with his friendship— has seen the Paff ~~that~~ hour— saw narrative drawn up by W— respecting Mr F's death—

x^d—

That R. Henry is an Exr of Mr F— never saw the Indictment charging steals of watch— never saw watch deliv. to W— he was to draw up the narrative in a private room & not to take away any of the papers from there— The papers respects the narrative were deliv. to Mr W— & person a particular place— had particular charge of this business— the watch was not necessary to draw up this narrative— was present when McLeod narrative— & Dean when D ofs— gave his depos. touching the watch— Depondt declined giving his depos— seemed to give it with reluctance— that Mr Dease who had given the first affidavit was requested to do so, but as he could not identify the watch he declined doing it— the

wt—

Wr was requested to give his depos^{n} on this part but refused it for same reason — That when

That sometimes Mr W. drew up private papers at his own house dat house of Wr & has been there assisted by Wr but after W. was discharged — he was told to do all his business in a certain private room — this was in Sept^{r}. 1820 — & Wr drew up narratives after this — left employt. of Mr T. & Co^{s} — in Oct^{r} after — By C^{o} — a few days before he left the employt^{t} of Mr T. & Co^{s} — the narratives was deliv^{d} in to them by Wr in Oct^{r} 1820

Chas Tait — had occasion to accompany Y^{t} Constable to house of Mr W — & there found a watch, with a ~~paper round~~ pocket book & some papers enclosed in another paper, q^{e} watch & pocket book belonged to late Mr T — ~~afsd~~ as a wit^{s} before the Grand Jury on a charge agt W — for stealing a watch q^{e} he understood to be same q^{e} had ~~been stolen~~ belonged to Mr T — believes to be same charged in the Indictment —

Cannot say it was on the particular bill of Indictment now shewn that he was examined — That D. was present, & first discovered the Watch — saw in handwriting of Mr John Porteous a paper stating that the watch was the property of the late Mr T — but saw nothing in the hand writing of Wilcocks, that this watch was to be returned — The search warrt was granted on affidavit of Wr alone — That when Depot gave his affidavit, it was with reluctance and at earnest request of his employers —

Chas Gethings. knew Mr W.— understood that the Cause he had to leave the Province was on acct of pecuniary embarassement — believes W. told this to Pluff — Has seen Mr Mck — at house of W — Has known Pluff in a respectable situation & carrying business in Montreal as an Auctioneer & broker —

x.

Believes that W. s. in presence of Pluff. that it was pecuniary embarassment which induced W. to leave Province —

John Boston. has ten. Pluff for 20 years — he always enjoyed a reputable character & carried on trade in Montreal — Here the evidence on part of Pluff was closed —

Mr Rolland for Defend. moved that a non suit should be entered agt Pluff

1st Because there is no proof that the accusation made by Defd. appears to apply to Pluff, but only to one — Woods. —

2d Does not appear that Defend. ever demanded any warrt. agt Pluff, or prosecuted any compl. against him

3d No proof that the prosecn is at an end — the Bill of Indictment produced not being proved to have been brot into Court by Grand Jury, as ignored

4. A bill of Indictment produced for stealing a watch from Mr. McGillivray — but there may still be another bill pending for stealg watch of Forbisher

5. Prosecution does not appear to be at an end

6. The warrant being granted by the Magistrate was a sufficient excuse for the Defend. cites Chitty p. 15. — Semir & Marsolet v. archambault

Mr Ogden for Defend. stated also the variance between the deln & evidence, in regard of the deposition made by Defend & warrt granted thereon. —

The Court were of opinion to reject motion —

Defence –

John Delisle. was in his poss. a depos.n of Mr Chs Tait of 24.th Oct.r last – produced read – touching sundry checks wh.t drawn by Wilcocks –

Franc.s Rolland. J. P. – issued his search warrant on s.d affid.avit –

~~John Pastoors.~~

Rich.d Hart. rec.d a search warr.t to search house of Wilcockes dated 24 Oct.r 1820, does not recollect who gave it to him – he then found a watch – when he ret.d from the search the Def.t went to house of magistrate – Mr McL. & Mr Thain were there & app.d anxious to get a warr.t – ag.t Pl.ff – That Mr Lewis was in the house, & she was niece of W – shewn her apartments & in one of her drawers the watch was found – there was also found a letter from Mr. W – to Mrs Lewis 9.br dated, "near St Johns 19 Oct.r 1820 – & was torn in taking it from Mrs Lewis –

Chas. Tait, the letter now produced was taken from Mrs Lewis on the search – & believes letter now shewn to be the hand writing of Mr W –

John Hattrick – has seen Mr W. write & believes the letter now produced to be his handwriting –

Letter read – refers to assistance of Woods –

Rich.d Hart – this letter was laid before the Magistrate

X.

Chas. Tait. This letter is same alluded to in depos.n of Def.t before magistrate – Def.t was not present when the search warr.t was granted – ~~Def.t was requested to~~ Mr saw noth.g in conduct of Def.t shewing M. well to Pl.ff – That first depos.n drawn Def.t & sd. not signed – the 2.d depos.n he signed with reluctance – The watch was found in a trunk of Mrs L.s – claimed as hers, refused at

first

just refused to allow the search — the watch was marked wt a label, a "Watch & Journal belonging to Lab B. Frobisher, in handwriting of Mr Porteous — Exh. No 3. shewn says it is handwriting of Mr Welsh Letter was read —

John Porteous. That Mr Wm M'G. desired him to put up a watch wt a red-pocket book belong to late B. Frobisher, after he put in the vault of N. W Co — saw same watch — thinks he indorsed on the wrapper a Watch & Journal belonging to late B Frobisher Esq — Xd That Mr W — had a private room to write in after his discharge —

Xd —

Thinks these documents ~~books~~ were afterwards delivd to Mr W — the watch may have been delivered also — Mr Thain kept the key of the vault — but it was often left open — the watch, chain & seal were all in one bundle —

David Ross, after the issuing the warrants, the Wr directed the proceedings —

Fr. Rollard. Recd Security next morning after the arrest recd Security from Mr Gethings & have seen similar Security from the Plff & others — informed Mr Gds that he wd do so —

Bleury, has received ~~evidence~~ letters from Mrs Lewis, believes that now shewn to him to be her handwriting —

Verdict for Plff £75 damages

No 293. Lussier vs Ainse —	Faits & articles admitted, except the 3e which the Court rejected —
No 187. Caldwell. vs Byrne —	Rule absolute for rejecting plea. —
No 281 Macé fils vs Racine	Interlocutor ordering proof
No 1924 Warwick vs Nicolsdale	Judgt for sum acknowledged by Deft
No 449 Rollaud vs Scott —	Judgt
No 1852 Turner vs McNider	Judgt for Plff
No Deddie vs McNider dal	Judgt for Plff.
No 793 Thirkell vs Perham & Contra	Judgt —

Tuesday 11th Febry. 1823.

Present

Justices Reid Foucher & Pyke

Chartier Descelles & Ant: Descelles mis en Cause

On Plffs. mo. that mis en Cause be adjudged to pay the difference of price on his folle enchere

Bedard for mis en Cause — The Sheriff has here imposed illegal and impossible conditions to the Sale that purchaser should pay 1/3 of price five minutes before the adjudication —

No 105 Gates vals Hall —

On Defts motion that he be discharged from the arrest on Ca. sa resp. issued in this Cause, inasmuches as at the time he was in attendance under a Recognizance before the Court of Oyer & Terminer & General Goal Delivery on accusation made against him, and thereon not liable to arrest on Civil Process —

The Case went over till to morrow

№ 286.
Boutillier vs Preston

On admissibility of facts & articles.

Rolland for Pltff. The Defend. has pleaded non-assumpt. & wishes to ex. Pltff. touching the value he gave for the note of which is out of the issue. The other part is as to the indorsement having been filled up by Pltff. after the indorsement & name of payee.

Sewell for Dfd. Every thing that goes to destroy the pltff's title may be given in evidence on general issue. The Indorsement here was in blank when made and has since been filled up. this may be proved under the general issue. because it destroys the pltff's title.

№ 352
Robillard vs Robin et al

On Defts. mo. to be permitted to file their exhibits in support of their plea of Excepn.

Roi for Pltff. Dfd. is too late after issue joined on the plea of Excepn.

№ 1576
McRae vs Masson et al

over till to morrow

№ 433
Scott et al vs Phoenix Co.

Doc. Plaut. p. 208.

On Defendts. mo to discharge rule for Enquête and Defendts be permitted to plead anew

Buchanan for Pltff. The motion is irregular the Defend. has pleaded, and cannot be allowed to alter the proceedings.

№18
Blake
Willard

On Pltfs. mo. to reject pleas filed by Defendt—

Mr Gregg for Pltff— 1st plea of Ex. Jur. en droit, stating delay for payment — the precise day not stated — not clear whether on the 10th. May or 10th June. —
2. Delay stated to be given without any consideration this not binding, even if ever made. —
The legal right of action is in the person to whom the promise is made. — this is the Pltff here — Any new contract must be in Writing — Hoare v. Graves. 3 Camp. 57 — 5 Ed. Chitty on bills. p. 61 —
2d Plea is a kind of plea of Excepn: à la forme — in regard of money Counts on account of their general nature —
3d. General demurrer, Defts can found en droit — no Causes of demurrer subjoined, which is contrary to the rules of Practice —

Mr Sewell for Defendt— The plea here must be answered it cannot be rejected on motion — Pltff ought to have demurred — Duplicity is a cause of demurrer — The grounds of defence are here clearly set out, whether sufficient or not —

Mr Gregg in answer — A person not party to the Suit cannot be exd on faits & articles, — neither can I see here — The rules here do not determine in what manner and at what time certain particular matters shall be classed & pleaded — when the pleading is irregular it must be dismissed on motion — Reg. Prac. p. 21.

№999
Maitland dal
Forbes
&
Girrards

Ogden for Pltfs in 1816. Pltfs. obtd Lias ags Forbes — and thereupon an attachment

was

was sued out agt. S. Gerrard, who gave his decln stating he had no monies – this fact was denied by the Pltffs – Wm Forbes died in Nov. 1814 – at which time he was insolvent – was insane – & monies were recd by him on acct of succession of late Wm Forbes –

Here Mr Ross for Mis en Cause moved to reject the testimony of certain Wits as relations & as interested

Ogden – The parties here are merchants, the transactions are all mercantile – Were the case not mercantile yet the transaction here took place in a private room at the moment the late Wm Forbes was about expiring and when no act could be obtained to ascertain the fact – Poth. obl. 775. 6. 7. 8. 9 – Code Civ. art. 4. tit. 20 – which applies to cases of fraud, as in this case the wrongful application of the property of a Debtor. If G. did not receive the money in pay. of a mercantile debt, it must have been as the mandataire of the late Wm Forbes – refus to testimony of Corbett – corrobd by A. Forbes and Jas Fraser –

The best evidence has not been produced on the part of the T. Saisi – he ought to have ex. Dr Kennelly before he left the Country as to the state of the deceased his certificate cannot be admitted as evidence, on this act – The test? of Mr Jameson is confined only to what Mr Gerrard told him, and what appears from the books of act – this is all hearsay evidence, – is at best stating what the T. Saisi did and said himself – If Gerrard rec? the money as a mandatary his authority ceased the moment of the decease of the mandant. – Mr. G. had no right to receive monies on act. of persons who had ceased to be his partners without express authority to this effect –

Mandat. N. 106.
Rapr. v° mandat
p. 232. –

Ross for T. Saisi, states the defence to Pltffs demand The Pltffs debt is due by Instt. of 1816, two years after the death of Forbes, & is obt. of Dart and a John Forbes

as

heir of late Wm Forbes — & ~~believes that~~ it may be said this Indt was rendered for sale of a farm or any other consideration, and for a debt created after death of de Wm Forbes, for anything that appears to the Contrary — Indt refers to a debt stated in the declr, but no declaration is filed — In the Petition for the Saisie-arrt, the debt is stated to be due for the Causes mentd in the Indgt — & the prayer of the petition is to seize the monies of Daniel & Wm for a debt due by Daniel and John —

The D. Saisi has moved to reject the depositions of several Wits as it does not appear that the debt in question is of a mercantile nature, and therefore relations cannot be witnesses — all the Wits are either relations or Creditors —

The testimony of Corbett is contradictory and untrue as appears by the other testimony adduced, refers to the testimony of Mr Frser and Mr Clarke, in regard of the papers delivered into the board touching this money long prior to his death & even of his illness — & remained always in the possession of Capt Frser — The money was paid by a Draft in favor of Mr Gyrard by the decand, and not upon any vouchers or documents he recd from the demand, as they had been delivered in long before — That Corbett states that Daniel Forbes was present and objected to giving the papers to Mr Gyrard, whereas Mr Fraser, states, that Danl Forbes was not present all the time, and that after the death of Forbes, he Fraser, had to send to Vancouver for the said Daniel Forbes — Refers to testimony of Mr Desaulnier — as contradicting Alexr Forbes — who besides contradicts himself, by acknowledging that he did not understand from Mr G — that he recd the money in question on acct of his deceased brother

That after the death of Wm Forbes, it appears by testimony of Dr Forbes, that he recd £2900 from the

Commissariat

Commissariat after the death of Wm Forbes, and which shews that he was solvent at the time and carrying on business, and it was the pltffs own fault if they were not paid – refers also to the testimony of Jas. Fraser in regard of monies received by Daniel Forbes – also his opinion as to the Solvency of D. & W. Forbes at time of the decease of the latter

Refers to testimony of Mr Jamieson, who was a clerk in house of Gerrard & Co – who states that immediately after this money from the Commissariat on acct of Forbess, Mr G. put it to their credit wth his partners, and this nearly two years before the Plaintiffs Judgmt – and the money was pd by Mr Gerrard accordingly to the different Partners of his former Concern. – this shews that G – Did not receive the money as the mandataire of the late Wm Forbes. – John Fisher, shews also that after the death of Wm Forbes, he saw a statemt of the affairs of D. & W. Forbes, by qr it appeared that they were in a flourishing state – and he states that Danl Forbes told him that the monies recd by the T. Saisie, had been pd on acct of the debt due by D. & W Forbes to Mr Gerrard – and the first item in the acct shewn was a sum of £2000 – qr he D. Forbes had in money, besides large credits in bills & notes – Fisher also proves a letter from D. Forbes to Mr Gerrard dated 4 Dec. 1814 by qr he states his late firm to be solvent & good and that there was no room to sacrifice any property belonging to it. – Refers next to testimony of Dillesdernier, who speaks of the state of affairs of D. & Wm Forbes. – & that D. Forbes had ordered the money to be paid to G – to reduce the debt they owed him and that after the payt of all their Debts they appd to be worth £2000 – Boyer states that D. Forbes had

several

farms, which he sold, and rec^d large sums of money – the notary speaks to the same thing

The further argum^t was cont^d till to morrow

Wednesday 12th Febry.

Present.

Justices Reid Foucher & Pyke.

No 999.
Maitland vs Forbes & al & Gerrard T.S.

M^r Bedard for T. Saisi – The attachment here is made in the hands of Sam^l Gerrard ~~whereas he rec^d~~ Yeoward, Gillespie & Co^y whereas had he rec^d the money as the agent of Forbes. He ought to have been sued personally & alone. – The Plff's debt is not clearly established by the Judgt – either as to the time it accrued or for what cause. – It does not appear that the plff^s debt was founded on a Commercial dealing – The contestation raised by the Plff^s on the declaration of the T. Saisi cannot be maintained as the parties therein interested are not before the Court, and besides the question here agitated ought to have been matter of a principal action –

1 The parties interested in this contestation are not before the Court and no Judgt can be given – The late M^r D. Forbes in 1811 made their oblig^n to Parker Gerrard Ogilvie & Co^y for a large sum of money – this Partnership not before the Court – The money rec^d by M^r G. in 1814 from the draft by Wm Forbes was applied to the payt of the debt due on s^d oblig^n – The T. S. in this respect was the agent of Parker Gerrard Ogilvie & Co^y, he applied the payt of it accordingly, he has declared so, and has proved it – & cannot under this course of proceeding be accountable under a Saisie-arrêt made in hands of other persons than those to whom the money was paid –

2 The contestation raised here with the T. Saisie is to contest a payment made by them to third persons not before the Court – and upon the debt^r of the T. S. the Plff^s ought either to have discontinued the Cause or put the parties into the suit who were interested in the money rec^d – The debt^r of T. S. is supported by testimony of M^r Samson as to application of the money. – The debt of T. S. is a title

in

in favor of Messrs Parker, Gerrard, Ogilvie & Co – & they by his act and declaration became vested with the money – That Mr Gerrard is not personally before the Court, & cannot be condemned even if he had rec^d the money & applied it to his own personal use – nor can the persons called in as T. S – be condemned, because they never received the money –

3 This proceeding should have been had by a special action and the present contest on the decl^n of the T. Saisi is irregular Denisart v^o Saisie-arrêt. N^o 10. there must be certain limits to this course of proceeding – there must be something more than verbal evidence to controvert the declaration of the T. Saisi – because this decl^n is the proof admitted by law, and no number of wit^s can be allowed to have any weight agt it – it is like the Serment in litem, which cannot be controverted by other evidence – Poth. Proc. Civil. P. 198. It must therefore be here ascertained to what extent the decl^n of a T. S. can be contested.

The Plaintiffs here do not allege that D. & W. Forbes were in a state of deconfiture at the time that Mr G. rec^d the drafts from the late Wm Forbes –

4 That Mr G. rec^d the money in part pay^t of a joint & liquid debt, and had a right to apply the money so rec^d to that account. The declarations of Dan^l Forbes subsequently made that this was p^d to Mr G. with this intention, see test^y of Fisher & Dillesdernier see also the letter of D. Forbes to Mr G. of 4 Dec^r 1814

5 That this contestation, not being an Incident which flows from the principal Cause, must be rejected – The Pl^ffs do not shew by their demand for what their debt was due, but they attempt to make out this proof in the course of the proceedings by verbal testimony, to shew it was a debt due to them by D. & Wm Forbes – here then the variance – the Pl^ffs wish to arrest in the hands of T. S. the monies due to Wm Forbes, when they wish to prove their debt to be due to them by D^s & Wm Forbes

Mr Ogden for Pl^ffs The T. S. is by the petition is called upon not only as a Partner of Gerrard & Co^y but also individually – The Judgt is agt John Forbes as heir of Wm Forbes – for a debt due by Wm Forbes to Pl^ffs and the Petition for the Saisie-arrêt go to cover that debt

S. Girard is called upon to make his declaration as well individually as a Partner of Girard &c. The T. Saisi should have objected to answering, or pleaded in abatement if all the proper parties were not before the Court. 1 Chitty. 32. - According to the legal maxim of Le mort saisit le vif - the rights of Wm Forbes were vested in the persons of whom Pltff have obtained Judgt - and Mr G. rec'd the draft from Wm Forbes as being the Creditor of Wm Forbes, whereas the fact is that Wm F. owed nothing to S. G - but to a Partnership of which he was only a partner - and the debt was not the debt of Wm Forbes alone, but of Dan'l & Wm Forbes - There is no question touching the nature of the debt due by Wm & D Forbes to Pltff - the only question is whether Pltff can be permitted to prove what took place at the time when T. S. took the draft from Wm Forbes The authority cited from Denizart does not apply. as it says the party may contest the declaration by ecrit but it does not say this cannot be done without ecrit besides there is an ecrit, the Judgt of Pltff - This must be considered a mercantile transaction - & if it were not the proof may be made by indices -

It is in evidence that Mr G - received the money as the mandataire of the deceased and is bound to restore the money he so received - That the Witss produced although Creditors are competent Witnesses they have declared themselves not interested, and in this Cause they have no interest -

The certificate of Dr Kennelly is no evidence in the Cause - a Com. Rog. was sued out to ex. Dr K - but no diligence was done on it. -

The T. S. has produced an obligt on gt he said he rec'd the money, but there is no receipt put upon this Obligt - gt - is a proof that money is still in Mr G.'s pocket -

The Pltff want no other evidence to support this Case but their Judgment, which is not satisfied -

The evidence of John Fisher in speaking from a balance sheet as to the Solvency of the Estate of D.& Wm Forbes, is not conclusive, and is not sufficient—

No 92.
St Marie.
vs
Dent.—

Action Petitoire—

Rolland for Pltff action founded on a title from the Sheriff, part of which has been taken poss[n] of by the Defdt the question here is as to the interpretation to be put upon the deed, the lot is described as containing 16 arpents, whereas it is now found to contain 18— the Defd on q[n] the decret was made at first abandoned the lot, but some months after returned and set himself down on 2 acres q[d] he chose to say, was the part not sold.— The agent of Gen Burton sold the lot in question to the Defd under the name of Watson's point, for about 18 acres without warranty as to precise measure— the lot sold was understood to be the lot called Watson's point a corps certain— cites 1 Bonij de la vente v acq[r] des Imm. p. 482. No 47. refers to case of Mad Chaboilles. v. Vallé— here the number of acres is not the thing sold, but a certain lot supposed to contain so many acres and the title originally given to the Defd was given in these terms— in conformity to the plan of the Seigniory. Delery

Mr Boston for Defdt. The difference claimed here by the Defend[t] is of 2½ acres in breadth by all the depths, about 28 acres— which Defd contends was never sold by decret to Pltff— 16 acres by 28 only were sold by the Sheriff

The Pltff wishes to extend his title beyond what he holds from the Sheriff, and the Court cannot give him more nor declare him the Prop[r] of more— the Pltff has no right of action here, he has divested himself of all his rights & Mr Henry

M Henry the Witness proves this - If the Pltff had acquired this property under his title from the Sheriff, he might have had a writ of possession immediately by the Court under a writ of possession or he might have demanded a diminution of price on the sale - but as 16 acres only were seized and sold no more could be given to the purchaser This is no voluntary sale, and cannot be extended beyond what has been expressly sold - The name Watson's point is nothing certain or specific in it, and this name has occasionally changed - The 2½ acres claimed by Dft is a part of what was never conceded -

Bouy. loc. cit. distinguishes when a house is sold & a parcel of land, particularly where it is a certain number of acres is sold as here, and not a corps certain

Reps. Vs. Poss. Vs.

Rollard for Pltff - immediately after the decret the Defend. gave up the poss. of the whole lot, and carried off all his moveables - this delivery shews the mind of the defend. as to what had been sold by the Sheriff this tradition of the property comprehended the whole - The Defend. returned afterwards and entered wrongfully upon part of the very lot where he shewed certain labor to be done between him & his neighbour Gabourian when he Defend. delivered up the lot after the decret - The description, Watson's point is a certain object, which was the thing sold

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No. 201A

Allsopp vs Throop

action for goods sold

Buchanan for Pltff. Balance of £10 appears to be due by writ produced by Pltff - Defr. then confesses he has 7 reams of paper on hand, then worth £1. 10 - The evidence of Defend. shews transactions long before this acknowledgt - in Febr. 1820 -

Hunshaw for Defr. The acct. of pltff in June 1820 - & it appears that £12 - were pd. to pltff & the Court the Defend. is entitled to fully pays Pltff - as to the matter

on

on hand, it could not be sold at price limited, & is now ready to deliver it up to Pltff – the Defend[ts] afterwards became insolvent into whose hands the paper was put to be sold –

—

№ 26
Little
vs
Harbeck

Action for freight & goods sold & del[d]
Beaubien for Defd[t] action partly for sum sold for which Defend[t] is not liable – admits the freight –
Grant for Pltff. the Defd[t] & his men boarded & lodged at Pltff's house. –

—

№ 649
Aylwin
vs
Cuvillier
&
Cuvillier
opp[t]

The Case submitted on evidence before the Court –

—

№ 2089
Decarry
vs
Marion

on Exc[ps]
action for work done
Bruneau for Defd[t] – excps. to decl[n] as irregular and contradictory – action for £130 – concludes for payt. of £20 – The decln is contradictory & inconsistent refers to decln – refers to decln –

Mc donnell for Pltff. refers to decln as sufficient –

Thursday 13th Febr. 1823.-

Present

Justices Reid Foucher & Pyke

Friday 14th Febr.

Present

as above

No. 180
Laporte.
&
Laporte

On Pltf's mo. that on payt. of his own Expert he be allowed to have communication of the report - and this on the principle that Dfts made choice of an expert living in Montreal at a great distance from the residence of the parties & thereby occasioned a great additional expence, which ought at all events to be borne by the Defendt

The Court granted the motion upon this notwithstanding the experts had demanded to be paid before their report should be taken in communication by the parties, inasmuchas the Pltff was not bound to pay the Defendts expert in the first instance, and if this expert chose to take cognizance of the Case, he must be considered as doing so, at the instance of the Defendt - and on his sole responsibility as to his Costs & disbursements. —

No. 18
Black
vs
Willard

The Court, considering the plea of exception first pleaded by Defendt to be in its nature peremptoire, although branched into two heads not altogether consistent, yet there was no rule by which the Court dismiss this plea on motion, nor could they upon the principle that the matter of delay pleaded by

by the Defendt could not be proved, reject that plea that therefore issue must be taken on the points so raised by the Defendt — As to the matters secondly pleaded by the Defendt the Court were of opinion, that they were entirely matters of exception à la forme, and ought to have been pleaded in 24 hours — this exception being therefore too late was rejected — As to the matters thirdly & fourthly pleaded by the Defendt — they were in the nature of a general demurrer, and special reasons were not required to be stated in support of them —

Saturday 15th. Febry 1823. —

Present —

Justices Reid & Foucher

On Petition of Moses Morton } The Petitioner a Prisoner in Gaol under a Ca. Sa. moved to be discharged from confinement on the ground that his allowance on Monday last had not been paid, nor offered to him till 1/4 hour after 4 o'Clock in the afternoon, which is not conformable to the rule of practice, and after the Prison doors were shut, when he could procure no means of subsistence from without —

The Court however were of opinion that as the law gave the whole of Monday

№ 1670
Carrol
vs
Aussenvab

on action for labor on Lachine Canal

Stevenson for Defdt has proved that of all the Pltff was entitled to — Pltff has not proved all his demand, & sum P. by Defdt exceeds much what Pltff has proved —

Grant for Pltff — Defendt has proved nothing — all the money pd was merely subsistence money for workmen the Defendt is in poss — of receipts for all monies pd & they ought to be produced as the best evidence —

—

The Kings
vs
Jno May

on motion for contempt —

M Rossiter for Defendt — The Court has no right to take upon any affidavits but that of the Defendt who exculpates himself from all imputation as to the offence charged upon him — com. Dy. Attacht. Letter D. —

—

№ 1803.
Brush
vs
Russel

Russel for Pltff asks for Judgt for Costs have rec'd £22. on act,

№ 577
Cartier
vs
Normandin

on action hypothecaire —

Pizer for Defdt. The Defendt has pd. suffte to reduce Pltffs demand below £10 Stg the competence of this Court, and therefore cannot give Judgt as Pltff —

—

№ 105
Gates vs
Hall —

On Defendt mo. to be discharged from his arrest —

No 1534
Frostdal vs Armstrong } Action on deed of transfer to Huntson

No 1663
McKenzie vs Ritchie & Ens – opt } On oppos^n of Ens. afin de conserver – Vigie for Oppos^t The oppos^n was afin de charge, but the time lapsed, & the present oppos^n made to preserve the proceeds – It is contended that the plff should have the Capital only of the rents stipulated by the bail Empts. – but as the property itself belonged to the oppos^t is entitled to the whole amount of the proceeds

Boston for Plff – The defend^r has made very great improvements on the lot under a lease for 99 years of which only 16 or 17 years have yet elapsed It is therefore for the benefit of the oppos^t that the Capital of the rent stipulated on the property should be paid to the oppos^t by which means he obtains what will produce this rent for ever – to this Plff consents, and also to the pay^t of the arrears due

p. 49. Vigé for oppt^t cites Hericourt – to shew that although the property has been sold in this Case, yet the – purchaser would be bound to the pay^t of the bail Empthy. and as oppos^t disclaims all right to the property in question he is entitled to the price which represents it –

—

Mc Lean vs McVey. – McVey opt } Boston for oppos^t This oppos^n is made afin d'annuller, as the Jud^t on q^l the Ex on is issued on a Judg^t not reversed in the Court of Appeals –

Reps^e Vol. 12. p. 265. V^o nullité – all proceedings of the Sup^r. Court must be regular before Ex can issue ——

Rep. v. Nullité 265
Id. v. Reg. Cards p. 320 —
Poth. Proc. p. 141 143. 148. 150.

Walker for Pltff — The Court of Appeals gave that Judgt. qch the Court here ought to have given, the Pltff is entitled to the execution of that Judgt from this Court, and it cannot be enquired here whether the Court of Appeals did wrong or not. —

Mr Boston for Dfts — The exon is irregularly issued, & the statement on the Exon is not correct, as the Judgt endorsed thereon of this Court is not the Judgt reversed by the Court of Appeals. —

—

No 151
Filiatreau & Labelleroux

action monies rect & monies expended by Pltff

Rollin for Pltff — Pltff purchased a farme from wife of Deft — on qch he laid out a sume of £15 and p.d on act of purchase £8. 6. 8 on acct but as Defdt would not allow Pltff to possess the property, he is entitled to recover back his money. —

Bourré for Defts — The wife of defendt had no authority without the authority of her husband to alienate the property, and if Pltff has p.d money to her on that acct it was his own fault — besides the husband has never profited by this money, nor ever received any part of it there is no proof before the Court that he ever did

—

No 145
McNider Lab & Coté —

Hears on Law

Roi for Dfts — action on a transport — It is not stated for qch consideration this transport was made, or that the transport was ever signified to Defts which is irregular & shews no right of action in Pltff till this signification is made —

Walker for Pltff — not necessary to state the consideration for which the transfer was made

No. 2036
Bender + Durand Lal.

Action to be subrogated in rights of Debtor to obtain payt due to him from Arcange Lafontaine

Beaubien for Pltff. Arcange Lafontaine was named to petition of Defdt the debtor, and is accountable to him for his share of Community rights as heir of his father and Pltff claims subrogation in their rights — The Defdt filed a discharge from the debtor of all his rights on the day of filing his plea, which cannot bind Pltff, as it was too late to pay them rights after the action instituted upon case of Lilly & Boston, vs Beaumont vs Racine —

The Defdt counsel did not attend —

No. 1834
Goodsell vs Spragg Lal

Action on sale of Salt — Issue on Law
Rolland for Defdt not set at what time the indorsed note was to be paid by the conditions of sale —
Grant for Pltff moves to amend

—

"

No. 1576
McRae vs Mason Lal

On mo. for an attachment-agt the Defdt for not delivering up certain articles seized and left in possn of Defdt

Rossiter for Defdt — it does not appear by Sheriff's return that Defdt was ever charged with the possn of the articles in question — and the mere answer of the Defendt that he had not the Skid, is not enough to put him in contempt — the rule here not served on Defendt personally —

Morrough for Pltff — The Counsel appd for Defdt

№106.
Hildretta
& Mitchell

On Report of Experts —

Both parties submit to award — only question as to Costs —

—

№515
Foster.
& Ransom
dal

Action on 2 notes —

Henshaw for Defr — The two notes are sign — The Plff states Defds to be copartners this denied, and no proof of it, on the contrary the Comps appears different from that stated — Chitty on bills. 350 — this is a joint note & all ought to have been sued

Rossiter for Plff - at the times the notes were given the Defrs were partners

—

Donegany
Teasdale
& Stanley opt

On oppn — afin de conserver

Buchanan for Oppt — The oppt had a lease of the land sold, and by his industry the orchard produced a considerable crop of apples, worth a considerable sum of money — cites Lacombe. vo Prescrne — no 6 — Rep. vo Privilege vol 13. p. 69 — vo Labourer. Sec. 10. № 9 —

Rolland for Plff — The improvements ought to be p. 242. 243. Aubault. des Criées — there should be a ventilation of these improvements but this not necessary as the possn of oppt from May to Septr for 9 he paid nothing, is equal to any sum he could be entitled to for his improvements — & this is in proof — & the oppost has nothing to demand —

№ 593
Charles
Coté
vs
Lebrun Qq

action for 5/7th of £54. 8. 4 due by Defr for house rent from 8 Dec 1818 to 1 Oct 1820 — £38. 17. 4 —

Beaubien for Pltff — the Defr says he rented from Colette Lebrun from 1 March — owed a balce £47. 5 — wt sum he has not pd as Colette Lebrun had forbid him to do so —

Rolland, for Defr — in consequence of the contest among the heirs the Defr was not safe to pay to one or the other, as they all demanded the rent — & particularly Colette Lebrun who forbid Defr to pay to any one but her, in consequence she has been called in as a Garant she excepted to this, but this exception was dismissed & she has pleaded to merits of action en garantie, & also to the principal action —

Bourré for Gart — the Defr has not proved sufft as her to maintain this action of garantie — the Pltff is not sufficiently authorised to maintain this action under his powers of attorney, — the Gart never prohibited the Defendr from paying to the persons who shewed they were authorised to demand the same — but Gart ought not to be held to pay the Costs in this Cause, as the refusal of Defr to pay what he owed is not to be imputed to Gart — the proof made by Defr is insufft and Gart has objected to it as insufft the whole consists in the testimony of one Bourdon & his wife, & the matter touching of their testimony is given exceeds 100th —

Beaubien for Pltff, the Gart has pleaded to his action which is in contradiction with what is now alledged Pltff's action is well made out —

Rolland for Gart — the Gart must be condemned to pay the Costs as she has occasioned all the difficulties of has occasioned —

№ 2051
Lusignan
Pickle —

Ou action hypothecaire

Roi fu Plff — The Plffs had established two different rentes Constituées on property they sold to the Defend — this property has since been discussed and sold; and present action brot. agt. the Defdt as in poss. of property he purchased from the debtor Bellanger after the constitution of the Rents — 2 Bouj. tit. 6. p. 544 — The vente forcée gives right of action for reimbursement of Rents Constituée —

Buchanan fu Defdt. The sale by Plffs was not ratified by Polite Lusignan on 25 Sept. 1822. —

Roi. the ratification has a retroactive effect Dec. Fr. vo ratification — Repn vo Ratification p. 455 —

Buchanan fu Defdt on 2d ap. 1817 Defendt purchased from Belanger — the sale on its origin was null in regard of Polite Lusignan, this ratification can have no retroactive effect — 2 Bouj. 541 — Dec. Dront. Ratification — the deed was in suspense until ratification — Denis. vo Hypoth. Sec. 2 № 9 — Poth. hyp. Vol. 6. p. 429 — 4th — 2 Bouj. 535 — Dic. Dront. vo Ratification —

Mr Gale fu Defdt — The debt alleged a decompture not proved — the Plffs sell, not for themselves, but as se fiscant fort for Polite — who ratified only 7 years after — this was even after Polite had bot. back the land qt could be of no avail — the deed had no existence at the time — it was a mere non-entity — The Donation from Lartigue of the property was not to Bellanger alone as stated in the declaration, but to Bellanger & wife — qh is a fatal variance —

Roi in reply — The Plffs sold for themselves as well as for the absent heir — the ratification had a retroactive effect — The act was not null that was made

made by the heirs, and this act deriving its force by the ratification it must have all the effects of a valid act from the commencement —

Barsalow
Orkney
&
Gray ofts

On opposition afin de charge
Boston for Oppos. The Oppt. built up the house and made an agreement w. Defde to have enjoyt. of the house till the monies he had paid back the monies he had disbursed in thus ameliorating the property — & present oppn. made in order that house be sold subject to this agreement The right of Oppt. consists of a priviledge on the house to be realised by the actual enjoyment of the house cites ~~case of~~ 2 Bouv. 467. 722. 732. — The conclusions taken here by Oppos. are of three kinds. Rejt. denied.

17 J. 609 —

Rollard for Pltff. The conclusions are irregular and incertain — as the time to objects is consistent with the oppos. qt is a charge, and the conclusions are afin de conserver —

Monday 17th Febry. 1823. —

Present. &c

No. 477
Stacey. —
vs
Ermatinger

Action agt. Defdt. for an escape —
Ogden for Pltff — In July 1820 — Pltff obtd. Capias agt. Alexr Grant, Ir. — ret. in Oct. after. and Pltff moved Judgt. against him for £270 — Pltff afterwards sued out a Ca. Sa — & Dfdt. made a return 6 months afterwards stating that Grant was not to be found in his district — It appears by evidence that Grant was

arrested

arrested and was afterwards allowed to go at large — Defendt. has pleaded that Gaoler alone is liable, as he is an officer appointed by Govt — but it is in evidence that no person was allowed to communicate / wt the Debtors without a written order, — that under such an order one Martin was admitted, & yt they think Grant appears to have escaped & Grant had escaped. — In France Huissier liable 2 Comp. Bor. tit. 13. art. 16 — on note + Id. art. 22. 38 — Dic. des Arrets + vo 1o Prisonnier evadé — + Despeisses 709. 10 Repre vo Prison 13 vol. p. 673 + 2 Dic. Droit. vo Prison N. Denisart. vo Emprisonnement — Id. vo Gardien. + all these authorities shew the liabilite of the Gaoler in France, and the principle
& mer. tit. Escape letter A. 8 T. Rep. 28. 29 +

Sewell for Defdt — Before the Defendt rec'd the writ of Ca. ad respo. the Debtor had escaped from Gaol, & was regular, it should have been to detain the body of the Debtor as then supposed to be in Gaol — the Defdt therefore could make no other return than he did, that when he rec'd the writ of Ca. Sa. the Debtor was not in his district. — The Sheriff is an officer appointed during pleasure — the Gaoler is appointed by the Crown & is not the officer of the Defdt — The Debtor with others conspired to break the gaol, & did so without consent or knowl. of Defdt. or Gaoler — the insecurity of the Gaol from the House of Correction — from the insufficiency of the Gaol — no indemnification from the Gaoler nor from the Kings Govt — That there is a Guard of Soldiers appd by the King to take care of Gaol — There is no poundage or allowance to Sheriff for detaining Civil Debtors — That Radford being the superior officer & first answerable ought to have been proceeded agt. or his insufficiency shewn 1st Prop. The Sheriffs in this Province not liable for escapes of Civil Debtors — 2d. Even if they were, Defendt here is not answerable to Pltff in this action — The Huissier & Gaoler are distinct offices in France — in England it is

Defft

different. the Sheriff is chief Gaoler — In Eng.
there must be some laches or negligence shewn to
render a Gaoler or Bailiff liable — N. Dens. V. Geol
N. 10. Here the debtor escaped by a complot with others
Dom. tit. 3. N. 5. — there must be gross negligence to render
a gaoler liable — In this Country the hardship would
be extremely great if the Sheriff were liable for escapes —
he is the person to execute all writs, but he is not liable
for the defects of the Kings Prisons, nor of the Kings
Inferior Officers — It is said that in this Country the
Sheriffs are the Keepers of the Gaols, but this is a
mere fiction of Law — the calling of Sheriff, does
not render him liable, unless the Law attach responsibility
to it — the Gaol here belongs to the Govt — and they
exercise authority over it — The appointment of a House
of Correction in the Gaol by Govt has rendered it more
insecure — The Gaoler is not appointed by the Sheriff,
but by the Crown, and there is a Military Guard appointed
to assist this Gaoler — The Sheriff has no power for
Civil debts — and there can be no responsibility without
power —

In England there is a series of St. regulating the
duties and responsibilities of Sheriffs, &c do not apply here
there also he has an indemnification of the County for
the insufficiency of the Gaol — he has the appointment
of the Gaoler & his inferior officers in the Gaol — Impey
Sheriff. p. 154 — the principal bound only when he has this
power of nomination, for the neglect of the Inferior Officers
him also the Sheriff receives a remuneration Imp. Prac. p. 101. 2

But this case has been decided at Quebec before King v. Found
M'Auley. v. Sheppard, that Sheriffs in Canada are not Gaolers
so as to make them responsible for escapes in Civil Cases —

If the laws of England were in force here, the Plff would
fail in his action — he ought to have stated that Radford
the Gaoler was his officer, & unable to pay the damages. &
therefore Defdt became liable — 3 Com. Dig. tit. p. 641 —
2 Levinz. p. 160 — Impey. 158. 159 — Dalton's Sheriff —

F. Mod. Rep. 416. 119 + 3. Vol. p. 145 —

By the evidence in this case the Plff must also fail the note written by the Sheriff cannot create responsibility without Law + the original of this note is not produced nor accounted for, and the copy produced is not evidence — and the means by wh. the debtor escaped here would have exonerated the Gaoler himself under the Complot — appears to have taken place in the Gaol. —

Mr Ogden for Plff + If the Sheriff here is not liable there is no security for the publick ag[ainst] their debtors — The case of Mc Clure v. Shepherd. was diff. from that cited — That responsibility must attach to the office of the Sheriff here — his return must condemn him here, to the writ of Ca. ad Sat — when he admits Debtor to be under his Custody — to await the ends of Justice — by Ca. Sa. Defd was found to hold Debtor till he pd. the debt — The part of Gaol converted into house of Correction, does not release the responsibility of Sheriff, but assists him + as well as the Gaoler — the acts of Sheriff giving an order not to let any one go into Debtors ward without leave, shews the responsibility of Sheriff, as understood by himself the testimony of Radford shews that without this order he would not have admitted the person Martin wd not have been allowed to escape + The Sheriff here holds all the honors + profits of the office and must be liable. —

The Sheriff is liable in England by the Com. Law as well as by Statute.

—

No 54
The King
Knower

action on Penal Statute for 3pl value of two chests of tea found in poss[n] of Defd + under St. 14. Geo. 3. ch. 15. sec. 37 —

Grant for Defd — Case not proved — no evidence that articles were found in premises of Defd — want of conviction not entered — Ross in reply — not necessary that articles found should be condemned — Evidence suff[t] —

№ 165 D

Armour
~
Peddie

action by Pltff as indorsee

Quere for Defts on General Demurrer — The decln contains 2 counts — to both of wh a general demurrer — The decln is defective, as it contains no allegation of protest on non accept or non payt when presented — That the bill was not presented according to its tenor —

1st It was necessary to have alleged a presentmt for payt and a protest for non payt which was necessary avers to tenor of the bill — No action could be brot on this bill before the time elapsed for payt — and excludes the days of grace — The bill here was drawn at 60 days sight, and could not be considered payable till exp. of that period, & the day of sight must be reckoned from the day of accept or the day of protest — 6 Edit. Chitty on bills. Exch. p. 343. — 6 Term Rep. p. 200 — Poth. Change. № 70 — 8 Edit Chitty on Bills. p. 309. 10. — Abbott. on Plead. 302 — form of action by indorsee ag indorser —

6 Ed. ch. Bills p. 343

2. The bill is not alleged to have been presented to have according to the terms of it — this was necessary the bill is stated to have been presented to James Obrien but not said to be James Obrien Chancery Lane London the drawee — non constat — they are the same person p. 322. Chitty on bills — 14 East Rep. 500 — 508 —

3. It was necessary when bill was presented for acceptance that 2d & 3d were not paid — the bill drawn to be paid on this condition —

Mr Walker for Pltff — The principle upon wh this action is founded that upon non-accept of bill liability attached on all parties — Chitty on bills. p. 136. 7. 8 — Bull. N. P. 269 — Esp. N. P. p. 51 — 3 East. T. Rep. 81 Ballantyne Gloster — Bishop vs Young — referred to as in Buller — 2 Bur. 674 — When due notice of non-acceptance, not necessary to wait till day of payt arrive — nor even to protest for non-payt —

Chitty p. 300 5 Edit.

It is sufficiently stated in Decln. that bill was presented to the said Jas Ogden, after he had been in another part when he lived — Protest for non-payt. not necessary where there has been a protest for non-acceptance — and action lies thereon —

Mr Gugy in reply. The authorities cited by Pluff do not apply — p. 300. Ch. author treats of inland bills — of necessity from foreign bills — where protest for non-payt — is as essential as protest for non-acceptance — But at all events Canadian Law must prevail, & awards to Pltff — the action would lie only for 1 cents — and not certain, but that under the circumstances the 2d or 3d bill may have been applied & paid —

Bishop v. Young, 2 Bos. & Pull. 83 — on note (a) cases referred to —

Decln 2 & 3 not pd — this not necessary to be averred. See Chitty Forms of Decln in Supn Courts. p. 509.

No. 359
Trim
Delorme

action possessoire —

Sullivan for Pltff — action for possn of a certain lot of ground adjoining Pltff. house — and from evidence adduced the Pltff. title is made out — the lot in question was generally considered a vacant lot but which was always used by Pltff, as a yard — The evidence of J. Clarke shews Pltff's poss. extended to several years past — Bragg's evidence shews same thing —

Beaubien for Defdt — The first right of poss. of Pltff was by entering a fence on 13 Nov. 1816, in the night time which was a voie de fait on the possn of the Defdt — The Pltff describes the lot of land in a situation — Repve v. voie de fait — there was no possn annale in the Pltff to entitle him to the present action ~~action~~ — The Defdt had possn on 18 Oct. & on 13 Nov. after Pltff entered his fence, & Defdt removed as he had a right. — The ground in question is stated by all the witnesses to be a terrein vacant and neither party could be said to have any possn till the 18 Oct 1816, when Defdt took possn —

M'Intosh
vs
Aussem
et al

action for work & labor — on Lachine Canal

Henshaw for Defdt — Part of demand not made out — work to be done to satisfaction of Engineer — this not proved —

Walker for Pltff — work proved to have been sufficiently done and deliv? to Defdts

—

No 303

Throop
&
Davies
Richards
Intervs

Action of revendication for recovery of certain Cattle —

Henshaw for Pltff — The Pltff made a lease of his farm wt the Cattle — the farmer tortiously sold the Cattle to Defendt and were in consequence seized —

Grant for Defdt — There is no evidence to shew the Pltff was proprietor of the Cattle in question — their identity not made out — The defendt purchased the Cattle in question from Boyden &c? for them — That Boyden was allowed to sell the Cattle on the farm with the consent of Pltff

1 Bowy. 145.

Henshaw in reply — There was evident collusion between the parties to deprive Pltff of his property objects to evidence of Davis on the Intervention —

—

No 275

Bridge
vs
Andrews

Action by Pltff — on transfer for sale of certain real property ~~sold by~~ Defdt — on 1 Oct 1818 —

Sewell for Defdt — Defendt pleads in compensation Pltff. claim under deed of Cession in June 1818 — signified to Defdt in 1819 — Defendt sets up a debt due by Bowron prior to the assignment & signification of it — That was an arbitration in March 1820 — which shews that Bowron was indebted to Defendt when he made the

1 Laws 524.

transfer

transfer to the Pltff — The Debt due to ~~Pltff~~ Defdt by Bowron existed at time was ready to be proved as appears by the evidence in the Case, was without any award this is an equitable case for Defendt — and the transfer him appears to have been made to defraud Defendt of his right — 1 Despausses. 781 — delay for Bowron of a year to pay does not exclude compensation. —

Walker for Pltff. cites Poth. Ob. 628 — only a liquidated debt could be set up by Defendt to Pltff demand — & was due at time — That there is no evidence before the Court that at the time of the transfer there was any debt due by Bowron to Defdt — It is admitted that Defendts for Pltff after the transfer the 2d payt of Loan due on deed of Sale —

Tuesday 18th Febry 1822

Present

Justices Reid & Foucher. —

No 2125

Durocher dab
&
Beaubien dab
&
Bouthillier

On hearing on Law —

Rolland for Pltff — The Exor intervenes & prays that the testament of late Miss Durocher be executed to this Intervention the Pltff have excepted, inasmuch he has never accepted the office of Exor, — that he has only the year & day to execute the testament, wch has elapsed — The Intervening party has excepted to their reasons, & parties are now to be heard on this exception — has done no act within year & day

Beaubien for Interv & party — Pltff not entitled to make this plea — Denet. no Exor. No 29 —

Interlocr ordering proof —

№ 537
Flaherty
vs
Clarke

action for damages for non-delivery of Cattle on sale—

Gale for Defr denies the sale at 135 dollrs—
Sylas Colbrook. Wm Lecam & Pre Lebert, Pltff's witnesses
shew suffr to dismiss the action—

—

№ 214
Marotte
&
Monplaisir
&
Contra

On Report of Arbitrators.

Kelly for Defr— the award allows to Pltff 165 ℔ —
but the Arbitrators say, they could not finally
determine the matters in contest between the parties
in regard of certain Costs on three actions in the Inferior
Court— a statement of these Costs ought to be given in
by Pltff's counsel, amounts to £ 9. 6. 8 & it appears that
no credit has been given to Defr—

—

№ 1974
Archambault
&
Fullum & al

action by Pltff as Trustees of the Parish of
Lassomption agt the Defr as security for the
workmen who built the Church of that Parish

Rolland for Pltff— The Judgt agt the principals ought
to be executed agt the Cautions, but before it can be rendered
executory agt them they must be heard to state their reasons
agt it— There is great latitude in matters of Caution
it may be in various cases and in uncertain matters
Obl. № 396. Repr ve Cautionnement— By the plea
and the nature of the proof adduced the Defrs here would
wish to set aside the Judgt as a thing never had, & to
contest the Cause anew— But the Cautions ought to be
bound by this Judgt— assimilate case to a Caution
of a Tutor on his acct rendered, the Caution could not
enter into new contest on the debats de Compte—

Obl. N°. 908 - as to chose jugée — when Indt. avails as well of the Caution as the principal - Nouv. Denizt v chose jugée - p. 548 - Desp. p. 674. des Cautions - part. 2. tit. 2. sec. 3 N° 19 — Nouv. Denizt Declaration de Jugt. Commun - —

As to change in original contract pleaded by the Cautions Repse vt Maçonnerie. p. 66. - the workmen cannot avail themselves of this 2 Bourg. 465.

Mr. Buchanan for Defdt - Deffts pleas put in, particularly, that after the contract made wt workmen of the Cautions were party - certain changes were made therein whereby the Defendts obligation was altered, and discharged - the Pltff took on themselves the conducts the work, instead of allowing workmen to do so - Defdt were to furnish good materials, but this was not done —

Dig. liv. 44. tit. 1. 19th law - all the exceptions of the principal could avail himself may be taken advantage of by Caution

Dig. liv. 46. tit. 1. l. 32 - This may done at will of principal Poth. ob. N°. 380 - same principle — Desp. des Cautions 1 Vol. 587 Su. 3. N° 44 - Domat. 1 Vol. p. 194 - —

It was necessary for the pltff to have filed a copy of the debt of the principal to shew that grounds of action were same as present & an ct Indgt was given — moves to reject certain exh. filed by Pltff. too late - No. 18. & 19. not regular to have been filed wt replication, as the Repse was a general one & pleaded to no particular facts in support of which such exh. could be filed - they were put in to support the original demand merely by this indirect means —

The evidence to support pltff is strong - shews that the stone & sand were of bad quality & not fit for such a building The devis was departed from by making a chimney in one of the Towers - when the failure of work first happened - The workmen complained of the insufficiency of the materials - but were directed to proceed & employ them - by this departure from Contract the Securities are released

Poth

Poth. Obl. N. 404 — Disp. des Cautions Sec. 3. N. 42. Obl. N. 599 — 1. Domat. p. 196 — That the Defendts cannot be held bound for the costs — the Cautions ought to have been notified of the original action that they might have pd the money if they thot fit. Poth ob. N. 404 — Despeisses Caution Sec. 3. N. 3 — no evidence of the taxation of the costs —

O'Sullivan of Counsel for Defdts — The principle being clear from the authorities adduced that the Caution can be admitted to avail themselves of every point of defence qch they could have done if parties in the original suit, the Pltffs action must fail — The Pltffs reserved to themselves the right to superintend the conduct the work and to furnish the materials — and if there were insufficient the workmen could not be responsible for bad workmanship when materials were bad — the workmen made constant representations on this subject to the Pltffs, but Defdts were directed by them to proceed, and to use the materials — The extent of the Towers was diminished at least a foot or a foot half — there were four doors made in the towers instead of three stipulated by the Contract — there is also a chimney made in it, not in the Contract. — this is a deviation from the original contract, sufft to discharge the Defdts — particularly as it appears that from these changes, the destruction of the building ensued —

Rolland for Pltffs — The Defendts cannot be admitted to plead to the existence of the debt established as the principal Obl. N. 380 — But the workman is judge of the materials given to him, and if he employs them, he must answer for the work — The identity of the action of the principals is made out as connected with the present action — the workmen are answerable for the work, whether they furnish the materials, or whether they are furnished by others — and even when the others reserved the right to conduct the work. The Action being founded on a Judgt it became unnecessary to

plead

plead chose jugée in reply, he has replied that the reasons pleaded were insufficient.—

That there is not the least proof of any of the deviations complained of, which they allege ought to discharge Defends from this action — by the marché — there are four doors contracted for in the towers by the Devis & marché The contract also provides for the niche in the wall for the baptismal font.— There is no proof that the Syndics ordered the towers to be of less dimensions than stipulated — but the fact is not so — As to the Chimney in towers — it is true this is not in the Devis, but this will not change the obligation of the Caution, nor discharge them — The Defds have not pleaded that this Chimney was the cause of the fall of the towers — nor can it be proved — and besides the report of Experts contradicts the fact — As to the Costs had the debt been ascertained by the Contract, this objection of the liability to costs might have been raised — but the Costs here are a part of the damages, as they became necessary to establish the right of action of the Cautions — There is no novation here proved that can discharge the Cautions —

—

№ 1810
Farquson & Brewster } Action for grosses — noth[s] d

—

№ 96
Page — & Dawson } Action for damages for Slander.

Morrough for Defd. The words spoken were used in confidence — The wits say they understand English very imperfectly, & Defend. spoke in English. —

Rossetter & Page for Pltff contend that Pltff has proved special damages —

—

№ 772
Stevens & Decarry & Stevens & Leclaire. Jos } Action negatoire at. Defd —

Bidard for Pltff — Report of Exps. ought to be homologated — & Defd. condemned in £10 damages w Costs —

Rossiter for Defdt The defendt had no notice of the proceedings of the Experts – notice was given at 2 o'clock to attend at 4 P.M. same –

№ 578
Brosseau
Cartier & al

on action of account. –
Mondelet for Pltff, discontd his action as. Cartier & Roi – and contends that he is entitled to a Judgt. as the other two defendts

See Dennt. Vo Procuration No. 1A.

Rolland for Bondreau – action is founded on a verbal authority said to be given to Defdts to institute actions regarding interests of Pltff by divers others – Exceptn pleaded – that action ought to have been founded on a power of Attn which was made in writing and not a verbal power which is vague and uncertain

—

№ 252
Holt
vs
Thayer

Action for goods sold – noths said

—

№ 1766
Davenport
vs
Thayer
&
Smith
oppt

On opposition of Smith for wages & to be paid by privilege –

Rossiter for Oppt – The sum demanded is for a balance of wages, not amounting to one years salary & appears to be due

Rolland for Pltff – Oppt can obtain only last years salary the has applied the monies he rec'd to the salary due on the former years, and wishes now to demand last year salary, this imputation cannot be made by the Creditor —

No 1811
Schwartfager
vs
Nelson &al

action on promy note —
heard on law
Grant for Defdt does not appear by the decln
that the note was given for value rec'd — refers to case
of Gibb. v Robertson — Perrault v Desperance —

—

No 21
Mills
vs
Chamberlin
&
E contra

1. Pigeau. 197. 8.

action on Promy Note —
Morrough for Defdt — The note was
payable at store of Defendt in goods in that
of Vermont — no suffit proof of this demand
Chitty on bills 321 — The Defendt has also pleaded
a sett off for certain monies paid by him to Pltff — There is
also an incidental demand —

Ogden of Counsel for Defdt — no evidence to support
Pltffs action — the Defdt was to pay in whiskey at Newbury
in one year — a demand must be made then — none proved
5 Taunt. p. 30 — Chitty 333 — 1 Pigeau 35. Obl. 518. —

Grant for Pltff — It is for the Defendt to prove that
he has fulfilled the Contract — he has pleaded payment
and ought to shew this —

No 59
Little —
vs
Tucker
&
E contra

action for freight —

Ogden for Defendt the Pltff acted with great
negligence whereby Defendt suffered damage
as a great part of his flour was damaged — The
Pltff over-loaded the batteau —

№139
Gray
vs
Hart

Action for furniture sold —
M^r Bender for Pltff did not appear —
Ogden for Defend^r by the Contract between the parties the Pltff cannot maintain his action — Defend^t had a delay of 12 months for payt of the furniture —

№1895
Warwick
vs
Pomeroy

Action for Promy note —
Morrough for Pltff — asks Judg^t for amount of note only —

№536
Laurion
vs
Chaudillon
& sup

Action on account of Intelle —
M^r Buchanan for Defdr There is no evidence produced of the authority to alienate the land upon which the rights of the Pltff are pretended — Ob. № 737. 738. — Domat Liv. 3 Sec. 2 §. 12. —
Brunean for Pltff — The action bot on act. rendu —

№208
Dupuis & al
vs
Roi

Action by Pltffs as Parish Trustees for recovery of the Defendrs cotte part of a repartition —
heard on law
Rolland for Defdr The matters of law are so mixed with the fact that the Court cannot distinguish before evidence is gone into —
Mondelet for Pltff — the Court cannot admit proof of the facts set up by the Defdr because they are facts which regard another Jurisdiction which has already judged them —

№ 188
Girard & wife
vs
Jeffries

action on Judgt —

Grant for Defendt action founded on a Judgt to wch Defdt was no party — and he cannot be bound by it — Portelance w.h whom Defendt contracted gave delay for payt — & has called him as his Garant

M.r Roi for M.r Portelance — the action in chief cannot be maintained, as Defendt was not bound by the Judgt to wch he was no party —

Rolland in reply action must be maintained

—

№ 1572
Brouillet
vs
Leclair fils

action to obtain from Defendt discharge from certain burdens on a land sold by Defdt to Pltff —

Bourret for Pltff — Pltff is entitled to Lods & Ventes on the ventilation of the Rents & pension due on the land —

Pigeon for Defdt two questions were left to the Experts the value of the land, and the value of the rents & pension — the Pltff has settled w.h the Seignior, so that he now contends to establish the highest rate due to the Seignior, who refuses to have any thing to do w.h Defdt the Defendt ought therefore to be condemned to pay the lowest value — which is the the value of the property at the time of the sale —

Wednesday 19th. Febry. 1823.

Present

Justices Reid & Foucher.

No. 273.-
Bridgeodal
vs.
Andrews.

Judgt. for Plff. The Court were of opinion that the demand set up by the Defendt. agt. Bowron, at the time of the signification of the transport made to the Defendt. consisted merely in a right to demand damages from Bowron for a breach of Contract. That this could not have been set up by the defendt. agt Bowron had he brot. the action on this deed of sale agt the Defendt. at the time of the said signification. Nor can it be set up agt the Plaintiffs. And even if it could, there is no sufficient proof made of the damages claimed by the Defendt. here, because the submission & award subsequently made by arbitrators to this signification, cannot bind the Plaintiffs, it being res inter alios acta as to them.

No. 236
Lebeau
vs.
Charles.

Judgt. on ant. rendered. In this case two points occurred. 1st. whether the children of the parties could be witnesses. and 2d. whether the Commune renommée could be received to estimate the extent of the Community. On the first point the Court were of opinion that the two children were competent witnesses. because the fact to be ascertained arose out of the trade and Commerce carried on by the Defendt. from the books of account he kept and the nature and extent of the trade he carried on. which was a fact of a commercial nature. and the Court that that a fact of this kind could be proved in the Cause, although the object in question was not Commercial. On the 2d. they that that as the proof by Commune renommée had been introduced in favor of minors when no Inventory had been made, as being the next and best proof in default of such Inventory, so a fortiori ought it to be admitted when the party refused to render that act. which he had been required to do, as it was a kind of fraud in him to refuse it, as he alone was possessed of the property of the Community and able to render the act. & he could not complain if the next best evidence was admitted

No 54 The King vs Knowlton	Judgt for Statutory penalty of triple value of tea found concealed in possn of Defdt
No 145. McNider et al vs Cotté	Exceptions dismissed.
No 434 Beaubien vs Morley	Judgt of separation.
No Barsalou vs Ostiguy & Gray opt	Oppn dismissed — not being afin de charge
No 1754 Armour et al vs Peddie	Defendrs exceptn dismissed
Donegany vs Teasdale & Stanley opt	allowed Oppn £25 on his claim
The King vs May.	The Court were of opinion to adopt the Chancery practice in Cases of Contempt in order to establish the facts, and therefore considered the depositions given in to rebut the answers of the defendt not sufficient for the Court to proceed upon, as in this case the evidence ought to be taken in the usual course and the party admitted to cross-examine the witnesses — They therefore gave leave to the prosecutor to move for the admission of such evidence if he thought the case merited further consideration.
No 669 Fuller vs Johnstone & Frayne opt	The action en Garantie dismissed

No 577
Carter
vs
Normandin

Judgt for Pltff

No 234
Lafresniere
vs
Warwick
& Sheriff

Rule discharged

No 991
Allison
vs
Jeremy
& Schultz

Rule absolute.

No 105
Gates & al
vs
Hall.

Rule discharged.

Thursday 20th Febry. 1823.

Present.
Justices Reid & Foucher.

No 2051.
Lusignan
& al.
vs
Pickle.

Action dismissed.

Roussy
vs
Roi.

Motion of Pltff rejected.

No 146.
McLean.
vs
McVey.
McVey oppt

The Court considered the opposition well founded in regard of the Costs of this Court refused to in the Judgt of the Court of Appeals, as there was no such Judgt in this Court upon wch Pltff could demand Costs. - but held Expn valid as to the rest.

No 1978.
Pearson
v.
Charles.-
Lebrun, Intervt

Intervt dismissed, saving rights to party and Judgt for Plff on Deftes confession—

No 1577
Fowke.-
v.
Hazard

Action dismissed— facts not commercial—

No 659
Scott
v.
Driscoll.-

Plaintiff was allowed to proceed, on principle that action wd be prescribed in law if dismissed under rule obtd by Deftes—

Lacroix
v.
Lacroix
&
Davids optes

The Court confirmed the projet de distribution of Plff, and held that the Optes would not claim interest on his debt after the sale of the Estate by the Sheriff

No 536
Laurion
v.
Chandillon

Judgt for Plff—

No 572
Hunter et al
v.
Perrault et al

Judgt for Pltffs—

No 515
Foster
v.
Ransom

Action dismissed.—

April Term 1823.

Tuesday 1st. April.—

Present.—

Justices Reid and Dyke.—

No. 304
Charetier
vs.
Descelles
&
Descelles
mis en Cau.

On Pltff. motion for a continuance of the mis en Cause for part of defendants on following reasons

Bedard for mis en Caus, contends, that on the reasons alledged the parties must go to proof—

Rolland for Pltff. The mis en Cause ought to shew that the reasons given by him are sufficient to exonerate him from the effects of the rule—

over till to morrow

No. 248
Duplessis
vs.
Cardinal
et al

On plea of abatement pleaded by one of Defendrs who is impleaded by name of Duchantal whereas is name is De Chantal—

Rolland for Pltff contends that the fact from all evidence adduced is that Defend— is called by name of Duchantal refers to a boat a loya— when Defr— has signed his name Duchantal, Ex. No. 3 filed by Defr—

No. 402
Bond
vs.
Johnson

On Exceptions.—

Mondelet for Defr— The plea filed is a demurrer, and not one of those exceptions upon which a previous hearing is to be had under rules of practice — hearing instanter without notice

notice is irregular —
Walker for Pltff — The exception is in nature of excep.
à la forme — and regular notice given —

No. 13
Scobie
vs
Driscoll. } on rule to shew Cause why trial shd not be had on 10th. inst. —

Defendt — in person refers to proceedings in the Cause and to cause being twice fixed for trial already & not having taken place — & presumption of 2 Terms had accrued

Buchanan for Pltff. as that would be prescription as the Pltff. action were it now dismissed. —

—

O'Brien
vs
Thomas } On Petition presented on behalf of the Defendt a debtor in gaol under Ca: Sa: praying, by his Curator, that he may be liberated from his confinement in consequence of mental derangement, and disease of body to the endangering of his life by confinement —

A rule having served on Pltff to shew Cause why the prayer of the petition should not be granted he appeared by Mr. Mondelet, who stated, that he did not consent thereto, but acquiesced in any Order the Court might give as to the discharge of the Prisoner if they considered that by law they could do so. —

Gugy for Defendt — The Ordce of 1785 was given to assist Creditors in recovering their just debts. but the introduction of this Law cannot be considered as abrogating the common Law of the Land which existed previously in regard of the rights of Debtors to be discharged from their imprisonment for debt under prior existing laws — By the Com. Law of France and by the arrets and decisions of the Courts a Debtor, situated as the Defendt was entitled to his

discharge

discharge even without giving any security – cites N. Denis. vo Elargissement. p. 446 – and Repse eo. vab. Prisons are intended as places of safe keeping, not as places of punishment without condemnation to that effect, and were intended to compel Debtors to discover their property to pay their Creditors – 1. Despeisses. Tit. des Executions – N. Denizt vo Cession de biens. p. 381 – 2. Desp. Des Droits Seigneuriaux. prisons. –

That according to the interpretation of Statutes the latter ought not to abrogate the former law, but both ought to stand – Bac. Ab. Tit. Statutes – and Viner's Abr. same title – as to interpretation thereof and authorities there cited –

Considers that the law of England cannot apply in this Case –

Wednesday 2e April. 1823.

Present

Justices Reid & Ryke.

No. 1713

Bone
&
Bone

Action petitoire –

Roi for Pltff – Pltff acquired the lot of land in question by exchange with his brother Seraphim Bone in of Dud Defdt. was a party and ratified the same – as to 2. lot of land cultivated at the plaines – the Defdt. sets up some appearance of right – By a legacy made to Pltff by his grandfather certain lots of land were bequeathed to Pltff the Testator held these lots only under a power of Attz to alienate in such manner as he should see fit – this power is produced and under it the Grandfather of Pltff the right to give it to the Pltff –

Lacroix

Lacroix pa Defde The Defendr has pleaded thirty years prescription, which he has proved by witnesses as to the lots of Land at the Plaines — as to the other Land, the Defendr never abandoned his right of property in the Land although he consented to the exchange between Pltff & his brother —

—

No 60
Duchantal
&
Larguedor

On demurrer to Defdts plea —

Buchanan pa Pltff. action on agreement for sale of a lot of ground — Defdt has first answered generally & then specially — To this Pltff has objected, that plea is contradictory — it contains an affirmation & negation — 2d. That affirmative matter ought not to be pleaded at all — vide System of plead. p. 307 — two affirmatives one by Pltff & one by Defdt cannot be rec'd — Id. No 213 — That this plea cannot bar Pltff of his action & ought not to have been pleaded —

Rolland pa Defendr The plea is a sufficient answer to Pltff's action, and to which Pltff could have answered — It is an answer to the action that Defendr has sold the Land to another person and therefore there could be deed given to Pltff on this action —

No 304
Charetier
&
Desselles
Desselles
&
mis en Cause

On hearing on the reasons alledged by the mis en Cause —

Bedard pa mis en cause — The rule in this Cause cannot be declared absolute, as the conditions of sale made by the Sheriff in this Cause were illegal, & impossible, to oblige the mis en Cause to pay a part of the enchere before the adjudication made to him — the adjudicataire has eight days after the adjudication to pay the amount of the adjudication — 2 Pigeau. 774. — That adjudication is unjust in having been made to Pltff for a less sum than that offered by the mis en Cause —

2 Pigeau 774

Mr

M^r Rolland pour Pltff - a question here to be determined whether the Sheriff can limit and determine the conditions of sale as to the payment of the money - The law cited by mis en Cause as the 8 days given in France to the adjudicataire does not hold in this country, nor any other formalities of the Decret

No 424
Labelle
& }
Paquet }

action hypothecaire -
Lacroix pour Pltff demands Judg^t
Bleury pour Defd^s did not appear

No 538
Turgeon
&
Achin
&
Lacroix
Gart -

Roi pour Pltff demands Judg^t
Defend^s ~~did not~~ appear^d ~~and~~ ~~asked~~ Inf^s ag^t Gart -
Beaubien pour Gart - The facts alleged & proved ag^t the Garant are sufficient, and the Defend^s admission of Pltff^s right cannot injure Gart - ~~That~~ Lacroix sold to Valiquet, she only can have his right of action ag^t Defr as heir of Lacroix - & the marriage ~~of~~ between Valiquet & his wife is not proved by the marriage Contract - & upon Act^n for
Pt. mariage - there must be more than a Contract - there must be a celebration of the marriage to give rights to the parties - There could be no Community established in law under this allegation, and widow of Valiquet could not acquire a half thereof - The proof is equally deficient no proof of marriage between Mercier & Valiquet, nor of Mercier and Achin - no extract mortuaire of Valiquet no proof of the births of children of a marriage between Valiquet & Mercier -

No 362
Robillard
Robin
dal -

No 493

Bleury pour Pltff en Garantie, submits the Case -

No 1078
Blackwood
Pasteur
Mower oppt

On oppn afin de conserver —
Beaubien for Oppt claims balce on an obligation — and terms of payt on notes given by Defdt without derogate to this obligation —

Pollard for Pltff — The oppt has lost his right of mortgage under this obligation, except as to £35 — but as to payt of three notes for £100 — each oppt can have no mortgage — these notes are now in the possn of the oppt — and he cannot have a double remedy — on one oppt has obtd a Judt of Defdt — and it is not certain what has been paid thereon — The oppt ought to have returned the notes if not paid at this term, otherwise he waived his right on obligation

Beaubien for oppost — The Pltff opposes a want of diligence on one note, and the doing diligence on the other as equally destroying right of oppt — The obligt specially reserves the right of oppt — on taking these notes, and the demanding payt of them cannot do away this right — there was no novation — the contrary even is provided for — Poth. obl. No 559. p. 87 — in 12. —

Scott. —
vs
Driscoll.

Pltff's motion was granted

Duplessis
&
Cardinal
val —

Duchantal's Excepn — dismissed

Bond
vs
Johnson —

Exceptions dismissed, on mo. for the summary hearing. —

Gates —
vs
Gordon &
al' — —

On Pltff's mo. for ex. of writ — reserv. to be heard
McRoss for Defdt — objects that writ — were returnable & nor required to attend, nor did attend at day of Enquete last appointed & cannot be exd. —

Thursday 3d April 1823.—

Present.

Justices Reid & Pyke.—

№ 1548
Woods
Vanderlinden
№ 2038
Sexton
Connell

On Defendr mo. to set aside the attachment

L. Vigé for Pltff. contends that the Pltff affidavit is suffr—cites case of Mason vs Rae where contrary proof was rejected — and no evidence ought to be admitted on a motion, of affts the merits —

Mondelet for Defendr— refers to cases where party has been held to shew the grounds he had to proceed by saisie

№ 2125.
Durocher
vs
Beaubien
Bte Bouthillier
dal

An action of account—

Motion on part of Bouthillier that the faits & art. proposed to him by Pltff be suppressed

Mr Sullivan for Bouthillier — the Interrogatories proposed are of 2 descriptions, one personal to Bouthillier & the other personal as to him the Attr— The act of Mr B. is here an answer to these Interrogatories, his bringing his demand before the Court is a sufficient acceptation of the authority under which he acts — Denis. Vo Exer. № 29— the execution of the Testament is delayed when contests arise among the heirs — qre is the Case here — Laiombe. Vo Exon Lect. № 6. № 9— Repse Vo Exer

The other sett of Interrogs— regard the Counsel, as to the party having employed him in this case — if he has not been employed — he is liable to a disaveu —

Bedard

1 Py. 233

Bedard for same party — Parties cannot be examined without cause. 1 Pag. 233. — and at the caprice of the parties — here the Court has before it suffi. proof of all the facts required of — Here no Inventory was necessary to create right to executorship, as an Exr may exist without any Inventory + and here there could be none, because the Testatrix was a minor + all her property was in the hands of her Tutor, of whom Estate Inventory has been made — Here the Exr could not proceed, as there was a contestation on part of the pltff as to the right of the Executor to bequeath in favor of certain persons —

—

No 1649.

Prince & Scott — } on Pltff's mot. for hearg + Defdt's for facts + articles. —

—

Gerrard & Thayer & Divers opps } On hearg on oppositions +

Mr Sewell — objects to demand of Smith for wages by preference — agrees to allow him $17 — as the bala has been pd him, for services rendered by him to Thayer alone.

—

No 1838

Mc donald & Goodsell vs } action for breach of Contract —

Borlon for Pltff — the Pltff was engaged as Clerk to Defdts and was discharged by them without any just cause —

Rolland for Defendt — when a servant conducts himself ill, the Master is at liberty to dismiss him — objects to testimony of Mr Judd, who is the party supporting the Cause — Repts ye Domestique —

No 803

Carmel & Orkney — } action for recovery of damages —

Bainder for Pltff — action for some oak taken + employed by Defdt belonging to Pltff.

Borlon

Boston for Defendt — Defendt was deceived in having purchased the timber from one Spottiswood — on the supposition he employed a part of the timber — Pltff does not prove all the quantity he alledges, and the value of the timber is much less than that demanded —

—

No 1625
Lamb dup
vs
Williams
dup

Action to recover rights in Succession Lacasse

Scott for Pltff. Defendt set up a claim for the maintenance of Children who are bringing the action — ought only to 25 — each ought to be allowed — there is still a large balce due to Pltff —

Sullivan for Defdt — Only one 4th of sum demanded by Pltff is due to them in Succ. of Lacasse — In this Case they ought to be experts named to ascertain as well the amount of value of grants of the house, as of what would be reasonable to allow to Defdt for maintenance of Children — Court has this right. 1 Pigeau. 246. — Repr. Arbitre. p. 538 —

Scott for Pltff — The entire sum demanded by Pltff belongs to them to amt. of about $1800 — as appears by the act. undered — The facts are clearly proved by the evidence and there is no necessity for Experts or Arbitrators — Objects to it —

—

No 226
Tidd
vs
Raymond

Action hypothecaire. —

Rolland for Defendt pleads poss. of good faith and having made improvements on the land, for which he claims reimbursement before he be held give up the property — Poth. Hyp. ch. 2. Sec. 1. art. 2. §. 4. Repr. vo Amelioration —

Boston for Pltff. The principle set up by Defendant ought not to be admitted, where a small sum only is due

due to the plaintiff — The defend^t also claims a right to be reimbursed the amount of an annuity P^d by Defft to another person — but this ought not be allowed as this annuity must be compensated with the enjoyment the Defend^t has had of the property —

N^o 2082
Miville
vs
Hague

action en Separation —

—

N^o 208
Dupuis dal.
vs
Roi —

Action by Syndics of parish to recover. —
Pltff. objects to all kinds of evidence —

N^o 753
Vincent dit
vs
Lambert
&
Lambert
vs
Dicaneau
En garantie

On action for account of rights of Pltff as Defend^t her Tutor —

Vizé for Pltff — Submission made to Practicians named by consent to estimate Pltff's rights — this rapport is made of q^l Pltff now demand the homologation —

Rolland for Defd^t objects to report — The Tutor ought her to account only for what he has received, and not what was due by 1^st community but debt q^l he was not personally liable, — the Pltff may pursue their action q^l the second husband — Demands a sum of 24 —

Mr O Sullivan for Dicaneau — complains of the error of the notary — consents to repay 150^l he received from the notary on settling the act. of his community — but objects to pay^t of all the costs in this cause, as the debats & Complaints all other proceedings in the cause were not made by him

Vizé — The Tutor was party to the act by which the right of the Minors were despoiled of & allowed the monies to

be disposed of which belonged to his minors, & is liable to them for the same —

Pemfield Lacasse & Williams &c

Our question touches the proof made to support opposts Pltff contending that same is not sufficient

No 307
Town
vs
Thayer &c

action for recovery of wages —
Monrough for Pltff — the action is supported on the evidence of the quantum meruit — claims £6 p m
Walker for Defdrs The evidence adduced is not sufft to support the demand as to the quantum of wages demanded — Pltff was not entitled to more than £4 p month — this the greatest allowance — on evidence of Jones that Pltff is entitled only to four months wages and have pd him more than he ought to have received.
Monrough the pltff was detained at Demarara by Defdrs agents & makes up the time of seven months

No 1598.
Gates & al
vs
Gordon & al

Judgt on Pltffs mo. allowing only such of Pltffs wits to be exd who had been reqd to appear at the time of the enquête first appointed. —

Chartier.
Descelles & Descelles.
mis en Cause

Judgt admitting the mis en Cause to proof on the facts alledged in his answer to Cause shewn. —

No 503.
Throop
vs
Davies & Richards

Judgt for Pltff —

Blackwood vs Pasteur. & Mower opp[t]

Judg[t]. on matters of law alledged as oppos[n]

No 197

O'Brien. vs Thomas.

Judg[t]. discharging Defend[t] from Gaol on grounds of his petition. —

No 336.

Cadieux. & Auclair. & E contra. —

Judg[t]. hom. report

No 92

St Marie vs Dent —

Action dismissed

No 674

Piché qux vs Maingy & al'. — —

Judg[t]

No 203

Lamoureux & Nimbal & ux

Evocation admitted —

Friday 4th April 1823. —

Present

Justices Reid & Pyke.

Et. Dorions & Ch. Dorions & al

action en petition d'heredité —

Buchanan for Pltiff[s] — action of Defend[ts] to render acct. of the succ[n]. of late Jean Dorion — he died poss[d]. of considerable real & personal estate

Charles Dorion has pleaded separately from the other defendants and has set up a will made by the late Jac. Dorion the other Defts as Epts have set up the same will 1st the Plff contend that on decease of the ancestor they were immediately seized of all his Estate - 2d there are two expressions in the will - tous les fonds, & "argents" in regard of which it is necessary to ascertain the values intended -

1. The heirs are seized by Death of ancestor & deliverance of legs became necessary - Inst. 1 lev. tit. 1. - the 318 art of the Custom is in conformity to this principle - Loisel. Inst. Cout. on this article - Fer. on 318. art - deliverance must be demanded from the heir by the legatee of his legacy - Poth. 7. Vol. p. 726 Id. Don. Testrs p. 307. - Nouv. Denis. Delv. Legs - §1. Nos 1. 2. 3 Repse vo. Delivrance. p. 307. -

2. as to the constructions of the legacies - 1st as to the money, in the construction of legacies words must be adhered to. Repse vo Leg. 418. - Pariscis. liv. 6. tit. 8. - 13 y the word, monies as distinct kind of thing, & separate from other kinds of moveable articles - Despeisses. 2 vol. 271 - tit. Legs. sec 6. art. 4 No 18 - 2 Bourg. 356 - Repse vo Meuble p. 565 - Dig. liv 3. tit. Leg. when monies are bequeathed, the smallest sum that can be allowed is only admitted - Pap. Dig. 33. tit. 7. 12e Law § 45. the moveables in a house being given, the monies or obligations do not pass - Hubert Police. on Cout Law Dig. liv. 32. law 92. de legatis - Mornac. on same law - Repse p. 515 vo ~~Legs~~ Meuble.

as to the fonds - that by words of the will, tous les fonds, by which only the lands, but not the instruments of agriculture 1 Domat. p. 394. liv. 4. tit 2. sec. 4. No 12 - Poth. Don. Testrs vol. 7. p. 429. Fr. des choses - distinct between materie & utensils the goods in the shop do not pass w. shop. Dig. liv. 33. tit. 7 law 12. § 30 -

Beaubien pr Chs Dorions - the Plaintiffs claim as heirs of Jac. Dorions - but Defts contends there are no heirs of blood, but only testamentaires - 2 Sec. leg. & Testrs - in this Province - the Sec. test. prevails over Sec. legitime - there the Defts. is Sec. testre Poth. Fr. Sec. art. prelim. p. 1 & 12.

Poth. p. 322. Vo Succ. Traité. ch. 3. sec. 2. — The rule, le mort saisit le vif, holds in all the provinces of France — & it applies to Legatees, as well as natural heirs — here it applies to the legatees — The restriction under custom of Paris in willing only to a certain extent has been removed by Stat. 14. Geo. 3 by which any man having a right to sell can give by will. and Prov. Stat. of 41 Geo. 3 is still more express on this head — and a man by disposing by will of all his estate which he could sell by Deed, can have no heirs at law and consequently no heirs who have a right of Saisine Poth. Tr. Succ. p. 328. n. 12. Saisine is only a consequence of the acceptation of the succession — By the will, the Jouissance de tous les fonds is given to Defendt and interest of all the money during his life, and after him to his children. — The best rule for interpn of Wills is accords to Poth. Don. Test. ch. 7. a free & extended interpretn should be allowed by word toutes les argents, must mean as well the money in his own possession, as the monies he had placed out at interest — and the words of the will seem to be express to this effect — Does not mean to say, that tous les fonds carry the instruments of agriculture or other moveables —

Donat. des Test tit. 3. tit. 1. Sec. 1. Dom. 7.

Vigé for Plff. That Chs. Dorion is only by particulier he does not by the will represent the succession of the late Jas. Dorion — and there must be a Saisine in the heirs by blood — But by St. 14. Geo. 3. & Prov. St. 41 Geo. 3 the old laws of France in regard of Saisine of the heir, have not been changed — they were made to facilitate the power to give by will, but the rights of the heirs were not thereby affected — The two laws may subsist without any inconvenience — There should have been an express revocation of this Saisine to destroy it — a posterior law does not abrogate all prior laws — Rep. Vo Prescription p. 355. Same auth. Vo Lois — p. 16. — Viner. Vo Stat. 11 Mod. Rep. p. 151 — That although the law has removed the difficulties as to willing, yet it has not affected thereby the rights of others, or the general law by

by which the rights of others were governed.

The Testator here made no appointment of a universal legatee, and Defend^r cannot claim such right — he is at most only a particular legatee — and claim no right of saisine — That the moveable Succ. of Testator, consisting of his merchandise & debts have not been disposed of nor even mentioned in the will, — and the Plff^s as heirs at law are entitled to claim the same, and an account thereof from the Defend^t — a legacy of meubles meublans does not include all the moveables in a house, but this does not include money. Inwards the general words are not even used of meubles meublans, but only of the particular kind of moveables "toutes mes argents" — which cannot be extended to any thing due, and cannot extend to notes, bonds or obligations

Rép^se. V^o meubles p. 502
2. Bourg. 356

—

No 254

Et. Dorions
dal^t
Dorion

Action en complainte & reintegrande —

Buchanan for Plff. the heir of the deceased having been expelled from the house of her parent after his decease by the Defend^r is entitled to claim to be reinstated therein, and even without the quality of heir at law the poss^n alone would give them right to this action —

Beaubien for Defd^r. The Plff^s have not alleged sufficient to maintain their action — in order to obtain the reintegrande, a possession of year & day must be alleged and proved — Rép^se Voie de fait — p. 600 2^e Col. The Plff^s might have interrogated the poss^r of their ancestor to make out their title of the year & day — That the Defend^r has was in fact as by law under the testament seized and in possession — The 2 stat. of 14. Geo. 3. & 41^st. Geo. 3 have established a testamentary succession, pt. may submit as well as the succession legitime

P prov. Cw. on tit. complaints.

Mr Vigé for Pltffs. Not necessary Pltffs. should have poss. for year and day to entitle them to bring the action de complaints, but it must be brot. in the year — 1 Gp. Com. p. 1528. N° 39. Repo. voie de fait. p. 608. It was enough to allege the possession the Pltffs had and that the law gave them on the death of their father

N° 1886
Chamberlain
Heath

action by Indorsee ag. Maker on a promissory

Morrogh for Pltff — prescription has been pleaded and new undertaking replied — this new undertaking has been proved —

Mr Grant for Deft. Prescription pleaded accords to Laws of New Hampshire where note was made — there is no evidence in the Cause to support the Cause the writs do not appear to have been sworn under the Com. Reg. — The Pltff has not made out the interruption of prescription — only the payee who speaks to it — not competent to prove interruption of prescription — altho' he might be competent to other facts. —

Morrogh in reply — By the return to the Com. — it would appear that the writs were sworn — The interruption of the prescription is proved by two writs in 1816 and 1822 — The indorsee here is a good writ — Chitty. p. 532. 5. edit —

N° 362
Robillard
&
Robin dit

on Exception

Roi for Pltff. action by ~~Pltff~~ for erecting ~~conducting~~ certain public ~~work~~ building at instance of Defts four of the Syndics were parties to the act, but 5 on oath thereon altho' the 5. Robin was not a party, but he is bound as one of a body representing the parish, for whom the work was done —
Poth. obl. N° 82 — Dic. Droit. Corps & Com.

Grant for Defd. Robin – action brot on a Special Contract to which Robin was no party & cannot be maintained ag[t] him – the action being brot – ag[t] the Defendts as representing the parish cannot bind the Defd Robin –

Mondelet for other Defendts The Pltff does not shew under what authority the Defendts were appointed Syndics, or that this authority was ever ratified – also that the Defendts were authorized to contract with the Plaintiff, and therefore they cannot be bound as Syndics – The conclusions are irregular – the premises in the declaration state a contract made by Defdts as Syndics but the conclusions are ag[t] them personally – The Defdts are charged solidairement, the contract does not shew that they ever undertook as such. –

Roi for Pltff – There is enough stated in the declaration to shew that the Defendts were legally appointed Syndics, & they have contracted as such – The Defendts contracting as Syndics, the solidité is presumed – Poth. Obl. 267. –

Penfield v Lacasse & Williams & al — opp[ts] — Interlocr ordering that oppos[t] appear on 7[th] – to be exam[d] on oath. –

No 1649
Prince v Scott. — Judgt on 2 motions – Pltff mo. for hear[g] & Defend[ts] mo. for fait & dt. The Court inclined to think, that although Defend[t] was bound to follow up his application made at sittings in Vacation for fait & dt. on first day of Term, yet when no diligence was done by Pltff on that day for setting down Cause for hearing, the Defend[t] ought not to be shut out from mak[g] his mo. –

No 208
Dupuis & al v Roi. — Interlocutor –

No 226
Kidd v Raymond — Interlocutor

No 2038
Sexton v Connell — Rule discharged

Saturday 5th April 1823.—

Present.—

Justices Reid & Pyke.—

Cadieux & Boucq & Cartier dal opp.t

On Pl.ff's Claim

Rolland for Cartier. In original action act. was filed, on q.t Defr acknowledged to owe a balance — this bal.e claimed by Pl.ff, but not allowed — a motion was then made by consent & Pl.ff rec.d the amount of money in hands of Defr.t — Procr.s named, who reported a larger sum in the hands of the Defend.t on this Judg.t entered but without deducting the sum rec.d by Pl.ff as the balance in hands of the Defend.t —

Ross for Pl.ff — Two reports were made, at instance of the defend.t and first report confirmed — and in giving the Judg.t a great deduction was made on the account wch was not allowed, & in deducting q.t the Court must have had consideration to the sum p.d by Defend.t on that account — The opport.y here cannot come at the Judg.t — q. Rep.n vo. 634 - 637.

No 148

Armour dal & Brown —

action by Indorsees q.t Indorsers —

Walker for Pl.ff. the Pl.ff on protest for non-accep.e is entitled to their action q.t all the Indorsers —

Beaubien for Defend.t — The action cannot be maint.d — when action is brot on a bill protested for non accep.e there is a necessary diligence to be shewn — Chitty. p. 732. 6.th edit. due notice is to be given to the drawer and to the Indorsers — there is no allegation in declr q.t this suffr notice — it ought to be given before the time the bill becomes due it should not be held back until the protest for non-

non-payt — signify both protests together — Kyd on Bills 120 — 151 — Chitty 196 — notice after protest for non-payt to be given immediately — the day of notice given not mentioned in the declaration — Chitty. 110. — ~~Bancbant~~ Protest for non acceptce absolutely necessary — must be shewn that between protest for non acceptce & day of pay't the drawee had no effects — Chitty 300 — 310 — The notice should have been given to the drawer, before any action can be brought up any of the parties, even wt notice to such parties —

Walker for Pltff. The declaration states that due notice was given of non-acceptance — the day of giving this notice not necessary to be stated in the declaration. —

№ 1033.

Hart — Goodsell } Action by assignee on deed of sale —

Gregg for Pltff. the matters pleaded in bar here are not sufficient to conclude Pltff —

1st Plea. nil. deb. the p art purchased under vente saisie privée of Casimir, not valid — that Casimir after sold all his immoveable rights to his brother Hypolite — who has become legal owner of the part sold by Casimir to his father — who transferred to Pltff —

1. Poth. Vente — not necessy that the seller shd be the incommutable propr of things sold — but the nullity alledged of the sale by Casimir to his father is inadmissible the nullity alledged will not apply — the nullity here was relative, & the party could renounce to it — But if the minor were the person, he must allege that the contract not been delivd. specie furnished — but the relation between father & son is an exception to this rule —

Resp.ts v. nullité

6 Resp. v. Donation

Poth. obl. № 21 — violence or fraud do not render contract void, but only voidable — also. № 29 —

The Defendt cannot take any advantage of any contract between other parties — nor enter into what rights Hypolite became acquired under the transfer made to him by Casimir

2° Plea — compensation — improperly pleaded — alledged only by if a debt existed, & is unliquidated — Poth. ob. 599. there must be mutual debts, existing before there can be compensation — Prov. Civ. plea ought to be articulée avec precision

1 Pyc. 227 – there is an essential contradiction here as Defd. prays that to be compensated the existence of the he denies. –

3 Plea – The King Superior of the front part of the lot hereby Defend. was expelled from this part of it – this does not follow in law – this wd be a voie de fait, where the garantie does not apply – The Defd says that he thereby sustained damages, but this cannot be set up at present Pltff – as not having been liquidated before the transfer to the Pltff –

O'Sullivan for Defd – The Pltff can have no better right than Ivory were he the Pltff in this Cause. – Altho' a party may sell the property of another, yet this will not be available unless the fulle intent of both parties be carried into effect – The vices alleged at this sale must prevail – 1st the sale by a Minor to his Tutor is null and void, – on the face of the paper here made it appears null – as to the plea of compensation, it is sufficiently stated and clearly – The 3d plea is also sufficient, as the rights of the Crown must be presumed as Superior Lord, –

No. 1953
Hachiras
vs
Patenaude
Exp

action on deed of Sale. –
hears on law

Greggs for Pltff – objects that part of plea is admitted & unnecessary – further that Pltff as Tutor of minor children is indebted to them in a certain balance for which he has not accounted & whereby a mortgage has accrued upon the land sold, for which he is liable to be troubled – this is no plea, the possibility of a future claim. – 2d a difficiency in the land sold – here the particulars of what wants is not set out – 1 Bouv. 420 – no sufficient plea to the action – 1 Bouv. 420. 421 – here a corps certain was sold, the measure was uncertain & unnecessary

the

the defendt declared himself to be content & satisfied which cannot be considered as words of Acte —

But this ought to be a plea of reconvention. if there was any deficiency, it is a demand made by the Defendant of a right of the Pltff — & the demand ought to have appropriate conclusions — see 1 Pig. 332 2 the Defendt — concludes to dismiss the action which could not be, if only a small deduction was to be made — 1 Jourse tit. 2. art. 1. nob 5. grounds of defence ought to be set forth with precision & certainty — 1 Pig. 205. —

Vigé for Defdt — The Defendt has alleged facts which would show a trouble in his possession at a subsequent day — The Defendt ought to be admitted to prove the fact of the existence of the debt due by the Pltff as Tutor as constituting a mortgage on the land — a practice constantly observed — as to the deficiency, the Defendt may set it up as a plea to the action, and not by an Incidental demand — The lot of land here was sold by measurement & not as a corps certain —

Grigy in reply, there must be an eviction to warrant any claim for Defdt to retain the purchase money — there is no trouble here, nothing but a mere apprehension The plea as to deficiency is insufficient in form & substance

—

No 256
Pierce
Reab

Action for work & labor — on Exceptions

Grigy for Pltff — 2d plea is irregular & insufficient the agreement set forth is said to be a special contract whereas it was agreed to verbally — the term specification is an unknown kind of Contract in law — Poth. Proc. 181 to shew what is meant by specification — but allowing this to be a good kind of Contract, yet when not signed it forms no contract. Poth. Obl. No 11 — Rep. Vo Acte — the signature of a party is absolutely necessary to form a Contract

N. Digest
Acte. § 2. Sec. 3.
Ecriture privé

But the Contract here even if legally made, ought to have been made double to be binding — Now 2 vo Ecrit double — Fitz. Rep. when Contract is no longer executory, Indeb. assumpt. will lie — New Rep.

Ross for Defdt. The plea is regular as the work was to be done upon a special agreement

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No 19
Mason
vs
McRae.

on motion to quash process, as no copy of the declr has been served on Defendt —

Morrogh. in case of Latrau. vs Currier the rule of this Court in regard of the service of copy of Decln has been set aside —

Rossiter for Plff. this not so decided in the case referred to, but because a certificate of the service was not made by the Prothy —

No 1597
Hopkins
&
Hart —

action for goods sold. —

Ogden for Defdt — only proof on answers of Defdt — on pairs & articles — the amount of the bill ought to be given without costs —

No 1486
Chamberlin
vs
Heath —

Judgt

No 1813
Leclerc.
&
Dame.
Frejo —

Judgt

No 1888
Mc donald
vs
Goodsell et al

Judgt

№ 307.
Town
v
Thayer. } Judgt

Monday 7th April 1823.

Present.
Justices Reid & Pyke

№ 19
Masson.
& Mc Crae. } On defendr mo. to quash writ of Capr as the declaration had not been served on the Defendr but a copy left at the Office according to the rule of Court Morrough for Defr. presents motion made in conformity to a Judgt in Comb of Appeals, & held rule of Prac. of this Court not conformable to law, & that a service on Defendt was necessary — cits case —

The Court not being satisfied that such Judt as that referred to had ever been given, dismiss the motion.

№ 1612
Malo
& Miville. } On Defendr mo to quash writ & process as Defr resides at la Petite nation, instead of residing in Montreal as stated in the declaration & Summons.

But this motion not having been made on the day of the Defendrs appearance as req by the rules of practice the Court dismissed the same.

Tuesday 8th. April 1823

Present
Justices Reid & Pyke.—

No. 148.

Armoural' v Brown — Defendt. exceptions dismissed.—

Wednesday 9th April 1823

Present
Justices Reid Foucher & Pyke

No. 1875.

Chas. Try.— v E. Daubreville — On trial by Sp. Jury—

James Carswell. Wr parties, on evg of 5 July last saw the watchmen about 9 o'clock in evg. with a crowd of people, it was about dusk — saw Pluff there — he followed the crowd — ask'd Wr what had passed — went to door of watch house & Pluff told Defdt he was wrong to illtreat a man who had been taken up — Defdt s'd it was none of his bus's — Pluff s'd he would make it his business, as he would report him next day, upon this Defdt ordered Pluff to be laid hold of by 2 of watchmen & carried to the watch house — where Pluff was detained till about 11 o'clock — went to acquaint Mr Foster & Wr D — & rest of them to watch house, at first they refused him admittance — was present when Pluff was liberated by Mr Turner, the magistrate — & Wr became bail for Pluff —

That Pluff s'd to Defdt — at time that Defdt was drunk & did not know what he was doing — there were several persons assembled there — Defdt ordered Pluff to be apprehended by two men of watch —

James and P. Foster – On 5 July last was informed by Mr Carroll that Pluff was in watch house, went there & saw Pluff there asked Defr what charge he had of Pluff. offered security – Defr told him he could not take less – to go to a Magistrate they went to Mr Turner, who came down to watch house & liberated Pluff – it was then about 11 O'Clock – That it appd to W. that Defr. was in liquor –

Is partner of Pluff – when W. asked what charge Defr had of Pluff – he made no particular answer, but refused to accept bail –

Alexr Gray – on 5th July last as W. was going up St. it was a shame to see a person used in that way – told D. he should not use the man in that way, & that he Pluff would make a complaint of him next morng – D. asked him what was his business laid hold of P – & ordered his men to arrest him & take him to the watch house, upon this they did that P – requested of D. to let him go & he would appear next morng & answer to any charge he had to make of him – that P. offered Mr Carswell as bail for him but this was refused – & P. was not discharged when W. remained there – The conduct of D. appeared very violent & extraordinary, & that he was in liquor –

That this took place on the new market, where the old man was struck – thinks that P. told D. he was drunk. –

William M'donald – about 5 July last – Mr Carroll called at P's told them that P. was in watch house, went there & saw Pluff there – Mr Foster asked what charge he (D.) had of P. he made no answer, offered security D. & P. they must go to a Magistrate & but D. if P. will make an apology to D – he would let P. go out of consideration to W. & Mr Foster – upon this they went in search of a magistrate, found Mr Turner & rest. with him to the watch house in about an hour – Mr Carswell was with them – Pluff was then liberated, upon Mr Foster & Mr Carroll offering to become security for P. –

François Roi. Wt D. on 5 July last went to Quay to get assistance from Bourbonnier at watch house for a man that made a noise — the D. laid hold of Wm and gave him several blows over the head wt a stick — That Wt. applied to D. at watch house for assistance, & was refd in this manner by D —

It was Bourbonnier who applied to D. for assistance x2 at one Coté who was in the street making a noise — that when D. refused assistance Wt went away, and did not say any thing to insult the Dt who followed Wt and laid hold of him & gave him several blows wt his stick —

Jos Bte Bourbonnier, liver in St L. F. on 5. July last, there was a disturbance in the street, and Wt. ~~& last Wt~~ to watch house for assistance, & saw D. & hold him of the disturbance in the street — Dft. asked Wt why Coté had not been arrested in day time — Wt. sd then were no men to assist him D. sd the people in that street were a pack of fools, & that they ought to have taken up Coté in day time — Wt ~~went~~ sd he would see next morng. if it was the duty of watch to insult people when they came to get assistance — Roi made same observation — Wt went off before Roi — heard D. say to Roi what is that you say, & went up to him — & Roi put himself in posture of defence — saw D. give Roi a blow over the head wt a stick & another blow over the arm — the Wt stopped, & people came up to assistance of Roi, & the watch came out & took Roi away to watch house

x2

John Fairbrell. was on N. Market on 5 July last about 1/4 past nine, saw D. push a man, & struck him on the head broke his stick, & Wt. picked up a part of it, which he now shews — Wt that Pelt was arrested soon after & carried to the watch house — Wt remained at place when the man had been struck —

Thos. A. Turner. Lieut. Peace – was called upon some time in last summer after 10 o'Clock in the ws to go to watch house to get Pff discharged. asked D. if he had any complaint agt P– & he had + upon this he took bail for the appearance of P. next morng at Police office, & P. was discharged –

x^d.

When W. went to watch house, directed door of watch house to be opened to admit him & the persons who came as bail – there might have been others at the door –

Thomas McCord. Police magistrate – heard of a complaint having been made agt P– at Police office – believe does not remember if P. appeared there –

Jr. M. Mondelet – That on exam^n. the circumstances on complaint of D^r agt P. W^m discharged P. without the proceeding –

Defence –

Le. Victor Henry – was one of the watchmen formerly – on 6 July last Bomb. & Roi came to watch for men to arrest on Coté D. s^d he w^d send men, if he would engage to come next morng & substantiate his complaint Coté – that Roi on going away s^d. on going away s^d. sacré cog-l'oil, je vous finai bien venir D. went up to R. who laid hold of D. by throat, upon this D. whistled & the watchmen went out & took up Roi upon this P. came up & said that D. was a drunken – fellow – & upon this D. ordered P. into watch house with Roi – two of watchmen laid hold of P– that P. held his hands clenched – P. was unwilling to go into watch house but was forced – there were several persons wanted to get in to watch house but D. ordered door to be shut – then P. was liberated by a magistrate – P. was not struck or ill-treated by any body – D– was not in liquor that evening –

that Roi was in liquor – D. went up to him & touched him gently on the shoulder, when Roi turned and laid hold of D. by throat – That upon this D– gave Roi a blow – D. had a cane in his hand when he went after Roi, but did not observe it when D. returned

Joseph Cire – was a watchman in July last – about 6. July last he hear at the watch house a great noise & the whistle of D. run out – met Roi Pres: by last with him – then was then a Crowd gathering round, saw P– who told D. he had no right to strike a man in that way – D. asked if he meant to meddle in his business – P. ,, D. was drunk & damn'd drunk – shaking his hand & kept moving he wd make complaint of him – upon this D– said as it is so we shall go together and ordered P– up stairs into the watch house – P– was taken up stairs by watch – There might then be about 50 persons assembled about the place – there was no violence used towards P– only conducting him up stairs –

John Bower – in July last was a watchman – had been out on duty & on coming back saw P– at door, who told D that he was tipsey & damn'd tipsey – and that he wd report him to morrow, upon this D. said order his men to take P– to watch-house – no violence was used in doing this – P– did not seem to make any resistance – Wit– was sent out on duty, was about about ½ hour, when W. returned P. was gone –

Jos: Vaillancour. In July last was watchman, when Wit was coming up to watch house, he saw P– holding up his fist to D– did not hear what he said, but understood that they would meet next morning – heard P. say to D. that he was beastly drunk – upon this D– ordered P. up stairs into the watch house –

P.

x

That it was a little darke, there were some persons standing between him & Dy, cannot say who they were —

Jn Bte Allair — Heard P. tell D. he was tipsy & d amnd drunk, and shewing his fist to D — upon this D. ordered watch to take P — and carry up stairs in watch house — which was done —

Edward D. Beaubien — In July last seeing a crowd at watch door, went there understood that Pltff had been taken up, went in & saw Pltff there — that Dr McFarlan & Mr McD. came forward to give bail for P — but P. said no, send for a magistrate — that D — told P — if he would give him his word of honor to appear next day at the Police office, he would let him go —

x

D. might have said that if P — would make an apology to him he would let him go, but did not hear him —

Jn Marie Mondelet — not examined —

Verdict 5/ — damages & all costs —

De Rouville
v
Bourdalais

On defend.ts motion to reject certain of the faits & articles proposed by Pltff & Defr

Vigé for Defr — as to 2e Interrog — it is inadmissible inasmuch as it cannot make any proof for Pltff of the publication & affiches in question — this must appear to have been done by a public officer, it is like service of process, the want of it cannot be supplied by faits & articles. — Objects also to 3e 4e 5e 6e & 7e Interrogs as not pertinent and regarding facts not in issue in the Cause, nor material to the decision thereof

Rouville. –
& Bourdelais

Bedard for Defendr the Interrogs. here ought not to be admitted, as the facts enquired of are not in issue and when there is already proof in the Cause of the facts they ought not to be enquired of by fait & art. – the Pltff has produced the certificate of the huissier as proof of the publication of the Indgt – this ought to be enough – this is the legal proof, and none other can be received, –

Rolland for Pltff. if there were an admission of the facts enquired of by the Defendr – it would not be necessary to have faits dart. but this is not the case The notification here is compared to an assignation but the case is not applicable, as assignation is necessary to give Jurisdiction, but the question here is to put the party en demeure by shewing that he had a Ten. of the plaintiffs demand – Here the party is not called to prove the publication of the Lettres de Terrier, but to shew that Defendr had a Ten. of this publication – The protet produced by Defendr ought to be allowed to have been made the answer of Deffr given, by employing a notary to draw up this protet.

Vigé in reply – The facts to be proved must be facts in issue, and tend to decide the cause – faits articulés – the publication here is an assignation to the Pltff's tenants and the formalities of it are requisite, it is like an interpellation Judiciaire – The protet produced by the party makes proof agt him, if so, there is no further proof of that protet necessary – The private acts of the parties which were made by Defendr & others for their own justification ought not to be shewn in proof nor the party bound to upon them, not being a fact in issue

№ 137
Dufour
Bro— } On rule on Defend. to shew cause why he should not be held to pay the Costs personally — having contested the principal action, which was an action hypothecaire. —

548 Rolland for Pltff consents Judt. only as Interlocutory, and Court can yet adjudge on the Costs — by reason of his contestation 2. Bourg. 248 —

Faribault for Defd — Judt. is final — and Court cannot alter it, but it is in conformity to the pltff's declaration. —

Thursday 10th April. 1823. —

Present

Justices Reid Foucher & Pyke. —

Woods. —
Vanderslups } on Defend. mo for new trial —

M Rolland for Defend — There was a question before the Court as to recvg in evidence a bill of Indictment it not appears to be produced by the proper officer, nor proved in any sufficient manner — Suppos no bill of Indictment there would be sufficient to support the action — this said by the Court — but there was no proof that the Defend — ever was the prosecutor, or made any demand of any a warrant, or any proceeds agt. the Pltff — cites Peake on Evidce on malicious Prosns — without this sollicitation on the part of the Defend — there can be no action agt. him — the Court did not sufficiently touch upon this point. — It ought not to have been left to the Jury to determine upon the weight of the evidence between Wolcocks & Defend — also it ought not to have been left by the Court to the Jury, whether there was any probable Cause arising out of the evidence, on wh the Jury have also wrongfully determined — But if on the whole case it appears that Justice has not been, the Court have the power to grant a new trial —

That there is as misconduct in the Jury, in the manner they

they estimated the damages, by the sum each of the Jurors was disposed to give, being added together and the medium sum taken — this is contrary to law, as the Juror who is disposed to give only 1/— is thus made to give £75— and is liable to have given more — 2 Morgans Essays — 25. —

Mr Ogden of counsel for Defendt— malice was necessary to be made out to support the Cause — the facts showed the contrary — and it was even shewed that the Defdt had probable Cause — Purcell v Macnamara 9. East. 361 — want of probable cause is want of express malice — the most express malice no ground of action 1 Burr. 12. —

Mr O'Sullivan for Pltff — Indictment proves its self — The disposition of the Defendt was sufficient to maintain the action — if done without probable cause — 2. Esp. 536 — when Indict. is found. Defendt not bound to shew probable Cause — but Pltff must shew express malice — hence we are to infer the contrary of the proposition — Peake Ev. 329. 1 Camps. 203. Isaacson v Barry — as to probable Cause — 1 Term Rep. 545 — it is a mixed proposition — When there is evidence on both sides the Jury must determine 2 Term Rep. 1142 — As to the misconduct of the Jury, there is not sufficient evidence of the fact — 1 Term. Rep. 11 — Farr v Sykes — 13 Ann notes — In these two Cases — Ld Mansfield refused to receive the evidence of the Jurors — this depositn of a person who heard one of the Jury admit the fact, cannot be received — In the other case the depositn of Jurors was refd — But this was not a matter of chance; it was the medium opinion of the whole Jury —

1 Sh. 042

Rolfe and for Defdt — on the misconduct of the Jury, the authorities cited may be reconciled — here the Jury are not bound to account their chances, therefore their depositions are not to be expected — 1 Str. 642 — Gilb. Rep. 12 —

There should have been proof from the entry in the Register Book the bill of Indictment had been brot into Court — the bill itself does not prove this. —

№ 1503.

M^r Intire
vs
Scott et al

action for slander —

Grand for Pltff. action for charging Pltff with having committed perjury in a cause in q^t — he had been exam^d as a witness — the case is made out in evidence —

Sewell for Defts This is a case of contrivance to get money from Defend^rs upon the most unfounded charges — and this is in evidence ~~from the evidence~~ in the Cause — the whole of this charge rests upon the testimony of one Graham & one ~~Foster~~ Watson who are contradicted in the most clear manner — The certificates given by these two men to the contrary of their testimony is enough to invalidate their evidence, — they say they were induced to sign their certificates from liquor given to them by Defend^rs but it is in evidence that this was not the case. —

—

№ 125.

Davies
vs
Ermatinger

action ag^t Defend^r — as shewn
heard on Exceptⁿ, & demurrer. —

Sewell for Defend^r The decl^n does not contain sufficient on the face of it to maintain the action, no malfeasance or negligence — there is no recollement de saisie made in this case when the saisie was discharged if there were therefore any articles missing the Pltff was wrong to take back his goods without ascertaining the state in which they were by this recollement — Reps^rs v^s Gardiner

Gardner

Rolland for Pltff. This ex^n shews no want of form in the declaration, and the fact particularly now rested upon ought to have been pleaded, it is more an argument en droit to the merits — That the want of the recollement is an argument in favor of the Pltff & will be used accordingly —

—

№ 969

Vegiard & Taupié
vs
Thetrot

on defend^rs mo. for delay to carry in his garant formel
Bedard for Pltff — there can be room to call in a Garant formel. this is an action personelle. on an oblig^n and has moved to proceed ex parte ag^t Defend^r by his enquete to morrow —

—

No. 2030
Cartier
&
Dundass

action en voie de fait

~~Stands over~~ —

Quesnel for Pltff, objects to the testimony of N. Douglass as being an interested Witness refers to the cross-examn of that Witness as to this interest—

The action is en complainte, for having cut down a large quantity of wood on Pltffs land, he has made out his case by the evidence in the Case. —

Sewell for Defdt— The advice given by Douglass to Defendt was merely an opinion of the Witness & it does not appear that the other lands in regard of which the Witness has instituted actions have any thing to do with the land now in question — The Pltff has not made out his action — he has not proved any possession in the lot of land in question. possession by making sugar is no possn — as held in the case of Pinconneau v Bellanger in 1801. —

No. 244
Robillard
&
Dumont

On motion for Contrainte par Corps —
for shutting his door & oppos & Sale of his effects—

Rolland for Defendt— This rule was obtd upwards of a year ago, since which time the parties have come to arrangement, & on this short notice the Pltff claims a contrainte par corps without notice to the party—

No. 1585
Moffat
&
Turner

On Defts motion to reject certain exhibits filed by the pltff—

Gale for Pltff. Defendt has no right to interfere as to the right of Pltff to file any exhibits he pleases in the cause

No. 354
Beaujeu
&
Truesdell

action for Lods & Ventes &c

Bedard for Pltff. Defendt purchased a part of a land on condition among other things of building a house for his own use — this was a charge, and Defendt —

Pltfs Ft p. 178

was

5 Frem. was bound to pay lods & ventes for the value of the house so built, as being a charge & consideration of the sale. — Poth. Trés. p. 178 — Id. 145 —

M. O'Sullivan for Defend. — There can be no lods & ventes, except on charges onereuses in favor of the donor — which was not the Case here —

—

No. 256.

Pierce. Reab — } De Defts mo. to amend — mo granted —

—

No. 69

M. Coll M. Donald } action for work & labor done by Plff for Defts —

M. donnell for Defts — The Plff has not made out his case, the work & labor has not been proved. —

—

No. 335

Dumas dup. vs Turgeon } action of account —
on acct. rendered. —

Roi for Plff, asks for hom. of report —

Lacroix for Defts — the difficulty here, the interest ought to be compensated with the maintenance of the minor — and also in regard of the rents on houses. as it does not appear what they were rec. — Defend. ought not to account for the dettes dontenses —

Roi for Plff — In the acct. rendered by Defts he charged himself with the dettes dontenses

—

No. 731

Lusignan dit vs Serres — Lorimier Curt } action on acte of Transport. —

L. Vigé for Defdt — There exists a dower of £2000 on the lot of land sold to him by Garants — All the property of Lorimier consists in a certain lot of land in S.L. Sub. — valued at £100 — which would give no security to Defend. —

Bleury for Garants — The security in this case ought to be limited to sum of £1000. being the sum demanded by the present action.

№ 293
Lussier
vs
Arnoux

action for Lods & Ventes &c

Lussier for Pltff. action founded on sale from Mr Massue to the defendr — It is pretended that this sale was rescinded, les choses étant entieres, but this was a mere contrivance between the parties to defraud the Pltff, & in lieu of a sale an acte d'echange was made between the parties — but the sale being complete & the Defendr having always remained in possession of the land he must pay the lods & Ventes — The fine was due attho' lettes exhibd after 20 days Poth. des Cens. Ser. 2. art. 2. p. 319. & seq. 2d Vol. in 12. Duplessis 1 vol. p 102. 103. Fer. Dic. Ventes regles — & vo notification — the Sup. may prove the fraud between his tenants. Repo vo Fraude. — 5. Tremainville p. 719. There is a contradiction in the answers of the defendr on faits & articles & the testimony he has adduced in regard of the possession of lot of land given in exchange —

Vigé for Defendr — moves that certain faits & art. be declared confessed as not answered by Pltff —

That Defendr owes noths to Pltff — there was a sale between the parties of 18 Dec 1816, but before this was carried into execution this act was rescinded by another act of 30 Dec. 1816 — That Dfdr was to have possn only in May succeeding the sale — That Defendr now possesses the land in question by deed of Exchange in Feby 1817 — The deeds above mentd were exhibited to Pltff afterwards to shew him merely that nothing was due to him — this was in 1818 — four years before the action brought — it therefore be no fraud proved there can be no Lods & Ventes due to the Plaintiff — as to the fine of the ecu d quart d'ecu — here the Pltff acknowledges that unless he is entitled to Lods & Ventes on the deed of sale he is not entitled to the fine, but contends that the exhibition of the titles not being made within the 20 days, the fine became due de Jure from that day —

As to the 3d point Pltff abandons it —

Gr. Coutr art. 77. p. 1131 — Glos —

№ 102
Lussier
&
Patenaude

action on lease of a Mill —

Lussier for Pltff. Defdt. has occasioned damages to Pltff by not having fulfilled his Contract wr Pltff & qn are demanded by the present action. —

Vigé for Defend^r — Lease for one year — Def^r remained in poss^n for two years, & contends that for second year he held under tacite reconduction — but Pl^ff is not content with this, but claims a greater quantity of grain for the 2^d year — there is also a demand for damages for not having left the mill in as good order as he found it — but the proof on this point is in favor of Def^r — and the action as to damages ought to be dismissed — As to the rent for the 2^d year, it appears there was a great diminution of the revenue of the mill, and the Pl^ff cannot have more than a quantum meruit, & cannot amount to more than 385 bushels of grain

Friday 11^th April 1823.

Present

Justices Reid Foucher & Ryke. ^a

No 256
Pierce
& al
Reab — } Demurrer dismissed in consequence of Defend^rs amendment — & ordered that Pl^ff answer over to the plea —

Allison & al
vs
Surgeon } Interlocutor ordering Experts to be appointed. —

Monday 14th April 1823.

Present

Justices Reid, Foucher, & Pyke.

Holt
v
Holt — } action of account for Community between Defdt and his late wife —

Case submitted —

No 1754
Armour
Peddie } action by Plff as Indorsee of Defdt as Indorsers —

Walton for Plff. evidence of Plffs case is made out — That as to time for giving notice of want of acceptance between Canada & England, no certain Rule can be established Chitty 289. 290 — 6. East. p. 4 — 15., Poth. Change 152. 157. 8. — If Defendt was entitled to any notice, yet has waived this right by his conduct. Chitty p. 300. 1. 2. 3 — & 522

Gugy for Defdt — a reasonable diligence has not been used, by Plffs, & therefore Defdts undertaking was not binding until protested 2d March — & yet no comn was given till 29th March — & then appears a lapse of 29 days between day of protest & notice to Defdts clerk — then were sailing Packets every fortnight from England to America — Same rule ought to hold in foreign bills as Inland bills — Tindal v Brown and 1 T. Rep. 167. — Lloyd. 169 — notice must be given as soon as possible — there is a direct communication between Gt. Britain & Canada once a fortnight — Nothing but an express waiver can be taken as giving up want of notice — Chitty 308 — the promise of Defdt was to pay, if a protest for non payt. should be produced —

Walton — the principle refused to by Defdt. holds only in cases of Inland bills in England — Yuleman v. Degruno 2 H. B. 565 — Express waiver not necessary — Chitty 303. Lundy v Robertson 7 East — 6. East. 16 — cases where Defdt bound — if Defdt did not mean to waive this benefit of want of delegence, he should

should have shewn that some damage had occurred to him by the want of notice — Defendt. now made it a condition of his promise that a protest for non payt. were produced — he only ob. in that. such protest was necessary —

—

№ 1866
Perrault
Meillers

Action for money over paid Defdt —

Borton for Pltff, it appears that Defendt has been overpaid in the sum demanded — wants right to ex. Defdt. in fact articles —

Vigé for Defdt — There is no allegation in the declaration touching any acts, or contracts between the parties touching the monies in question — The evidence here adduced does not apply to the case before the Court — on an action of general assumpsit for monies paid the The ~~circumstances~~ general allegations of the latter case do not apply to the particular transactions brot forth in evidence — Every case ought to be set out according to the true circumstances, that a party may know what he is called to answer, — If party means to avail himself of any act or writing made between the parties, he ought to set it out in the declaration — Rep. 286. Vo adjournement — Action for monies had and received do not imply any express deed or Contract between the parties, Id. 287 — cites case of Blanchet, v Fortier adjudged in this Court — 20 Oct. 1819 — 1 Rejean 140. ed. 1987 — Denizt. Vo adjournement — says les moyens & titres de la demande ought to be summarily set out — The Defendt has objected to the evidence, and now moves to reject it as inapplicable

Borton for Pltff. All is stated in declaration that is necessary to maintain the action — Fer. Vo Repetition de la chose non Due — monies over paid, are compared to money lent —

—

№ 1889
Arnoldi
Bellestre

action for medical attend.

Buchanan for Defdt — Only attend. for wh Pltff can be paid is for what took place before death of Defdt husband — £50 have been pd by Defdt. wh ought to apply to what was due since the decease of the husband — Evi is incomplete — only one Witness to a great part of the

and since 1816 there is no evidence at all? —
Bourré for Pltff — There is evidence to a certain extent of all the demand, but not complete as to the whole — The agreement between parties has been proved by Pltff in his answers on faits & articles — proposed to him by Defdt — qt alone would constitute a proof of all the demand — The monies for by the Defendt apply as well to what was due to Pltff as well before as since the death of her husband —

No 473.
Rolland
Pothier — } Action for an account of administration of the succession of the late Mad: Lacote. —

Drosne for Pltff, the matters pleaded by Defdt have no reference to this action — as it relates to a demand Defdt sets up for papers alledged to have been given to Pltff. of which they retain — to this part Pltff have demurred —

Beaubien for Defendt — contends matters are well pleaded — as to the exceptions of the right of Pltff to allege the nullity of certain purchases made between Defdt & Gibb but he does not demand that them acts be declared null — this is irregular as a demand en nullité cannot be pleaded par incident but by a principal action — this act is not passed with Defendt as Exer, but in his own private name — and the Gibb is no party in this cause — had the act been passed between the parties in the Cause, this might have been alledged — but Defendt is not before the Court, but as Executor —

The Pltff in person — The Pltff contend that the matters in the plea are inadmissible & without any conclusion — As to the exception pleaded by Defdt the Pltff are well founded to allege the nullity of the acts in question — the Exer is merely on a mandataire & he could not have purchased for himself and this is alledged to be null — This action is of the Defendt personally to account for his gestion as Executor — and the Pltff can allege of him by exception what he could by action — by law Defdt could not purchase for himself. Poth. Mandat No 59. 60. — Poth. Retrait No 424 — who retracts is considered as acquiring from the person who sold — so that Defdt must be considered here as having purchased from himself — & Gibb is not necessary to be called into the Cause —

No 59. Mandat Poth. —

№141
Armour
vs
Bangs

action on indorsed notes —

№1903. 4. 5. 6. 7
Armour
vs
Thayer

same action — hears on merits. —

Sullivan for Pltff — a plea has been put in of the right of Pltff as agent to an illegal association, & could not maintain the action under 6 Geo. 1 — 14 Geo. 2 but semble that plea. the Canada Bank has been incorporated by Law. 14 Can. Rep — Reg. v. Webb 2d — the association may be within the act, and yet not be a nuisance — This point has been settled in Court of appeals. McCallum. v Sutherland —

Walker for Defendts The words of St. of 6. Geo 1. extended to the Colonies stamp such associations as that in question, as public nuisances, no proof beyond Statute is requisite. —

№304
Chartier
de Desecelles
vs
Desecelles

Judgt setting aside Sale made to pltff by Sheriff

№1033
Hart
vs
Goodsell

W

Judgt on Excepts — dismiss excepts first pleaded by Defendt — and admitting proof on the others. —

№102
Lussier. —
vs
Patenaude

Judgt

№354
Beaujeu
vs
Trudell

W

Judgt — rejecting Pltffs claim for Lods & Ventes on donation made to Defendt —

№1614
Brown
vs
Quillam

Motion for changing conclusions from Contry to Court granted — inasmuchas upon the face of the pleadings the Court was unable to say that the Defendt was entitled to trial by Jury. —

No 2036
Bender
& Durand & al — Judgt ordering Defendt to render Acct

No 1572
Broullet
& Leclaire — Judgt hom. report allowg Lods & Ventes on the rents & pension, as the rente of the land sold.

No 1064
Warwick
Yule —
& Boudrian
Gart — Judgt on motion agt the Gardien. —

No 618
Blackwood
& Guy — Order for proof. the Court maintaining Defts plea. —

No 578
Brosseau
& Cartier & al — Action dismissed as to Boudreau. —

No 1088
DeRouville
& Gaucher. — Judgt allowing faits & articles. —

No 125
Davies. —
& Ermatinger — Demurrer over-ruled

No 1597.
Hopkins
& Hart — Judgt

Tuesday 15. April 1823.

Present

Justices Reid, Foucher & Pyke.

№ 2024
Kimber
&
Cazeau

Except. withdrawn.

№ 1649
Prince
&
Scott

action of damages for dispossessing Plff of his tools of trade & putting him out of his house —

Sewell for Defendt. There is no evidence to support this action — The plff occupied same house with one Smart the tenant of Defr — all the effects in the house were affected for the rent and the day before the quarter rent became due the Tenants were in the act of carrying away those effects, and in endeavouring to prevent this the Defendt was assaulted & beat, — The Defendt had a right to stop these effects as having a lien thereon — There is no voie de fait here, the act was necessary & justifiable cite Repr Vo Voie de fait. —

As to second Count in decl — the defendt says Plff never demanded the property, & defendt was ready to deliver it, & now are still ready, as not being of any suffr value to indemnify Plff prosecuting the sale of it for the house rent —

Boston for Plff — the conduct of Defendt is not justifiable the Plaintiff owed nothing to Defr —

№ 156
Bruce
&
Cook

action on promy note — bears on Exceptn

Grant for Defendt — Plea of prescription, altho' not stated as payt yet it is sufficient here, as Defendt is heir & cannot swear that note was really paid. —

Bourst for Plff — When party means to make use of the plea of prescription, he should plead it in limine & not content

contest the Pltff's demand by other pleadings to the merits

—

No 1976
Davis
vs
Lipman

Rolland for Pltff. the licitation having been taken pro confesso asks Judgt for a division of costs among parties ordering that Pltff pay 1/5 & Defds the 4/5—

Grege for Defds submits how far Pltff ought not to be held to pay all costs in an action of this kind

—

No 218
Duplessis
vs
Cardinal

Action en delivrance de legs—
on Exceps

Buchanan for Defendt has pleaded general Demurrer inasmuchas the will in question was null and void as to—not idoines, not sufficiently described—nor that the will was read over in presence of Wits—

1 Poussa. p. 59— Exceps & defenses are synonimous terms
1 Pigeau. p. 200.— Rep: vo Demande. p. 377—
5 Cooke's Rep. 104— 2 T. R. 573. 5— 1 Chitty. 660—

On merits— 1st The witnesses are not sufficiently designated— no place of residence mentd. Poth. Vol. 7. p. 301 Don. Tests 2d Will not stated to be read & read over to Testator in presence of Wits— 4 Gr. Cout. p. 66. No 3— p. 74— ant. Cout. 289— 4 Gr. Cout. p. 108— 2 Bourg. 304 305. 1. Duplessis 591. —

Rolland for Pltff. the question argued is not regularly before the Court— the plea here is to the form of the declr— there can be no hearg on merits until enquete has been had and there can be no pleads to an exhibit not yet in court of the Court— the exception should have been answered & then it would have gone to the merits— but no exhibits can be looked at before enquete—

№ 2089
Decarry
vs
Marion
&
Ecostres

On merits of Incidental demand

Bruneau for Defend^r has proved all the articles in the Incidental demand -

M^c donnell for Pltff, admits the demand as proved except as to two pair of boots. —

№ 100
Lacroix
vs
Norman
&
Thibeault
T. S -

On rule on T. Saisi —

Vigi for T. Saisi. act may be given to Pltff of this demand to contest the declaration of the T. Saisi, but nothing further this rule is premature — as there should be an issue joined between the parties and an enquête had thereon. —

№ 587
Ward
vs
Goodsell
et al —

On action on special recognizance

Buchanan for Defend^r. There is no taxed bill of costs filed in support of demand for this object — There is no proof of Jud^t of Court of Appeals — there is no Seal to the copy of Jud^t —

№ 2003
Verdun
vs
Beaupré

action of account —

Roi for Pltff. the acc^t rendered by Defd^r is insuff^t although approved by one of parties, as not being rendered to the person entitled to receive it — The account rendered contains no statement of the sale of the realty, nor of the monies arising therefrom — the Pltff could not alone receive this acct nor approve it so as to alienate the rights of his wife in the real Estate — 2 Pigeau p. 28

Rolland for Defend^r — a sufficient account has been rendered on which the parties have gone to proof — and still Pltff persists in his demand, so that the sufficiency of the account is not before the Court. —

Dunlop et al
v.
Russel & Co

On trial by Sp. Jury.
Verdict for Plffs.

No 143
Chaffey
~~Jaffray~~
v.
Scott et al
&
E contra

On rule obt. by Plffs to shew cause why the cause should not be set down for hearg on the principal demand only.—

Buchanan for Defendrs here there are mutual accounts between the parties, which is one of the instances marked where both demands ought to be heard and determined together. Jousse. p. 40— and it is the policy of the law that as many contests should be determined by the same Judge as possible to save litigation and expence between the parties Dic. Droit Vo Revendication.—

Gugy in support of the rule — refers to the rule of practice of this Court, where the Incidt demand is a separate and distinct thing from the principal demand it shall not be delayed by such Incidental demand and here it is not alledged that there is any connexion between them — nor are they in anywise connected — had they been so this demand might have been set up as a plea of set-off to the Plaintiffs action, which could not here have been done.—

Wednesday 16th April 1823.

Present

Justices Reid Fourchr & Pyke.

No 16
Vigeau & Piccard — action for goods sold — Lacroix for Defdt — no evidence to support the demand —

No 1072
Hunter & Co & Perrault & McKenzie & al — action en Garantie — O'Sullivan for Pltff. action to obtain indemnity for a debt of Pltff has been condemned to pay to Pltff —

Rolland for Defdt The Defence in this cause ought to be favorably received —

The Defendt has here been deceived in the acte de cautionnement by the fallacious statement of the state of affairs of the Partnership of Perrault & McKenzie — there is dol de leurs — The cautionnement was founded on the statement in their books, by which that partnership is rich in several thousd pounds, & particularly in regard of the debt of Hunter & Co — they on the contrary appear to be Debtors to that partnership — there are no effets on hand, nor money although by the books this would appear to be the Case — altho' the Pltff in this Case did not keep the books, yet he allowed his partner to do so and trusted to his acts in this respect — there was dol on part of Pltff, he ought and is presumed in law to know the state of the books of the Company of which he is a partner. —

The debt due to Hunter & Co — was a debt for goods shipped to Perrault & McKenzie, but altho' there is a Dedt in that case yet Defdt was no party to that case — Supposing there ever was such a debt, it was innovated by the parties, to which transaction the Caution was no party — but is entitled to avail himself of it. Repse vs novation — p. 23A. 5. Delay was also given to the Debtor for payt — which will discharge the Caution 2 Bouv. 43 & see 5. ch. 5. particularly since the delay given R. McKenzie has become

become insolvent 599. Obl. — 2. Arnou. p. ~~457~~ 379. 457.—
in all cases where the situation of Caution is rendered worse
it will operate his release. Ob. 604 — Rep.: 774. 5. V° Caution
The debt of Hunter & Co was innovated by taking notes of
hand for it payable at different periods, & to different
persons from the original Creditors — it became a debt of
Rod.k MK. to Alex. Allison, the kind of Cautionnement
noticed in Poth. N. 604, which operated a novation of
the old debt — the delay here given to the debtor Perrault
& MKenzie during wh the latter became insolvent, was
injurious to the Caution, — Perrault even during this delay
could not transfer his right of action to the Caution of
R. MKenzie, on account of this delay — Had Perrault
pleaded the novation to the action of Hunter & Co the
action must have been dismissed, and Hunter & Co
obliged to prosecute on the notes they took. — The letter
written by Perrault to the Attys of Hunter & Co shews that
he became merely the Caution of his debtor MKenzie, for
the payment of the notes only, the original debt being
wholly changed — 1. Despr. parte 2. Sec 3. p. 686. N. 42.
45. Des Contracts — The Defendr shews by the acte de
Cession made by MK. to his Creditors in Sept. 1820. the
insolvency of that person —

That Perrault is debtor to the Partnership of Perrault &
MK. in a greater sum than that now demanded

Mr Sullivan for Pltff. — a material fact in this
case is that Pltff had no kn. of the books of P. & MK —
this was confined entirely to MK — and on dissolving
the Copn. the Pltff. req.d of his partner a security for transfers
the effects of the Partnership — it was the business of the
Defendr to look to the nature of the security he was giving
there could be no error wh could avail at Pltff — the Defr
here gave caution for the obligation of Rod. MK — and he
can no more set up any errors in the books than Rod.
MK. himself could do — The examination of the
books & statement made therefrom by Mr Oldham

some

some years after the Caution granted by Defendt— shews errors in those books — the amt. particulars due to Hunter & Co but this is incorrect & better accounted for by Mr Badgley in his evidence — Then in 2d pap of Statemt the Debt due to Irvine Monarcht & Co is incorrect — by an abbrtion made thereto by Mr Oldham & Co — The Debt due also to Watt Barr & Co — In this statement there is also the omission of debts due to Perrault & Co From the real Statement from the Books of P. & Co there appears a balce in their favor of 3 th pds sterlg. & therefore Defdt cannot get quit of his Obligation

As to the novation pleaded, it does not apply. at best they apply to Creditor & debtor, but this is not a case of Debtor & C. because R. & M. owed Plff noths, it was a contract entered into by M. & R. of de novo facias — but there was no novation of any kind here — Poth. N. 406. Ab. Term given to the Debtor will not exonerate the Caution — still this applies to the Case of Creditor & Debtor — here Perrault was not a creditor, and did not wish to be held as a Debtor — and the Caution has no remedy agt Red. & M. until he had actually paid the money for him — the giving a delay was therefore a benefit to the Debtor —

That the acte de Cession has been irregularly filed and moves to reject it. —

No. 1577
Clapsdal
"
Torrance
& al. —

Action of assumpsit —
On Exceptions à la forme. —

Gregg for Defdt — 1 Deduc is informal & insufft.
The law of France knew noth's of Counts in a Declce but only a statement sommaire ment fait — the first objn Here are 7 counts and the nature of them counts for distinct & diffnt actions — some of Counts are agt Defdt as Trustee of — cannot be joined to demands agt parties individually — Poth. N. 548 — Paley. 293 — Defdts are here stated to have contracted in two diffnt Capacities, as Trustees & in their own names. then are incompatable demands in same action —

2. This is an action for an implied Contract, whereas it is evident that there was an express Contract between them

Chitty. p. 98.— the express contract should have been declared upon & the party been able to defend himself 1 Pigeau 37.

S Cause — that 3d. Count is repugnant to the 2 preceding Counts there is a separate & different Contract set up in this Count to those alleged in the 2 other Counts — the personal undertakings of the Defds is here set up. — but the Contract here might have been reducible to what might have been required — might be a mere nothing —

Lonage d'ouvrage 395

As the breach to all these Counts, is restricted merely to the three last Counts, and the conclusions are taken on these 3 Counts alone — Chitty. p. 398 — the Counts are sep. actions ought to have separate conclusions —

Buchanan for Plff — there are no particular forms of actions in France 2 Argou p. 416 — all actions are divided into real personal & mixt — 2 first Counts in Dec. are special Counts to each of which a breach is assigned — Actions of Assumpsit, are actions on the Case — 2. Comyns on Contracts 549 1 Chitts Plead 93 — the breach will apply to all the Counts. p. 96. 97 — 12. Mod. Rep. 511 —

1 Wilson. 252 Duke Bedford Alcock

as to joining different rights of action in same demand this is known in France, & in England, see order 1667 — as to joining all demands under 100l — & see also 1. Wilson 252 — 2. Wilson. 321 — the Defds here are not sued as Trustees. Viner. actions. Letter A. N. 1. N: 39 —

Gregg — there cannot be an express & an implied contract between the parties for the same thing, & where there is an express contract that alone must be declared upon —

N: 1681
Foster dal
Bingham

Action of assumpsit for work done. —

Walker for Plff — action for compensation on work countermanded by Defd —

Gale for Defd. moves to reject the verbal testimony as inadmissible in this Cause — Action founded on a

Special

77. Rp. 14 – 7 de – 201 and Walker 120

special Contract between the parties – there is no commencement de preuve par ecrit here, the letter of wright is not such. – Poth. ob. N° 737 – but if this testimony be admitted, still it will be insufficient to support the action – refers to depn of Mrs Northedge & Wright –

Walker for Pltff. Pltffs here are to be considered as traders, this being an action for sale of goods – to be made up –

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N°36
Haynes
vs
Keep –

Action for house rent –
on Exceps

Henshaw for Defdt. The lease made by wife of Defdt and not shewn that she had any authority – not said in the ab of ratification by Defendt that he had authorised his wife to execute the deed in question. – Traité de la Puissance Maritale N° 68. 69. 74 Poth. Cont. de Louage N° 68. 69. 74

Bowrot for Defdt. The party contracting cannot come agt his own act – particularly after it has been executed by the parties –

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N°326
Bridgedale
vs
Phillips

Action on Verbal Sale –
on quest. as to commencement de preuve par ecrit and right of Pltffs to adduce Verbal testimony thereon –

Walker for Pltff. Interrogs have been answered by the Defdt and those are so vague as must carry a certainty almost of the fact –

Boston. The answers of Defdt do not constitute any sufficient grounds of com. de p. par ecrit – The Pltff here shew no title in them to grant a title to Defdt – it was a mere pompa parler at an auction room – had the Defendt wished to enforce this sale there were no means of doing it – Bowron is no party here, who is said to be the proprietor –

No 220
See. v
Prestral

Action of Trover for a Durham boat

Mondelet for Defdt There is no proof of property in the pltff — one wit. speaks to sale to Pltff — but partially — no proof of the loss of the boat — nor that it was in the poss. of the Defendr At all events the boat having been lost in a storm, the defendr is not liable. — Dig. in Digesta

Grant for Pltff The evidence is sufficient

No 144
Robertson
Davis

action for damages on contract for dying certain skins. —

Rolland for Defdt Accounts were settled in March 1821, and one year after. this action is brt. for damages in an object so regulated — There is no proof of the Contract between the parties, nor that any consideration was paid by the plaintiff to the Defendr on that acct. There can no responsibility attach to the Defdt after his work has been received and paid a year after it is done. Repr 47. Vo louage. — But the Pltff appears to have disposed of part of these skins, to have worked them up — a certain quantity returned from Quebec — but no steps taken as to the Defdt The Pltff should have shewn when he settled and with Defendr he had no means of ascertaining the bad quality of Defendrs work — he has alledged this but has failed in the proof — one Chevrier exam.d — the skins after they were dyed & before returned to Pltff and found them sufficiently done — Myers's testimony is insuff. & contradictory — in one he says the defect could not be known without wetting & yet he says he could judge of them without this — but this shews the defect could have been discovered at time of the delivery & therefore Pltff must be liable for all the consequences, and not the workman. — But all these skins were refuse skins purchased by Pltff and of no value —

Grant for Pltff — There is little proof req.d of any contract in this Case, as it depends upon mismanagement of

Defdt —

Defend^r. in doing certain work for Pluff, the obligation that he should do it sufficiently is implied in law — enough is admitted to shew the Contract. — There is no prescription ag^t this action, the receipt given by Pluff to Defend^r is no discharge to this action — That the defect in shipping can be discovered only in working them up —

—

N^o 1525
Blondelle
Pillet
& Contra.

Action for wages —
Pellier for Def^r The Pluff conducted himself improperly and was unfit to do duty of a Commis, and worked as a common Servant, for q^r service only he can be paid — that on Incidental demand Defend^r ought to recover damages, altho' he has not been able to ascertain any specific sum —

N^o 55
Lawler
Mary
& Contra

On action for goods sold & deliv^d —
Rossiter for Def^r In act^n for goods sold, is included the rent of a Stable q^r cannot be allowed under any count in the declaration — The Defend^r has made an Incidental demand which is proved — def^r must be set off at^d the demand of the pluff —
Grant for Pluff can is made out. —

N^o 389
Masson
Taillon

On action to compel Defend^r to give up the possession of a certain part ~~Lot~~ in front of Pluffs. land —
Roi for Pluff. The Pluff has established by evidence the facts stated in the declaration, by which a damage accrues to Pluff — The Court ordered a visit and report of the premises by a Surveyor, and by this report as well as the evidence in the Cause the Plaintiff is entitled to his Judgment —
Lacroix for Def^r It is ascertained by the report that no part of the road is on the pluffs land, that is 24 feet beyond the height of waters in Spring —
ales can Seigneurie Boucard. 20 feb. 1798.

Thursday 17th. April 1823.—

Present

Justices Reid, Foucher, & Pyke

№ 478
Richardson
Thayer
E contra

Action on sp. assumpt.—

Sewell for Defdt.— Pltff has not proved his case— to ascertain the balce Pltff must prove his whole account— certain papers were irregularly annexed to the Com. Rogr— these must be rejected— in wh case no evidence remains Pltff was agent to Defendt. on his Contract with Govt— & acted improperly as such— Defdt has proved his Incidental demand by one Wr— wh is sufficient in this Case—

Rolland for Pltff, the Case is fully proved, besides verbal testimony Defendt has been examd. on facts & articles & objects only to one item in the acct—

№ 1582
Belanger
Donegany

Action of Qui Tam.—
On Exceps

Rolland for Defdt— not said when the money was recd— by Defendt— on wh the usury is said to have been committed That it is only sd that a note was taken for the interest & capital — & not said that this note was ever paid— until this, the offence is not complete Doug. 235— 7 T. Rep. 184. ~~Shallcross v. Abbot~~ Shaddock v. Hammit — 4 Bl. C. 157—

St. of 1812. 1 year.—

52 Geo. 3 ch 7.

Gale for Pltff, action founded on Ordce 17 Geo. 3— there is no limitation to this action. by St. 31. Eliz. ch 5. s. 5 by wh all suits on penal actions are limited to one year for the party & 2 years for the King, but this St. is not in force in this Province

see Gramsby v. Gill 19 Oct. 1821—

The decln states that the illegal interest was actually recd by the Defendt wh is suffte— St. Am. is well explained in Case of Lyod v Williams — Moore. Rep. 644—

№380
McKillop
Bourassa & Pinsonneau
T. S.—

Action on Obligation—
Sewell for Pltff. Judgt ought to go as the T. Saus as it appears he paid away part of the monies in his hands to another Creditor of the defendr after the attachment issued out & served—

—

№2108
March
Burnet

action for Slander—
On Exceps
Grant for Deffr. The words used are badly stated being said to be spoken of & concerning the Pltff to third persons, while the words are "you"— without stating that the Pltff was present.—
Rossiter for Pltff, the declaration is sufficient

№1953
Hachain
Patenaude

Pltff asks Judgt

№1855
Campbell
&
Leprohon

action on note — Presumpn
On mo. as to pertinency of faits & articles.—
Rolland for Deffr the Pltff is not entitled to faits & articles in this Case, it is the sermont decision that must be renewed in this Case only—
Gale for Deffr— the plea of prescription is irregularly pleaded, he should alledged to have paid the note — & offer his oath— There are various kinds of prescription, but they must be alledged as pleas of payment. Poth. Ob. №684. 688—
Pegeau. 240.—

684

№1567.
Brown
Smith &

Action on transaction &
Gale for Deffr action on an obligation entered into between Mr Gray & M. Kay, Brown represents him— Rosina McClement & D. Brown are the heirs of M. Kay &
No proof that Rosina McClement & Peter McClement were ever married or had children— No proof that Mary. McClement

over

ever married John Brown — it is said he married a Widow Pattinson —

Beaubien for Pltff — The plea here does not raise the question of legitimacy of the persons claiming, it being a question d'etat, which must be pleaded —

No 1632
Alexander
vs
Reo. —

Action of Revendication. —

Rossin for Defdt — The merits of this Case have already been discussed in a Cause between the parties in the Inferior Court — The Court there being about to give Judgt the Pltff withdrew his Cause and instituted an action in this Court, but before the writ issued in this Cause the defendt made a tender of the boat in question

—

No 1948
Warwick et al
vs
Jones —

Action for goods sold —

Gugy for Pltff. the plea here sets up that the purchase was made by Defdt as an agent to the Lasprairie Brewery. but this not proved pltff must be done. Paley 295. — The plea is itself irregular & states fact differently, irregularly —

295

Bostwick for Defdt — This action of assumpsit & the necessary credits not allowed according to rule of practice, so that Defendt has been obliged to make out a proof he otherwise would not have been obliged to — Defendt has pleaded that he never made any purchase from Pltff but as an Agent to persons composing the Lasprairie Brewery, who are named — in proof of this fact the Defendt has shewed by his exh. No 1, pltff is an acct given in by Pltffs for same articles as here demanded of Jones Millichaps & Co — there are several receipts also to same effect — there is also verbal testimony to the same effect — Poth. Mandat. No 87 — obl. No 448. 9. & No 34 — where principal is known the Agent is not bound — Paley p. 209.

Gugy

Gregy in reply — The fact of Defendrs agency is not here established — Millichap says so, but this is contradicted by other Wits — The Defendr must have proved this fact but has not done it — The questions on interrogs not to the apltg wonder —

—

№ 1879
Jeffries
Roi

On action en Garantie —
on hearing on Excepns —

Roi for Defendr — There are no exceptions which do not apply to the merits — That there is no proof in the case beyond the answers of defendr — on faits & articles and by these he has not become bound to and consists the Pltff, nor advised him to any course of defending the action brot. agt Pltff by the heirs. —

Grant for Pltff states that the matters pleaded by Defendr do not correspond with the present Argument but on the contrary he pleads to the action existing agt. the Pltff. —

—

№ 490
Fraser
& Campbell

On pltff mo. for payt. of Costs, the principal being paid. —

—

№ 1022
Lepailleur
&
Turgeon
&
Lepailleur
opp.

On opposition afin d'annuller — on Excepn

Roi for Defr. The opposr has set up a claim in compensation agt. the execution sued out by Defr — to this the Defendr has excepted — That debt set up by Opposr is not clear and liquidated, nor can it be set up agt a Judgt rendered in favor of Defr Dr. Fer. V.o Liquid is only taken in regard of things not contested or liable to contestation — There cannot be compensation between parties but in regard of debts due by the proper person who claims it. —

Rolland for Oppt. The credits here are personal, the Defr rendered acct as Curator to a Succ. of wh Oppt had a claim, and he acknowledged to have in his hands a balance more than

sufficient

sufficient to pay the amount of the Costs in the Cause—
the Defend. was condemned as Curator to pay the
monies due to Pltff, and the monies which he has in
his hands he is liable personally to pay

№252
Thrower
vs.
Reigles
&
Hagar
&
Berthelet
Intervs

action on promy Notes — by default agt Defts
Bender &c Intervg party, claims to be paid
the monies in the hands of Defts Saisi, in
preference to the Pltff — The Pltff & Defts were
traders & in habits of endorsing notes for each
other — On 18 July the Defts purchased from
Intervg party the goods for wch he gave this note, and
fraudulently carried them & left the Province same day —
The Pltff got money from Defts clerk, pursued after
Defend. and afterwards came up with him at New
Foundland — on 24th rec. a letter from Pltff
stats he had got money from Defts proposed to him
to give up the half of his debt, and he would buy
it to him, this was done, after wch it would appear
that there remained in his hands a balce of £225 —
The Pltff now prosecutes on 2 notes due to him by
Defend while he had so much in his hands belonging
to the Defendt, and it is extraordinary he should
compound with one of the Defend. Creditors without
calling all the others — The Intervg party is bound to
account for all the monies in his hands belonging
to Defend as well the above sum of £225 — as for all
the other monies he may have rec. out of the Estate
of the Defendt —

Gent. Jones

Buckanan for Pltff — note of hand of Intervg
party not stated to be to order — not sufficiently proved
as proof of other facts alledged —

№ 1668.
Lewis
vs
Eisenhast

On action for value of effects belonging to Plff which defendr wrongfully retains.—

Bleury for Plff— Plff has established by evidence and from the Defendrs answers on faits & articles the proof the principal part of the demand, the only question is as to the value of articles, in this case the supplatory oath ought to be left to the party to make out this fact— cites Danty—

Rollard for Defendt— The only proof in support of Plaintiffs action rests upon the Defendrs answers to faits & articles, and he establishes nothing in favor of the Plff

—

№ 1676
McRea
vs
Masson et al

Action of Revendication
On Plffs mo. for proof of facts—

Rosseter for Defdr Masson, says, the articles of which the attachment was sued out were never seized

Rule withdrawn

—

№ 1762
Warwick et al
vs
Wilcocke
& Contra—

On action for sundry articles furnished to Defdrs
On Plffs mo. that enquete be declared closed as to demand in chief and the parties heard on the merits—

Rosseter for Defdrs alledges that he has done all possible diligence—

—

№ 35
Parsgbom
vs
Denaut
& Goodsell

On oppos[n] of Goodsell.—

Boston for Plff— oppos[n] has filed a deed of sale of the 50 shares in the Steam boat, but no other evidence is adduced— no value shewn, nor any possession given under it— The deed does not come within St. 26 Geo. 3. ch. 60. s. 17— nor Regis ter appears to have been recited in the deed— To shew the insolvency of Defdr the Plff has produced several executions agt. them In Evidence it appears that the Coproprietors would never

entertain

acknowledge this sale to Goodsell — The Oppost never was in a situation to pay such a sum of money — At a meeting of the Creditors of Dennan the Oppost acknowledged that this sale was merely a sham sale — & that it was made under a counterletter wt Dennan — 675. 2° Bourgr Dennt vs French. P&th. obl. 153. & 800 —

Buchanan pa Oppost — There is no fraud proved in this transaction — That Postcous is an interested witness —

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No 1975
Lamothe
&
Fraser & al

Action for house rent

McKeith for the defendt — The action of the Pltff is for rent of a house on a lease — but the evidence adduced goes only to prove occupancy, but not any lease, and in regard of occupancy there is no allegation in the declaration — the acknowledgt of Defendt that he had heard the property cannot be proved by him — and moves that it be rejected — The authy cited from 2 Vol. Gr. Comb 1053. No in regard of Verbal evidence cannot be received only in cases when witnesses were present at the making of the lease — none such have been heard — and even those heard go to say only that one of Defdts leased the house — There was no droit de suite after 8 days in regard of the effects of Dame Fraser who were removed from the house so held in the Case of Burton. vs Collyer & Forte & Fry Intervs — Dame Fraser never leased any part of the house either from the Pltff nor as subtenant, but lived as a gratuitous tenant with the other Defendt her son —

Mr Bedard for Pltff. The Defendts having enjoyed under a lease are bound for the amount of the rent — The Defendts have occupied as Tenants, and must be considered as under a lease which the proprietor ought to be admitted to prove by verbal testimony —

—

No 48
McGillivray
& al
Wilcocks
&
Lewis. Intervs

On Intervention of An. Lewis claiming certain articles seized —

Rollard for Plff. There is not the least proof to establish the claim of the Intervening party. —

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№ 2059

Lesperance
vs
Lesperance

Ou Cautionnement entered into for Defendt and monies paid thereon —

Blamy for Defendt. The action is premature, as there is no proof of any money having been paid by the Defendt. to Plff —

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№ 1786

Dubord
vs
Buchanan
et al —

Action on deed of sale to Buchanan one of the Defendts for wch the other 2 Defdts became securitys —

Grant for Defdt excepts to suffy of action as to Defdts Robin & Carswell, the Caution given by them to Plff. is not sufficiently set out —

Roi for Plff. Declaration is sufficient —

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№ 1764

Dofresne
vs
Driscoll

Action for board & lodging. —

Lt. Vizé for Defdt. There is not suffi. evidence of the case before the Court — objects to testimony of Wrs Scott on acct of enmity — mo. to reject his testy

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№ 183

Sears
vs
Roi. —

Action for beef sold to Deft —

Fr. Bruneau — no proof — mo. to reject test? of Wrs —

Friday 18th April 1823.

Present.

Justices Reid Foucher & Pyke.

No 248. Duplessis & Cardinal	Judgt on exceptions.
No 203 Millar & Walker	Interlocutor.
No 1577 Clarke & al & Torrance & al	Exceptions dismissed.
No 36 Hayes & Exp & Keep.	Exceptions dismissed.
No 1594 Belanger & Donezani	Action dismissed
No 1582 Same & Same	Same Judgt
No 100 Lacroix & Normandin & Thibault	Interlocutor.
No 103 Carmel & Orkney	Judgt
No 1503 McIntire & Scott	Dismissed

No 1649
Prince
vs
Scott

Judgt for Plff

No 1855
Campbell
vs
Leprohon

Judgt on objections raised by Deft to the fact & articles — ordering him to answer thereto. —

No 143.
Chaffey
vs
Scott et al
&
E contra

Motion over-ruled

—

No 24
Mills
vs
Chamberlin
&
E contra

Both demands dismissed

—

No 1882
Desrivieres
et al
vs
Durocher
et al

Judgt homologating report of Experts and ordering partition accordingly —

Saturday 19th April 1823.-

Present.

Justices Reid Foucher & Pyke.-

No 1731.
Lusignan vs Serres. & Lorimier.- Gart- — Judgt.-

No 2003.-
Vevreaux vs Beauprés — Interlor

No 1974.
Archambault & al' vs Tullum & al'. — — — Judgt

No 246.
Bouttillier vs Preston — Judgt on objections taken by Plff to answering faits & articles.—

No 359.-
Trim.- vs Delorme — Judgt.

No 477
Stacey.- & Ermatinger — Judgt

No 151
Filiatreau & Labilleaux — Judgt Contr. Mar. No 524—

No 35
Pangborn & Denau & Goodsell } Opposition dismissed, and sale from Defendr to Opposr declared null & void

No 326.
Bridgeford & Phillips } Pltffs mo. for verbal testimony to prove sale granted.—

No 1975
Lamothe & Fraser } Pltffs mo. for faits & articles rejected

No 1889
Arnoldi & Bellestre } Interlocutor.—

Tavernier & Cuvillier & Sylvain opp } On Pltffs mo. for proceeding on the opposn Mr Rolland for Oppt stated that the Pltff in this Cause being dead, Mr Beaubien, his Counsel has no authority to proceed further in the Cause, until the legal representatives of the Pltff are called into the Cause.—

Beaubien for Pltff, admits that Pltff is dead but contends that it is a maxim, le mort-excute le vif, and the Pltff having in her lifetime obtained Judgt agt the Oppor— and execution thereon, the Defdt cannot by his act deprive the parties interested from deriving all legal benefit from that execution in her name— This principle was held in the case of Brunet & Legault—

Alsopp ad
v.
Walshzab

On Defendants motion to have mainlevée of the boards & plank seized upon giving good and sufficient security for the same —

Mr Gale for the plaintiff, stated, that the motion ought not to be granted, because this was a case of outrageous trespass committed by the Defendants upon the plaintiff's land — that the wood had been cut down there & had been sawed there by the Defendrs and had been seized upon the land, so that the Plaintiff ought to be considered in possession of the property seized in proof whereof he offered an affidavit of Mr Jones to the Court — That the trespass here was the more outrageous as one of the parties concerned had already been convicted and punished for a forcible entry upon this land, and for committing a similar trespass to that now complained of —

Repve — 1re Voie de fait.

Mr Gurgy for Defendr — The Court cannot in this stage of the Cause take notice of any alledged act of violence, the fact on the record is that the boards and plank in question have been seized in the possession of the Defendants, and the legal presumption is that they are the owners and proprietors thereof otherwise it might be in the power of any individual by an action of this kind to strip a man of his whole property and deprive him of all use or control over it during a tedious litigation. —

June Term 1823.

Monday 2. June.

Present

Justices Reid Foucher & Pyke.

No 606
Dunlop
vs
Russel

on Defdt rule to shew Cause why a new trial should not be granted —

Bostow for Defdt — The action founded on three different Counts — The two first sound in damages, but constitute a mere narrative without any specific conclusions — a conversion alledged without any specific damage accruing thereon — the Counts must contain separate conclusions — The third count of the contains the statement of damages refers only to the third Count,

1 Chitty. 88. 397 — all counts ought to contain all necessary allegations to support them — p. 324. & 389 — the special damage must be stated, or none can be given in evidence — p. 393 — when Verdict on all counts, if any insufft it is bad — p. 399 — the forms stated — Com. Dig. Pleader. C. 84. — count must conclude to damage —

This was a Contract de mandat, undertook Defendt rec. the ashes — & undertook they were sold — the amt

1—

of this sale. is the only sum the Pltff is entitled to recover on the third Count.

The Pltff ought to have confessed or denied the special plea of Defdt. The Defendt alleged an authority to ship or to sell — This was not controverted, by stating that this authority was only for a limited time — but Pltff proceeded to shew this in evidence — The Defendts as mandataries were placed in the most favorable point of view as acting gratuitously. Repert. Mandat. p. 233. — Powell on Contracts. p. 246 — The contract of Defdt existed after the ashes were stored at Quebec — Paley. p. 172. 5.ed

837. N°.31 The mandataire was bound to sell or if he had not would have been liable to damages — Poth. Mandat. N°. 31. 37. 38. — Paley. 168. q. 161 — The storing the ashes, and insurance of them was necessary and prudent acts — The expenses of transport of storage & insurance give a lien to Defdt. over the ashes, and to keep their hand on the article until reimbursed, consequently had a right to sell for their payt — at all events to consider their mandat not finished until further order of Pltff — The letter written by Defdt to Pltff, required an answer, withdrawing the right of Defdt over the ashes —

Mandat. N°. 100 — the mandat determines only by the death of the mandataire or mandant N°. 98 — an option given to mandataire to execute it in such way as he shall see fit, when there are several ways of doing it — The power of Defdt was to ship or to sell — if they did not ship

the

the power of sale remained —
The verdict is defective, being rendered on 2 counts which will not support it. — The only money of appeared to come Defts hands was only £475. 8. 10 & could have been for no more — 7 p. 500. ~~Selwyn~~ Selloni's Prac.. Com. Dig. Pleader. R.
It is not final, as something still remains to be done by delivering up 2 barrels to Pltff, without shewing what kind of barrels, or whether empty or full — Woods Inst. p. 601. Lv. 4. Bull. N. P. 57. the value of every thing found by Jury must be stated. 2 Esp. 596 — action not for goods but for damages. — Granting of new trials is in breast of Court, & here the verdict was after the charge of the Court —
Walker for Pltff. The decl. suffte and each count has an appropriate conclusion —
1 Chitty Pl. 199. 200. 201 — one general conclusion of damages to all the Counts is sufficient —
1 Chitty 176. where form of an action w. 7 a 8 counts one conclusion in damages on all the Counts.
The authority given to Defnd. was to 1st ~~to ship, or~~ to sell, or to ship — as this could not be done the ashes were stored and insured — If the authority to sell can be supposed to be continued, so also must the authority to ship, & might be held to extend to all the ensuing Summer — but the authority to sell was co-extensive only w. the right to ship —
The verdict is sufficient, as that part which regards the 2 barrels may be considered as surplusage. —

Tuesday 3d June 1823.

Present.

Justices Reid, Foucher, & Pyke.

N° Rouville. Gaucher & Bordalais

On motion for hearing on the 9th inst—
L. Vigé for Defendt— moves that Cause be suspended until the inscription en faux in another cause be heard — inasmuchas among the Pltffs exhibits there are certain papers of which there is an inscription en faux, wch ought to be first determined the originals have been compulsés out of the present Cause & transferred into the other Cause & therefore this Cause ought not to be heard on the merits until the original papers are before the Court — If these papers are declared false, the Court would not proceed to receive them wch as evidence in this Cause —

Rolland for Pltff, there have been no proceedings had on the inscription en faux, but whatever may be the result of that inscription en faux in another cause, it cannot avail the Defendt in this Cause — Dmr. Faux.

Vigé — copies of an act cannot be given after it has been inscription de faux — the Court could not view any valid copy to be made wch would avail as evidence —

N° 246 Boutillier Preston

On defendts mo. to be permitted to file an exhibit in support of his plea. — namely an extract baptistaire of Defendt —
over till to morrow

Wednesday 4th June 1823.

Present.

Justices Reid, Foucher & Rykert.

№ 2125.

Durocher &c
&
Beaubien
&
Bouthillier
&
Beaubien } Intervt

Action by Plff as heir of Miss Durocher then recin to have an account of her Succession from the Defendr as her Executor. —

Bedard for Defts Beaubien & Grey — the question here is whether the dispositions in Miss B's will are valid or not under 276e art. of Custom — but this art. has been abrogated by the Provincial Law of 1801 in regard of Wills — but contend that under old law the will is valid — The liberty of disposing by will is derived from natural law, & all civil laws made in regard thereof are to be considered as restrictions on this natural — D'antoine 252 — 60 — Lepretre p. 157 — In France where the Custome did not regulate the age at which the party could make a will recourse was had to the Roman law. Lepretre. p. 10. The Prov. Stat. of 41 Geo. 3. is not considered as explanatory of Stat. of 14e Geo. but as establishing a new right, so held in case of Perrault & Davarin vs Rai — this Stat. regulates the right of willing, in regard of persons & things & is the law to guide us here — It is easy to see that the Legislature had under their eye the 276e art. of the Custom when they passed the St. of 41. Geo. 3d — so as to set aside all the impediments stated in the 276e art. — The word, age, must be explained by the 293d art of Cout. as not mentd in Stat. — This age is reqd only as to the kind of property, to be devised, but not as to the natural capacity of testator — qd — is evident in case when the minor has no moveables as in that case by the 294e article he may dispose of 1/5 of his propres — & under the Prov. Stat. ought to have same right when the person is age, in regard of all property — Polth. p. 329-330 & Dom. Testes the words usans de leurs droit — explained & un profit de personnes capables — all persons not prohibited must be considered as capable the personnes prohibées, are by Cout. conjoints par mariage

cont. till to morrow —

No
Scott & al
vs
Driscoll

on trial by Special Jury for a libel
Verdict for Plffs 1/- damages.

Thursday 5th June 1825.

Present.

Justices Reid, Foucher, & Pyke.

No 2125
Durocher
&
Beaubien
&
Boudhillier
Intervs

this prohibition is taken off by express letter of the law — The art. 303. inhibits advantages among children — & 283 — children of a former marriage — all these prohibitions are removed all the other laws establishing incapacity are also repealed — the art. 276 is also revoked the ordre of 1539 does not go so far as this article but equally repealed by words of St. act — admits nothing in favor of qui qui ce soit — The mere being of an age to testate could do so in favor of her Tutor, as much as a Mayr could, in so far as regards moveables — all the incapacities are removed by Prov. Stat. — The St. reserves Proc. Lang. liv. 3 ch. 27. des Test. fo. 379 + where minors of 20 years can will to their tutors, in case the prohibitions of the Customs be tolled — In fact the Pr. St. is the only law to be considered as regulating testaments — The word age is defined by

293

292. art. explained by art 293 - This requisite of age is only in regard of the biens as appears by art. 294 and if the arts 292 & 293 are the only articles of settles the age of testing, this established, all dispositions of property comes under Stat. of 1st Geo. 3. and the minor by his will may at 20 years of age dispose of all his property without distinction — The words as ans de ses droits, mean only the Civil rights of the party Poth. Don. Test. p. 329. - If Thereupon Mlle Durocher was agé, saisi d'entendement, ousant de ses droits, she is within the words of the Stat, and entitled to will her property "à qui que ce soit." —

329

The law imposes the obligation on the plus proche parent to accept the tutelle, when legally appointed and therefore Defdt. here would be wrongfully excluded from the benefit of the will of — were granted to him as her nearest relation — But the prohibition of the law applies only when Tutor is not plus proche parent. Dic. des Arrets. v° Tuteur. p. 804. Cambolas. ch. 34 -

Rolland for Plff. The droit de tester is not of droit natural — Domat. Tr. des Lois p. 18. Rom Cyclus this writer refers to usages in France; whereas the authorities cited by Defdt are from writers on Roman Law — Id. p. 21 — 2 Blackst. Com. p. 11 by which it would appear to be a Civil right introduced from political motives — 2. Bourj. p. 293. Tr. des Succ. p. 1. Poth. - 1. Prevot de la Janes. tit. 3. § 53. art. Cout. le mort saisit le vif — The Stat. 1801 - being an exception to this principle ought to be strictly construed

and

and not extended – this is the principle in the Pais Coutumier, what is done to prejudice of the legal heir must be strictly construed, & we were in a Pais Coutumier in 1801 – see what laws are to be favorably interpreted. Domat –

Domat 1 cls. liv. 1. prem. tit. p. 4. & 7

The minor cannot will in favor of his Tutor reasons are stated by Furgole 1 vol. p. 282. – 467 – the constraint is presumed on the will onward of the minor – defaut de liberté – Lemaitre p. 410 – says. that Lepître mistakes what he has cited – The minor has neither the administration nor power of disposing of his property – C. Pothi. p. 603. Fr. des personnes – The stat. of 1801 – seems to have contemplated only the 292d. art. of the Customs – and not the 293d. art. – nothing is said or changed in regard of minors – whatever is changed by St. 1801 – has been changed by express words –

282.

The words et d'age – mean age of majority – and not d'age de tester – & would be limiting the sense of words – Rep.re v.o agé – calls emancipé, hors de tutelle – majeur – Dic. Droit. v.o Agé. – Gr. Com.r. sur art. 292. dom.e 7. – Auzanet. p. 246. – The words "usants de ses "droits", also mean a major – Poth.r p. 329. Cout. d'Orleans, estat as having un etat Civil, is but a general interpretation, but not the particular application to certain persons. Auzanet. loco cit. excludes persons under tutelle – as usans de ses droits – & p. 247. – 4. Gr. Cout. dom. 22. sur art. 292. Poth. Tr. des Personnes 603 – gives same interpretation –

The faculty given to the minor to lester is of a limited kind and not at all within the words or intent of the St. 1801—

Vizé of counsel for Plffs, denies that right to lester is of droit natural.—

The St. 1774. in speaking of word afé, connects it with the words having right to dispose of their property and same meaning must apply to St. 1801—

The will must be interpreted according to the terms of the Custom, according to gl although the minor can will, yet under 30 articular restrictions, and one of them is in regard of the Tutor—

The 276e art. of Custom— is positive agt the claim of the Defde p. 1277. N.Y. 3d Vol. Gr. Com. the opinion of Chopin shews that the Tutor when an heir at law can take what the law would give him and no more.— Repan vo Incapacité. 108— 3. Fr Gr Com. No 10. 11. 15 &c or above art 276. — & No 34— Riccard. ch. 3. sec 16. p. 161. No 714. 716— Fr. des Don. entre vifs—

Denizt. vo Incapacité No 11— & same doctrine—

Poth. Cout. d'Orleans p. 572. 3.—

1. Duplessis. des Don. Tut. liv 1. ch. 2. p. 347. 8.—

further argt. contd till Monday

Rouville
vs
Bourdalais

Plffs motion for hearing granted

Poth. obl. No 700

& Denizt vo Faux Incident. §1. No 6—

Monday 9th June 1823

Present

Justices Reid Fowler & Pyke

N° 2125
Durocher
&
Beaubien
&
Bouthillier
Intervs

Beaubien in reply — it has been said that right of make wills is not by natural right, but of civil law, this denied. Dic. Dijects 2 Vol. p. 458. N° 1 — p. 459. N° 3. — but with Domat Tit. 1. Se. 1re p. 325 — au 425. the testament forms the law 1 Fuzelier. ch. 1. p. 9. Grotius liv. 2. ch. 6. § 14. p. 190. — Imbert. Inst. liv. 2. tit. 20. Vol. 2. p. 260 — Chf du Droit Rom. p. 457 — Domat. Tr. des Loix - p. 13 — Domat. Succ. p. 339. the testamentary succn is perceptible to natural.

1. The Stat 1774. is made as well for minors as others — the word aged, has a particular application, the word d'age, must mean same thing or nothing — the word aged in art 292. means not 21 years. but of that age by gt a testament can be made — they art. 293, the minor of 20 years can make a will — Rep^re v^o age. this author cited by Pltff. p. 240 to shew word aged means of 25 years — the word aged. taken abstractedly in this art. 292 must mean the age at which a will can be made, & not the age of 21 years — Auzanet, p. 162 cited by Pltff N°. 22. en terme, usans de leurs droits — not regarding persons in tutelle — but in looking further into opinion of Auzanet he considers the words not applicable to minor of 20 years in regard of art. 292. 293 — Troncon. p. 626 — not aged — by gt it would comprehend minors of 20 years as to testaments. — Dic. Droit. v aged — means same — Dic. Droit. v° usans de leurs droits means using the rights of law authorises them to do

In answer to Arg. that the St. 74 regards persons of age of majority & not minors — This stat. says, that who has the right to alienate by Donation or otherwise shall have power to will — the words of stat, are general & comprehends all persons & includes the minor as well as the major — and he could have after this act disposed of all his property — The word testor, has a more enlarged meaning in England than in this Country — the incapacity to testate by will is not touched by this stat. but is included in the words testor

But admitting St. 74 never to have been made, the right of minor exist under Art. 292. 3 — and he has a right to test in favor of his tutor — The word Dicage in the St. 1801 — means same as word age in Art. 292, which means that person is of an age to make a will, without meaning age of majority — & having this age can will to whom he pleases — Bouyon an Pand. 293 has been cited as explaining words, us ans de leurs droits — but it does not apply merely to persons of 21 years, but to all persons who can exercise any civil rights — Poth. Tr. Personnes, p. 602. 3. does not preclude the right of minors in regard of acts the law allows them to do

The minor having therefore a right to will, the incapacity of the persons in whose favor will is made is removed by the stat. 1801 — & minor can thereby will in the favor of whatever person he pleases —

At all events the minor can will in favor of a Tutor who is one of legal heirs —

Arrêt de Brillon +
Rep.re p. 714 — Vo avantage prohibé —
Lange — The authority cited from Chopin cited by Mr. Viji is not correct — as it only gives what the law

law would give, this is not allowing the power of giving by will — That the wife, daughter & other persons to whom legacies have been made are not incapable to take as it is not alleged they were personnes interposées.—

On Intervention —

Beauboin for Bonthillier, Interv. party — who claims that the will of Miss Durocher be executed refers to same arguments had for validity of will

Rolland for Pltff — contends that Expr has no right to come into the Cause, inasmuchas B. never assumed the charge of Expn, & if he did his authority expired before institution of the Intervention — Dlle Durocher died 15 Oct. 1820 — the Expn has been exam. on facts & int. she says that next day after her death he took on him the charge of Expn — but the acts he did did not amount to an acceptation of the exn. of the will, but this acceptation must be made by an Inventory of the property of the deceased — 1. Prov. Jurnx. p. 150. N° 129 — Repx. Vo. Expn. p. 160. 161 — are not obliged until an Inventory be made — 1 Ricard. p. 367 — Ston 3. ch 2. 2. Bony. 375. Gp. Cout. art. 287 Somx. 32. — Then there was no contest to prevent the execution, nor was a prolongation of delay ever demanded, which is necessary. —

Bedard of counsel for Interv. party — The law in regard of Wills by Testament being entirely changed the will of the Testator becomes the law, and the Expr has the right execute it at any time & in such manner as he pleases — But even according to the ancient law of the Country, the year & day for the execution of the will is not expired, but is continued in consequence of the contestations raised respecting

The

the will — Execution brot by the present pltff. called in question the validity of Miss Debouchon's will — when that action was dismissed, the present action was immediately afterwards instituted, what has the effect to prolong the right of the Exor — Denegr. vo Exor. no. 29 — Lacombe Exon Testamr No. 6 — 9 — Poquet de Livr Ryke 43 — ch. 3. art. 1 —

Rolland for Pltff — The law in regard of executions of wills is in nowise altered by the law —

Tuesday 10th — June 1823. —

Present

Justices Reid Foucher & Pyke. —

No. 772

Harrieus & Decarry & Leclaire

On report of Experts —

Mondelet for Pltff asks hom. of Rapt —

Rossee for Defts — the report says nothing in regard of the jouissemt in dedn — The Defend — Decarry made a donation of property to Leclaire, who is therefore not liable — and Leclaire alone bound —.

No. 412

Guerin & Papineau

action of debt on Obln

Scott for Defdt — The Pltff. exn on oath allows that she said she would give two years for payt. of the debt. of the pr. the interest — It does not appear at what time Defendt made payt. here, so as to ascertain whether the balance claimed come within the 2 years —

Bowen for Pltff — The statement of Defdt not consistent with the Plea — that on more than 7 years elapsed since the debt became due

N° 372
Sutherland
Smith
& contra

action on lease for rent=

On merit of both demands -

Guay for Pltff, Defend^r complains of want of enjoyment and want of right of Pltff in property to keep Defend^r in poss^n but this no plea - not necessary to alledge transfer of poss^n to Defd^r under lease - Loisean

Loisean 103
Liv. 4. Ch. 11.

Rolland for Defd^r - Special Plea that Vendor has not put Defend^r in poss^n - but under this Plea Defd^r does not mean to avail himself of want of allegation in declar - but by the special plea the Defend^r contends that Pltff has not made delivery and this Pltff was made to make proof and shew that he had fulfilled his contract, and by reason of Pltffs failure in this respect has made an Incidental demand & on q^l he is therefore entitled to his Judg^t

Guay for Pltff, the Defend^r ought to have made proof of the facts stated in his Incidental demand. - Poth. Con, bail a rente no 5 - tradition fictive is suff^t -

N° 285
Gerrish
& Wher -

Action of assumpsit for money q^l Defd^r indebted to pay for one Martindale -

Bourret for Defd^r moves that testimony adduced by Pltff be rejected as inadmissible, as verbal testimony cannot be received in this Case - neither parties, nor the transaction can be considered as Commercial - That Martindale is an interested wit^s & cannot be heard. - Pltff has not made the best proof in the Cause he could have made - he should have produced the original note on which the transaction was founded - the date of note not ascertained, so that Pltff may have another action on it and obtain a double satisfaction - a copy of the note is filed, but it does not appear to be same note declared on. -

Walker in reply, the transaction is commercial - & the evidence suff^t - but without any evidence the default of Defend^r to answer to the facts & articles is suff^t to condemn him. -

№399
Rogerson et al
vs
Curtis et al
&
Dwight et al
Opps

Hearing on Opposition —
Case submitted by Mr Beaubien for Oppt —

№371
Hart
vs
McKenzie
Boucher —
Mercure

Action en revendication for a puncheon of Spirits. — or Shrub

On Defendrs plea, Mercure came in & claims a right to dispose of Shrub to Defd as Plff had not paid him what he owed for freight of this Shrub & other things and thereupon Hart makes an Incidental demand. for the ~~freight so due to him~~ same Shrub. — and also demands the delivery of certain articles from Mercure &c were delivered to him to convey from Three Rivers for Plff. — The Intervention being like an original action the Plff can set up aft it what ever he could have raised in an original action by Mercure —
L. Vigé for Defr. Boucher. — The Defd does not contest the Plffs right of action, but states in what manner it came into his possession, as depositary by Mercure & who left it w Defd to store, & altho' Plff may have rights, yet Defd cannot be bound to deliver it as he has acquired rights for storage. —

Grant for Mercure — says he rec'd the Shrub in question to bring to Montreal, when he arrived, Mr Hart not ready to receive the Shrub, refused to pay the freight, in consequence Mercure was entitled to retain the Shrub. —

Beaubien for Plff in reply. — The Defendr had no right to retain the Shrub, & Plff entitled to his Judgt for value of it.

№426
Chevrefils
vs
Richard

action Pétitoire —
Bleury for Defd did not appear —
Mr Lemoyne for Plff demands Judgt

111

№208.

Dupuis dal
Roi —

action for repartition for building a church
hears on exceptions. —

Mondelet for Pl'ff — the matters pleaded by the Defend'r have been already adjudged upon before the Commissioners — the parties were admitted to proof of this proceeding — and on this proof prays that exception be dismissed. —

Rolland for Defend'r — The proceedings before the Commissioners were irregular and contradictory, the petition for build'g Church was signed by people of three Seigniories to amount of 400 — when the assemblée for naming Syndics one of these Seigniories was left out only on notice of meeting given by Curé — & therefore the Commiss'rs set aside the nomination — a second assemblée had but so much disturbance that no appt. had — a demand made & granted by Com'r for assemblée after on notice in consequence of wch Syndics are named — the notice to proceed before Commiss'rs to have hom'g of appointm't of Syndics only one days notice — still proceedings had with 2 Seigniories — The Syndics appointed they proceed to repartition à deniers marché of Work — here an oppos'n before Com. by persons of parish, and also of the Seigniory of Delery, wch had been left out in all the proceedings — the oppos'n here shewed that the whole proceedings were illegal, as not done with the consent of the majority, wch appears by the repartition itself — The Com'rs got rid of oppn by saying three reasons sh'd have been given before appoint't of Syndics — They exclude the people of Delery. by wch means there would appear a majority in favor of the proceedings — but in contradiction w't this, they dismiss the repartition as the people of Delery had not been included, and a new repartition ordered in which

sh'd —

should be included the people of Delisy — this was done, but opposed by people of Delisy, who contended they had been wrongfully included — upon this the Court rejected this last repartition and homologated the first act of repartition which they had in the first instance rejected. — The Defendrs here contend that this act of repartition could not be homologated after having been rejected, and can have no force as a Judgment to ground or maintain the present action the Defendr who had gain de cause on the opposn to the homologation of the repartition of the parish, is condemned on a repartition which had been annulled, & to wh they were not called to defend. —

L. Vigé for Pltff — all the Pltff had to do was to prove the authority and proceedings before the magistrate, which has been done, and which must determine the validity of the Exceptn pleaded by Defdr — There has been no certiorari issued out to investigate the regularity or validity of the Defdrs proceedings of the Commissioners —

N°745

Davion & al
vs
Boudria & al
Garnt

Pltff action for payt of rents & pension viagère as Defendr hypothecaire —

L. Vigé for Defdr has put his garant in the Cause who has taken the fait & cause of Defdr — The Pltff having made election of domicile on the land in question Defendr not bound to carry the articles else where, nor does it appear that any demand was ever made of Defdr at this domicile, — the parties were never put en demeure in this Case — claims his renvoi as Garant at all events. —

Thibodeaux for Garnt — no demand having been made the Garant ought to have the alternative to pay the articles en nature or money. —

Laussat for Pltff — It was for the defendr to put the Pltff en demeure, as he was bound to pay, & ought to have liberated himself by a tender — either at place where Pltff lived, or at the elected domicile —

Dumat Droit Commandement. Obl. 270. p. 100.

№ 352.

Robillard & Lapointe

Action for work done. —

Mondelet for Defds contend that they are not bound solidairement on a contract made by them as syndics — As to one Syndics, Jos. Daout, the Plff has changed his recourse, by taking an obligation from him for his part of the debt, and ought thereby to be discharged from the present action. — If the Defends are not to be considered as solidaires, some of Defds will appear to have paid their cotte part of the debt in question — R

Roi for Plff — Syndics are bound Solt. Poth. Obl. № 267. Rep. v° Solidité. p. 364. — It does not appear that Plff ever discharged D'aout, from the solidité — there must be an express authority to this effect — Dic. Droit. v° Division. —

№ 157

Leduc & Toupin & Toupin, intervening opp.

Ore opposition afin d'annuller —

Rollin for Oppt the effects claimed appear to belong to oppt under a lease he made of them to the Defendt —

Lacroix for Plff — objects to filing a paper produced & joined with the replication — There is no tradition proved under the lease in question nor under the sale offered nor is there any proof of the identity of the moveables —

—

№ 248

Duplessis & Cardinal & al —

Action en delivrance de legs —

Rolland for Plff — action by Defendt to obtain possession of certain real property in possession of Defds — The plea of Cardinal sets up the nullity of the testimony — The plea of other Defendts is more à la forme than le merits — The only question is whether the will produced is valid — The exception pleaded by Duchastel cannot be received as affecting the validity

validity of the will as to merits — Vazeille says, that the will was not lue & publie, & is null on that acct — but this not necessary to be expressed in the will — at present the day these little formalities are considered as abrogated, particularly since the Ordre of 1735 — 1. Riccard p. 339. — Nos 1500. 1502. 1535. When we consider the Stat. of 1801 in the Province in regard of wills, the residence of parties & witnesses not necessary to be set out in the will, as not a formality essential to the existence of the will Id. No 1535. — Nov. Den. Vo acte Notarié — p. 188. the requirements of the ordre de Blois, are not reqs à peine de nullité But all the requisite formalities have been complied with as appears by the will itself, any difficulty now made can arise only from a capricious arrangement of the words of the will. — It is further alledged that the residence of the notary & wits is not mentioned in the will as fatal to its validity, & Pothier has been cited in support of this allegation, but Poth. allows that an acte was given where the designation of the witnesses was given as principaux habitans de ce village — but refers to opinion of Riccard above cited which shews that this is not a formality of rigor. — The St. of 1801, admits wills to be made either according to English or old french form, which admits a certain liberality in making a will, if in all essentials the forms have been followed — 1 Can. Mag. Le Robin & Fagnan —

Buchanan for Duchantal & wife — The Defendts must have the benefit of their exceps either to the form of the will as the deed on wh action is brot — or as evidence produced at the enquete — This Court cannot look at Ordre of 1735 — The practice of the Courts in France has always been to adhere to the formalities of wills. Repre Vo Testament p. 135 — 2 Gr. Cout. p. 66. No 3. — Danty. p. 269. — Poth. Ob. No 808. 2 Desp. p. 29. — Brillon Vo Testament. p. 629. An equipolence of terms to supply defects of form. not allowed. 4 Gr. Cout. p. 74 — 98. 99 — Danty. 292 — The words lue & publie pursuant 4 Gr Cout. p. 108 — 2 Bourg. 304 — 1. Duplessis 591. — As to the necessity of mention of residence of wits — Poth. Don Test, Ch. 1. art. 3, S. 1. 1. Conf. des Ordres p. 301 De Grenois liv. 4. tit 5. S. 8 — Repre Vo nullité. p. 247. & seq. To supply

135

the

Brillon v° Temoin 518

the deficiency of the will Plff has produced the two witnesses to whose testimony he objects & moves to reject it as inadmissible to supply defect in a written instrument Brillon v Testament p. 656. 695 — Dandy 514 — Rép^re v° Tem. p 60. 57. —

Vigé for Duplessis — The ord^ce of 1735 never was in force in Canada, no such law was ever passed by the Legislature of this Country — Lacombe v^e Testament. Sec. 3. N°. 1. 2. forms of wills must necessarily be observed, as ~~and~~ these solemnities have been introduced for good and valuable purposes — What are the formalities required by law refers to art. Cout. — art. 289 — Here the will does not appear to have been read in the presence of witnesses, 4 Gr. Com. p. 108. and N°. 9. N°. 30. — the want of any formalities req^d. by art. Coutum annuls the will — Dom. Dict. tit. 1 Sec. 3. art. 22. The modern writers in France since the ord^ce 1735, seem to consider many of the formalities formerly required as not essentially necessary — Poth. Cout d'Orl. p. 568 — cite forms of Fr. in Part. Not. 1 Duplessis 364. 1. Lange 382

Rolland for Plff in reply — The law must judge favorably of the intentions of a man in his will, and it would be judging hard of them if the omission of a word by a notary of pure form, not at all depending upon the will or knowledge of the testator — the ord^ce of 1735 altho' not enregistered here must be considered as written reason and ought to influence upon the decisions of the present day, and not a rigorous adherence to forms of no real use — The authority Rép^re v^e nullité, has been cited as the strongest in support of the ord^ce of Blois — but this ord^ce was not made for wills, but for acts in general —

As to want of designation of residence of wits. it could only serve as a ~~pre~~ comm. de p. in favor of suggestion or that the witnesses were not idoines, & proof admitted thereon — the only auth^y cited on this head is from Potter & the Rép^re but Poth. refers to a solitary arret — under particular circumstances — the Rép^re v° Temoin 57. 58

but the reason is given that the witnesses might be known, but not said that this is a form of absolute necessity or to be used à peine de nullité, but is given as an additional reason in favor of the arret—

1 Jour d'Aud. 358.

There has been no arret shewn where a will set aside from want of words lû & relû in presence of witnesses, but cites arret 1 Jour. d'Aud.x 358 where this point is touched upon, as not being a peine de nullité— There is enough in the will to support it—

The testimonial evidence is not in support of the act but to shew that the witnesses were decent, neighbours, and known to all the parties.— this proof made to meet the objection raised as to vets—

№182
Tavernier & Cuvillier dal & Sylvain opp

Plaintiffs motion dismissed—

№1625
Lamb dem vs Williams dem—

Interlocutor ordering Experts—

№1548
Woods vs Vanderslays

Mo. for new trial rejected

№1877
Roussy dem vs Jeffries. & Portelance Gart.

Judgt

same Judgt in 2 other causes between the same parties—

№253
Dorions & Dorions

Interlocr ordering act—

№252
Krower dab vs Reigles & Berthelot Intervs — Interlocutor ordering act.—

№1894.
Warwick dab vs Js. Jones — action dismissed

Rosseter vs Holt — Judgt.

Wednesday 11th June.—

Present

Justices Reid, Foucher & Pyke

№1911
Vaillancourt vs Piccard — On rule to shew cause why enquete should not be continued to 13th inst.—

№195
Rolland vs Pothier — On Exceps. & law
action for account of a Succession &
Gale for Plff — conclusions that Defd. restore 1/16 of property of Succession w. fruits & revenues & also that as property can be divided, that there be a partage —

Beaubien

Beaubien for Defdr — There is a cumulation d'actions, there being in fact three actions joined — 1st Act. Petitoire, the Pltff claims 1/16 of fief Lagauchetiere — also 2. action en petition d'heredité — and also — action en reddition de Compte et actis negotiorum gestorum — & also Action de partage — There are here 3 actions & three different conclusions, which are inconsistent. 1 Pigeau 37. —

Gale for Pltff. The Court must dismiss the exception en droit, as unnecessarily pleaded — The nature of this action necessarily comprehends all the parts of the present demand & the conclusions thereon — unless there be inconsistency in the persons, the forms, the rights of the parties, they ought to be joined 1 Chitty. p. 199 — 1. Pigeau 37. 198. Pltff might have been held to opter 5 Denizt. p. 89. vo Concours d'action — There may be many conclusions in same action. Ferriere. vo Petition d'heritier. — Here the whole demand proceeds from the same Cause — & not within the principle referred to 1 Pigeau 37. —

Beaubien — There are different and inconsistent actions joined here. The Petition d'heredité — and also to establish the right of Ebre Lacote in certain property, which is an action petitoire. — and there is also an action de partage, qt — is different from the two others — The authorities cited do not apply, as this is not cumulating several actions to obtain the same right — but here they claim separate and unconnected rights by the same action —

No. 490
Fraser — Campbell } Exception en droit

No. 485
Grouard — Bleuteau } action to be indemnified on Sale of a coupe de bois qt. belonged to another man — & on report of Experts — Rollin for Pltff prays hom. of report — but demands also costs on an action brot by Pltff in Inferior Court.

L. M. Vigé for Defend — not obliged to pay costs of action as encumbered — not having been called into Cause — By an affidavit of two of the arbitrators it would appear that they included interest

interest on the sum of 120^{tt} – from the year 1800 – which makes up the sum of 278^{tt} – which is wrong as Pleff had no right to interest having enjoyed a part of the coupe de bois –

No. 619
Dupuis
&
Piedalue

action for Debt – hears on Exceps.

Rollin for Defts. pleads innovation of debt, by Plff. acceptance of another & different obligation from Defts. by means of the attorney of Pleff – by this obligation Defts has a delay for pay not yet expired. –

Ross for Pleff. the power of Atty given here by Pleff. was a general one for conducting his affairs, but by no means to interfere in the debt in question, nor to give a delay for the part of the money here demanded – there was collusion – between the Attorney and the Defend^{ts} who were relations – Repse v. Procuration p. 714 – power not to dispose but to administer Ed. No. 11. if he makes a remise of a debt it is illegal – 19th. Mandat. No. 90. 93. 157. 164 – 166 –

No. 1612
Malo
&
Prenavau
al

action for house rent.
Hears on exceptions. –
Mondelet for Pleff. exception is vague generain –
Dismissed –

No. 180
Trudeau
&
Bingham
al

On Defend^{rs} mo. for quashing Process as not duly served on one Yates, one of Defts^{rs}

No. 1088
DeRouville
&
Gaucher de
Boucherville

On action to compel Defend^{t} to make his reconnoissance & declaration under letters patent for Paper Terrier. –

Rollard for Pleff – There is a certificate of the publication of

of the Lettres de Terrier, & other acknowledgments of Defend^r for this purpose, & particularly the two protests made by the Defend^r agt Pltff — The Defend^r alledges that he went to house of Pltff, & did there what he was bound. — The allegation in the plea as to the demand of new rights by Pltff — this is not proved. As to the exhibition offered by Defend^r of his titles before this Court this cannot be granted, but Defend^r must be made before the Commissaire appointed for this purpose. —

p. 60. 350. 358. 1 Freminville — Sup^r right to this action Actes de Not^re p. 68. 76. 328.

L. M. Vigé for Defd^t action contains 2 objects — 1. The refusal of Defend^r to make his acknowledg^t. befor Com^r and 2^d — that Defend^r be condemned to pay £50 — for arrears of rents & other Seigneurial rights due to him — Admits that the Censitaire is bound to make his acknowledgments to Seigneur on his fulfilling the requirements of that authority under which this right is granted — he must put the Censitaires en demeure, & here this has not been done — there must be a ~~call~~ commandement made upon the tenants and ~~by~~ publication of the Lettres de Terrier and a certificat of a huissier thereon — this formality has not been observed because the ~~certificate~~ commandement is not signed by a huissier — it is signed by Jn^o B^te Taché, but he is no huissier, nor is it said in what character he acted, or who he is — 1 Freminville 78 where form of commandement is given, qh is the most essential part of the proceeding to give notice to the tenants — The Commissaire could not give an order to the Tenants to appear befor himself — nor is there any proof that any Commandement was ever made by any huissier, such as required by the Ordg^t. of confirmation of the letters patent — The Pltff ought to have proved that publication was made — but nothg is produced but the signature of the huissier which is not sufft as the affiches & annonces ought to be made in the presence of witnesses who ought to sign the Certificate with the huissier — 1 Frem. p. 79 — the signatures of 2 witnesses appear with that of a huissier, but there is no proof of them, & their signature cannot be valid without proof — The certificate of Jn^o Marie Isidore Racicot signed in one of them, is stated in the body of it to be the act of Abedard Isidore Racicot, who is not the same person, nor a bailiff — There is a person named Marie Isidore Racicot a bailiff of this Court, but the Certificate here given altho' of that name is in contradiction with the

body

body of the Act — There is here also but the signature of one of the witnesses, and the mark of another — whereas both witnesses ought necessarily to be able to read and write so as to distinguish between the papers in regard of which their certificate is given. —

That notwithstanding this want of formality on the part of Plff, the Defend. acknowledges by his plea that he proceeded at 3 different times to the Seigneurial manor of Plff without being able to make his declaration, from the great number of other tenants then present demanding to make their declarations — The Defend. cannot be bound to more than this, and not obliged to wait the convenience of the former tho he call on Defend. to make his declaration — all the Seigniory being called together to meet within 15 days — so many persons assembled that the Commiss. was unable alone to perform the duty from this cause — it was imprudent to call together so many persons when it was impossible to expedite the business within any reasonable delay — a part of the Seigniory ought to have been called together at one time —

The answers of Defend. on faits & articles are not so positive as to constitute a proof of the publication of the letters Patent and other papers referred to —

The Defend. has alledged the demand by Plff of unusual rights to shew he was not bound by his deed, and for this purpose one of the forms adopted by the Commissary has been produced — and there may be many rights in the deeds of Concession of are prescribed, after a lapse of 30 years, except those not prescribed by law +

The demand of £50 by Plff for Seigneurial rights is without foundation, as it appears by titles & deeds filed by Defend. that all arrears have been pd to the Plff.

Rolland in reply, only 2 questions, whether Defend has been put en demeure, and 2°. whether he has done all that he was obliged to do — The Plff contends he was not bound to make any proof of the publication, as from the evidence of Defd. it appears that the necessary notice had been given which is sufficient to constitute the party en demeure

the

the avowal of the party is sufficient without any other proof to condemn him — It is not necessary that the bailiff should sign or publish the Commandat, on the contrary the Commandat should be signed by some other person than the huissier — but the certificate of the huissier comprehends the publication of the Commandat which is sufficient. The Certificate of Racicot is for the parish of St. Marie, in wh Defendt does not live, and can therefore have nothing to say to the variance in the body of the acte — but Defdt lives in parish of St. JnBapte where publication was made by one Besse, a huissier, as wh nothing is said — as to signature of witnesses it was not necessary to prove it, their signature with that of bailiff makes it an acte authentique —

The second plea of Defendr that he went to make his acknowledgment but could not do it from an impossible cause, had this been true, and had limited his defence to this action to say, that he was ready to make his acknowledgment the Court might have acceded to the demand — but the Court must observe what the conduct of the Defdt and the persons joined with him when he went to the Seigniorial Manor, was a tumultuous manner, and claiming to pass altogether before the Commissary — their protests — and combining together to embarass the Notary in doing what they were clamorous for

No. 226.

Kidd
vs
Raymond

On action hypothecaire —

Boston for Pltff. The Defendr claims to be reimbursed for the improvements he has made on the land before he be obliged to abandon it — but improvements in such a case are limited merely to what is necessary to preserve the property for beyond this the person in possn cannot be reimbursed. 2. vide Pothr. Hyp. p. 439 — p. 454 — Repe p. 347. Vo amelioration — Jo. Vo Hyp. p. 663 — Pothr. Hyp. 440. — 1. Domat. liv. 1. tit. 4. sec. 2. p. 299 parlay vide Coheritiers. No 16. 12. 12 dépenses necessaires — the dépenses utiles are different

Hyp. p. 439 Pltf

Rolland for Defendr — the proof made by the Pltff in this case, shews that property is worth much more than the value of the improvements, & Defdr claims that he have security to be paid the amount of them improvements —

Thursday 12th. June 1823.

Present

Justices Reid Foucher & Pyke.

No 16
Vigeardaux
v
Piccard

On report of arbitrators
Lacroix for Defdt. The report cannot be homologated as the arbitrs proceeded upon the avowal of the wife alone, as it could not bind the Defendt.
L. Vigé for Pltff, considers report sufficient, as they may have had other evidence before them besides admission of wife.

No 508
Lacroix
v
Turgeon

Action en Retrait Conventionnel.
Beaubien for Pltff, action founded on a clause in the deed of concession, stipulating this retrait.
Roi for Defendt.
Contd till to morrow

No 468.
Picotte
v
Courteau

Action for defamation — Trial by Sp. Jury
Verdict for Pltff 1/- damages.

Monday 16th. June 1823

Present

Justices Reid, Foucher & Bedard

Lacroix & Turgeon } Beaubien for Pltff. action on Deed of Concession
Roth. Rele. p. 482 –

Roi for Defdr – pleads 1° prescription – & 2° that Pltff is himself garant to Defdr in regard of property in question – as to 1° the right of retrait Con. is noths more than a faculté de retrait or remeré & becomes extinguished by prescrpn Dic. Droit. vo Remeré. Id. vo Retrait Conventionnel – there are same in law – Repse vo Faculté de Rachat – Ste Denis vo Faculté de Rachat – & Retrait Convl – 2. Argou. 252.

The faculté de rachat can be prescribed by 30 years Cout. Paris. art. 120. – Gr Conn. on this art. Glos Mn. Nos 4.5.6.7.8.9 Repse vo faculté de Rachat p. 269 – Poth. Vente 391. 2. 3. & No 433. – 2 Jurnis. p. 500. No 664. – Lacombe. vo Faculté de Rachat No 1. – 3 – Poth. where cited by Pltff, shews noths that can be construed contrary to the principles laid down by the authors in regard of the retrait Convent of the faculté de remeré or rachat – Poth. No 611. Retrait –

2°. as to exception de garantie by Pltff in this case – The land of Defdrs possessn was sold by Jos. Lacroix to one Lapierre the heirs of Lapierre sold to Defdr free and clear of all incumbrs – The Pltff although Seigneur must be held to warrant what his father would have been held, whose heir he is, being the same person in law – the accidental quality of Seignior cannot vary the principle – Poth. Vente. No 196. – Repse vo Garant. p. 722. Poth. Rele. No 571 – p. 182.

Mr Beaubien for Pltff. The law distinguishes between droit de retrait conv. & droit de remeré – & is also in its nature of a Conv. – & this diffn excpt by Pothier. the prescription does not apply to case of Retrait Convl – properly so called, – When the Seigr concedes on condition of retrait, it confers a right to exercise this right whenever he sees fit & in whatever hands the property is – The droit de remeré can be exercised only by the Seller or his heirs, but droit Convl can be exercised by anyone

who

who is Seigneur at any time — The authorities cited by Defts Pltff do not apply to Pltff demand — The prescription of the Pltff could commence only from the time of alienation by the original Grantee — here that prescription will not apply — Poth. Obl. N°. 679. The prescription begins only from the time the Pltff could have brot his action, the suspension being, contra non valentem agere non currit prescriptio — Poth. Obl. p. 785 — cites case of Baronne de Longueuil v. Prefontaine — where the prescription was set up as the right of the Seigneur — Aug^t 12 Oct. 1808. — The ensaisinement of the purchaser's title is an acknowledgment of the right of the Seigneur as contained in the deed of Concession — Poth. Retrait. Cout. d'Orleans 677 — cites case of Jacob: v Bonsij. where the right of remére was refused — Cout. art. 120. p. 451. 452. N°. 17 — The droit de retrait can be got rid of only by putting the party en demeure

12 Oct. 1808

As to Garantie — Had Lavoix pere made the concession as Seigneur without the right of retrait Conv^l Pltff here could not be bound, nor can he be bound for the act of a right imposed by another Seigneur — the right belongs to the Seigneur — Rep^re v^o Retrait feodal. p. 450 — The Ensaisinement of the deeds of sale here was a new acknowledgment of the right of retrait — That Lavoix pere when he sold the lot of land in question, he was not Seigneur, and not bound to warrant the purchaser of any rights stipulated by another Seigneur on that lot, more especially as Lapierre acknowledged by the ensaisinement of his Contract the right of the Seigneur — Lapierre in this case could not be called in as the garant of Defend^t as Defts cannot call on another person who must have been the garant de Lapierre —

Rai for Pltff — the definitions of droit remere & droit de Retr Conv^l are same, only diffce is the diffce in case where they may be exercised — The Retr. Conv^l is not a Seigneurial right, but arises out of stipulations in Contract, as it would between any other persons — every droit D'action is prescribed in 30 years — art. 12. Geo 3. N°. 5. — In the contract de vente par Lavoix pere to Lapierre of 13 June 1793 — there is no mention made of the retrait Conv^l — nor in any of the deeds of sale — subsequent to the deed of Concession in 1761 — where the

prescription

is limited to a certain ~~limited~~ time, the authority cited, for putting the Sup^r in demeure applies, but not where it applies generally. Rep^re Faculté de Rachat p. 272.

No. 1363
Beigue
vs
Labelle

Action on deed of Sale—
Rolland for Defend^r There are arrears of rent due to the Sup^r there is also a Judgt. of Def^r has obt^d ag^t Pl^ff all which must be deducted from Pl^ffs demand—There is also a mortgage on the land &c— ought to preclude Pl^ffs recovery even for balance—

No. 1938.
Ogden
vs
Hart
&
Ermatinger T.S

Cause for hear^g on Def^rs motion—
Rossetter for Def^r The saisie made on the hands of the Sheriff does not shew what right the Defend^r has in the money so seized, it contains only a sum of money a portion of which was to be offered to Defend^r in discharge of a larger sum.—
Ogden for Pl^ff—

No. 353.
Wilson
vs
Wisely
&
E contra—

Action of revendication—
Boston for Pl^ff. Defend^r wrongfully retained the worm in question from Pl^ff—reference to arbitrators who fund a small balance in favor of Pl^ff, but adjudg Def^r to pay Costs on acct. of his wrongful detention of the article
Grant for Def^r. he had right to detain the article till his repairs were paid for—

No. 1029
Doyons
vs
Arnoldi
&
E contra

On report of Experts—
Rolland for Pl^ff prays homologation of report
Boston for Def^r—The claim for augmentations not founded, as there was a specific sum specified for all the work to be done—& it was not in power of Def^r to increase the work so as to charge Def^r for the surplus.—Poth. Louage. No. 207—There are charges allowed by Exp^rs for these augmentations but without legal proof to shew they were restricted by rule of reparation—this Ex^rs ordered to visit case of Cut stone furnished by Pl^ff—no mention made of Tool—paid by Def^r. ag^t Judgt.

№ 19
Wilcocks
v
Hart & al

action pf trover & detinue. —
Grant for Pltff — prays Judgt on evidence before the Court, qr — appears clear, being under the hand of Defendt himself —
Rolland for Defts — pleas Defts do not detain any property of Pltff — that Tait, says, that papers were left with him to be deliver'd to pltff when called for, the Pltff never called for them but by present action, & Defts comes forward offers the papers & thinks ought to go free with his Costs. — as to Hart, not proved that he had any papers, on contrary produces Pltffs receipt for the papers he had in his possession. — as to money it appears that it was attached in his hands by Mr Tait & also that in an action by Anne Lewis agt Defendt there was a Judgt — in qr he was condemned to pay £35 — qr — must include present demand as to money —
Grant for Pltff Defendt Tait has denied all the facts in Pltffs declaration qr — required proof on part of Pltff — as to Hart the Judgt — on Saisie — and is subject to plea, & ought to have brot into notice by a new plea — at all events Defts. Hart must pay Costs —

Doyons.
Arnoldi
& Contra.

The Experts allow nothg to pltff for plants —
Exhib. № 4. shews the sums pd by Pltff for sundry articles he furnished, qr — have not been allowed by Exps —
Rolland the Experts were men of competent ken — & have decided upon all the points — costs Judgt. wr. Costs —

№ 106A
Warwick
v
Yule. —
&
Beaudoin
mis en Cause

On mot. to discharge mis en Cause from rule obtd ex parte —
Boston for Pltff — If mis en Cause, it must be on payt. of Costs. — as proceeding was necessary —

№60

De chantal
vs
Languedoc

On rule to shew Cause why Defds exh. № 1 shd. not be rejected – and also to be admitted to adduce parol testimony

Buchanan for Pltff – The contradictory answers of Defr on facts & art. constitute a suffr com. de prouve par ecrit
267 , Pigeau. 267 – Poth Obl. № 801 – the Court has the power to
801 say what shall be a com. de p. par ecrit. Rejet vs Commun. de preuve par ecrit – The Defndt says in his answers, that he meant only to sell the property to another man

Rolland, the stipulation here, was that there should be no sale but by act before a notary, & therefore all verbal testimony ought to be excluded – the authority of Pigeau, when the partys answers on facts & art. shall constitute a com. de p. par ecrit is a singular one & not to be found in any other author – & therefore ought to be admitted only when there is more than bare presumption – the partys answer should be taken as given, en entier, and no proof admitted of them – they cannot be divided & proof demanded upon detached parts – Dunty ch. 1. p. 582. ed. 1789. № 10. The com. de p. par ecrit ought to be a suffr proof & not a mere presumption – Poth. Ob. № 801. 1. Bourj. 471. № 5. –

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№1878.

De Martigny
&
Choquet et al

On action for Lods & Ventes –
hears on Law –

Vigé for Defndt he is son of the donor & therefore owes no Lods & Ventes to Pltff – Rejet v° Lods & Ventes. p. 616 – Pothier Orleans p. 101. Pandt. 137. Fr. art. 76. № 15. art. 26. № 19. 3 Guyot. Fiefs. p. 383. № 16. – p. 384. 388. – art Cout. 304. 305. 298. 278 –

Gugy for Pltff. The donation here not made en avancement d'hoirie, nor for love & affection, or arrangement de famille – the tie of relationship not even mentioned – Poth. Cens p. 305. Dunoyer. p. 186 – Pandt. 257 – Rejet. vs Propre p. 17. Id. p. 616. v° Lods & Ventes – The donor here contracts an obligation of warranty. qt. shews it was not a liberality. Der. dont

v°

v° Eviction — 5. Fremonville. p. 740

Vigé in reply — This donation cannot be construed to bear Lods & Ventes under any consideration — so held in case of Rolland Exp. v. Bellanger — M^c Gillivray dal. v Limoges — Every donation, on whatever change made between father & son do not bear Lods & Ventes — Arrets to 218 art. Cout. every don. made by father to son is considered as made in avancement d'hoirie — Every don. made by father to his child stipulating maintenance, is what the law compels every child to do —

278.

Tuesday 17th June 1823.

Present

Justices Reid Foucher & Pyke.

No 136
Hart
St. Louis
& Hamilton
dal — opps

On oppos^n of Hamiltons —
M^r Sewell for oppt made his oppos^n to which no answer in the ten days — his oppos^n was therefore admitted under the rule — On 17th April Pltff gave notice to file moyens, but this was too late as Pltff was in default — & Oppt not bound to answer to it

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No 1698
Roussel
vs
Clarke dal

On motion of one Gammel that action be dismissed as irregularly served — p. 43. Reg. 13 a c.

L. M. Vigé for Pltff — The party ought to have pleaded this matter, it not being an irregularity of service as provided for by the rules of practice — The service made on Gam — personally —

Stone
Willing
& Johnston

On rule to shew cause why folle enchere shd not be had —

Case submitted —

№304
Chartier & Descelles & Discelles ms

On ms. for conclusions in defft of sale on folle enchere —

Bedard for mis en Cause — If the price was deficient it was the fault of Pltff — The land was adjudged to Pltff for 2025 — That the sale which was declared null by this Court was owing to the conditions imposed by the Sheriff at the instance of the Pltff, and as a sum of 2500 was then offered, although that sale was declared null, yet the Pltff ought to be accountable to mis en Cause for the difference. —

№1553.
The King vs Cuvillier

On M Ross's motion to be permitted to fyle certain papers as evidence in the Cause —

M Beaubien for Defend. the rule obt. is irregular, as it states no ground upon wh Defend. can answer —

№1891
Page vs Nicholson

On Defts. ms. to be permitted to enter com. appce as affidavit states no specific debt due by Defend to Pltff. —

Rossiter for Pltff, the affidavit made under the rule of Practice —

Ogden for Defend. there is no debt due to Pltff in this cause being an action for damages for words. —

Roi & Lapensée vs Lusher & Whiting T. Saisi

On rule to shew Cause why T. Saisis should not be adjudged to pay Pltff the amount of the monies in their hands

Gale for T. Saisi — The party intend to plead in writg

No 2095
Dom^s Rex
v
McCorddal

Ou Certiorari –

Bedard for Compl^t The Just^s of Justice should be quashed –

1. Because the Court was incompetent as Mr Grant one of the Justices was interested in the P. Verbal sat and heard the Cause, qr – was illegal, and without him the Court was not Competent. – This does not appear on the face of P. Verbal, but fact is so & can be so proved. – and the act of preparation of Gauvin shews that Mr Grant has an interest in the P. Verbal. –

2. The Justices had no authority to proceed on the P. V. in question, inasmuchas it was not made by the person and in the manner required by laws – The 20^e art. of Road act regulates the course of proceds – these have not been observed. The Gr. Voy. in Jan^y 1821. did not and could not visit the place in making the road as it was then covered with snow – and the visit req^d by law could not therefore be made – That the Gr V. made no visit of any kind, as appears by affidavit of one Thibaudeau

3 The G. V. by the P. V. fixed no day for the hom. of it the P. V. has no date – unless the words at head of it can be so considered – by an addition he fixes the day of hom. for 22^d April 1822. & then dates the P. V. les Lous d an ci-dessus qr applies equally to first date 20 Jan^y 1821, as to day of homol. 22^d April 1822, & therefore the date of P. V. qr of hom = is the same day – The day of hom. ought to have been in April 1821, the first Sessions after making P. V.

4 The P. V. is unjust as it obliges some individuals to open the chemin in front of another individual to qr by law they were not bound – by art 3. of 6^e Stat. – Gauvin's front road is ordered to be made by different other Individuals without any cause assigned –

5 That P. V. after it was deposited at Sous-voyer's chambre his P. V – refers to renvois in st. qr was done in Mr Selkirk's office – The Lords have their front on the

River Richelieu – The request made for a front road and he cannot depart thro'.

Sewell for majesty's. There is no room for suits aside the P. V. – There was no opposition to ——— the hom. of P. V. qd was a tacit waiver of all objection – That it is shewn that W. Grant had no interest or had no lands there –

There is noth'g in law that can prevent Gr. V. from making his visit en Venter –

Bedard – The Gr. Voyer ought to name the persons bound by his P V. and not to refer to them by the general terms de tous les propriétaires depuis un tel point jusqu'à un tel point. — ☞ This may be a point in case

—v—

№ 1576

McRae
~
Mason
&
Young

action of revendication for a sleigh –
Only question as to Costs –
Monsarrat for Pltff contends that Mason must be condemned to pay Costs –
Rossett for Defd. Mason – States that the sleigh was taken by consent of person in whose possession it was left –

—v—

Stewart
McLean
~
Greece

On oppos. afin de distraire. –
Rolland for Oppt. Green, can by default –
contends that case is made out. –

№ 1855

Campbell
~
Lepsohn
&
Contra

action on Promy note – on Principal demand only
Gale for Pltff – rests case on Defds answers to facts & articles – Defend rests his claim not to pay the note as he considers he has a right to retain the amount on acct of a debt due to Defend for qt Pltff became security – This plea wd not be suffit to original action – The Cautionment was given 10 years before the making of the note, and has since paid monies on acct – Altho' note did not bear

— interest

interest from date of note – & payt – must first be appl^d to interest. – The Defend^r must by stat. declare that he has paid

Rolland for Defd^r – compensation is payt & extinguishes a debt – The defend^rs plea is that debt is not due, & altho' the Court have held Defd^r to answer on facts & art. altho' not bound accordg to law where the prescription is pleaded – his sirnent decisions was the only recourse Pltff in that case had – The Defd^r in his answers, says that Pltff was indebted to Defend^r for a certain debt, but altho' Defend^r has pleaded prescription, & Pltff has set up interruption of prescription by Interrogatories although he has not pleaded it & Defend^r is thus exposed

Gale – the pltff's right to recover is evident from the Defend^rs answers, it refers to a debt due by Sam^l Holland & Pltff warranted – but Defend^r cannot set up a demand in his own favor –

—

№ 156
Bruce
Cook

Action on Promy Note –

Bourret for Pltff – objects to testimony of Defd^rs Wit^s as fraud not alledged by plea, nor proved

Grant for Defd^r Not a forgery –

—

№ 188
Henshaw
Holt –

action on note – question as to costs –
Borron for Defd^r – no Statute in Canada to shew that costs are due –

—

№ 1006
Robinson
Beattie

Action for work & labor –

Walker for Defd^r. Pltff entitled to Ent for not only – as to work now of work speake to quantum of work done, Expts ought be named to ascertain amt –

on law

№ 1670

Chapman
vs
Bridge

action by Plff. in his own name and as surviving partner of another for a debt contracted in England

Walker for Defendt. The surviving Partner cannot alone sue for the partnership debt, but the legal reps. of deceased must be made parties. Poth. Soc. № 140 — as Plff has not invoked the laws of England he cannot avail himself of it —

Gregg for Plff. The plea is defective — does not say who are the personal relations or representatives of the deceased Partners in exception to Plffs action. Com Dig. tit. Assumpsit. letter I. — The debt is stated to have accrued at Liverpool in England — In interpreting Contract recourse must be had to the laws where the ~~Contract~~ contract is made — Com. on Usury p. 8. —

The Lex loci. 2 Bur. 1077 — party demand. must qualify himself amongst to law of place when demanded. Chitty on pleads. p. 12. — 436 — 1 Earl. 497 — actions may be brot by agents who have only legal interest Chitty 348. — 1 Chitty 605. protestation useless —

Chapin tit. № 10 Gr Court.

Walker in reply — It was impossible for Defendt. to know who were the legal reps. of deceased Sanders — the demand being in the name of Plff in the right of his deceased partner he ought to shew what that right by laws of this Country are —

Wednesday 18th June 1823

Present

Justices Reid Foucher & Pyke

No. 538.
Turgeon
vs.
Achin
&
Lacroix
Gart

Action en decln. d'hypothèque —
Roi for Pltff — asks Judgt. on evidence before the Court —

Bleury for Defdt. in action en garantie — claims his recovery over as Defendt. as heir at law of Jos. Lacroix from whom

Beaubien for Defdt — This action must be instituted against the proprietor of the land — that Achin & wife are not proprietors of the land in question, but only of the money, and that the other moiety belongs to certain minor children — On this account the action en garantie is unfounded — There is no allegation in the declaration when Valiquet & Messier were married which is an essential fact in this cause — The Defdt. must be considered in the same situation as he was when he entd. appearance, and on this act — the admission made by Defendt. subsequently to his plea, must be considered as not before the Court — and therefore Defdt. cannot be considered as heir at law of Jos. Lacroix —

Roi for Pltff. The Pltffs action is well brot. and must be maintained as the Defendt —

Bleury for Pltff en garantie —

N°. 521
Lemoine dit Lamy
v.
Brunelle

action on deed of sale —
Grant for Defd — Pltff ought to give security to save Defend harmless —

Mondelet for Pltff — Defd has not demanded security by his plea —

—

N°. 1762
Warwick & al
v.
Pilcocke
& Econtra

action for goods sold and delivered —
Morrogh for Pltff — demand mant by evidence —
Rossiter for Defd — Pltff demand is reduced to about £30 — a sum of £10 is proved on Incidentals demand of Pltff will reduce Pltff demand to £20 —

Barsalone
v.
Delisle
& Gray & ux
Barsalone
Oppt —

Ors oppos — afin de conserver —
Gale for Oppos — monies laid out by oppt to rebuild the house, a loan made to reimburse him, but property sold by Sheriff, as oppt does not now mean to continue loan, claims the monies laid out in rebuilding house — in preference to bailleur de fond —

Rolland for Pltff — The Plaintiff is bailleur de fond and is preferred to oppost — who in this case is not entitled to any privilege, he ought to claim in the name of the workman, who had the privilege — The workman to entitle him to this privilege must have a devis & marché before a notary, & the Oppt ought to have given notice before Notary Thibault. Ch. p. 242. & seq. Rep. de Vo Batiment. p. 232. — Dunet. Vo privilege. N°. 33 & seq. 1. Jour. Pal. p. 877.

Gale for Oppos — The act passed between Defend & oppt before Notary touches the terms on pt Oppt — was to rebuild the house — 1. Pigeau 683 shews right of privilege of Oppt in this case, pt must be considered as the same with the workmen — The law as cited by Pltff never had effect in this Country, being reglements peculiar to France only for pt they were made — Then regulations

were

were at no time applicable to the State of the Country, and the principles of Justice are in favor of the opposants claim.— at present objection of Ruff is premature & Oppt. ought to be admitted to proof—

Rolland in reply— has objected to the sufficiency of the demand, under the contracts stated, & upon this he claims the opinion of the Court— he neither states dates, nor subrogation in the place of the workmen The arrêt de reglement is of 1690— & 2 and 1770— but in the Journal de Palais cited

Mmor & all. ats. Hagan. & ~~Black~~ Bangs oppt— 20 April 1818—

№ 1911
Vaillancourt
&
Piccard

action en separation de corps & de biens—
Mdonnel pr Defendr contends that evidence is not sufficient to maintain the action—

№ 246
Boothillier
&
Preston

action on note—
Scovell pr Defr— note given by a Minor offers to file a certificate — moves that said Interrog be taken as confessed as not answered.—
Plea. 1r. Minority— 2d. general non-assumpsit. 3d General demurrer— ~~Ruff under this~~.—.

—

№ 443
Gary
&
Sheldon

Hears on law— action on obligation— Abt
Henshaw for Defendr— The Obl: connected wt a deed of sale, & must be taken into consideration by this deed Ruff obliged to warrant— & all incumbrances now than appears to be— mortgages on the property to more than its value— Ruff is bound to warrant Defr in this case—
Walker, the granting the obligation was a novation of original contract of sale as to part of mares & Defr

№ 1858
Lefevre &al
vs
Lefevre &al

Action pour partage de succession.—

O'Sullivan pour Defds — by deffts deeds of Donation gave his sons different lands, but in every such deed he reserved the rights of the daughters — These deeds must be considered more as deeds of Sale than of donation this is the only question to be settled by Experts —

Rolland pour Plffs — It is evident the acts in question are deeds of Donation, and the egalité among the Children when they are all heirs, must be preserved see art. 304 —

№ 14
Manchester
vs
Labelle

Action on deed of sale

Bender pour Defdr not bound to pay till Plff shall have discharged a mortgage debt on land that there is also a deficiency in the land sold — 1. Bouv. 682

Grant pour Plff — There is no proof to ascertain the facts alledged by the plea — This was a corps certain which was sold — at all events the manner has pleaded this does not entitle Defdr to any deduction —

—

№ 959
Dumont
vs
Forgeron
&
Beaudry
&al — Gart

hearing on law

action en delr d'hyps. — on a donation by father of Charron arrier Gart to him —

Peltier pour Plff. question whether lods & Ventes are due on this deed on a sum of 5000$ wh the Donor stipulated to be paid to him by the Donataire —

Mondelet pour Charron — arr. Gart — action for eph. de hers, but if the Plffs do not recover Lods & Ventes they cannot maintain this part — The Plffs are not entitled to any Lods & Ventes in this Case, being merely an arrangement de famille — That by a subsequent act to deed of Donation of febry 22. the parties agree to make an immediate rapport & division of the 5000$ — Poth. Fiefs. p. 148. - 152. §3. — Rep: vo Lods & Ventes. p. 616 — Dic. Arrêt. Vo Lods & Ventes. Donation. — Gr: Com: art: 78; p. 1187 — analogous case to that in question —

Peltier

Peltier for Pltff. This acte of donation is equivalent to a sale in as far as regards the money — Pog. de Inv. p. 196 — gives a case in point where Lods & Ventes are due. N. Denisart. Vo Lods & Ventes. p. 166

No 69
Laurain
vs
Prevost

action on deed of sale — hear'd on law

McDonell for Defdr — not stated in Declr where debt was contracted, a deed passed between the parties — Does not state any liability in Defdr to pay the money. —

—

No 2003
Vevesup
vs
Beaupré

Sur debats de Compte & fins de non recevoir —

Roi for Pltff — contests debts said to be paid by Defdr not mentioned in the inventory — claims also the pltffs share in the monies for which Defdr sold a lot of land on half of pltff belonging to his children — the act is irregular in having been rendered to the husband of the minor only — without her being a party. 2. Pigs. 28.

2 Pig 28

Rolland for Defdr — The act rendered regarded only the moveable property, & the husband was authorised to accept it — The Pltff contests the act after having admitted it —

Roi for Pltff. The Defdr should account for the land he has sold, either by the price or the manner in which he has disposed of it —

—

No 239
Detellier
vs
Masse —

Action of account —

Rolland for Defdr — Defdr says he is ready to act but not bound to pay money —

№ 1864
Gauthier
&
Monjeau

Action for Lods & Ventes. —

Vezi for Plff: Defd. admits demand, but that he has been prevented by one Desilles from paying & claims right to put Desilles in Suit —

Mondelet for Defd. —

Benoit
&
Bachamp
&
Bachamp
Opp.

On oppos. afin de distraire les meubles —

Cherrier for Oppt. the Defd. made a donation of the land ~~in question~~, with the moveables in question — a list of the moveables was to be made afterwards — this was done — it is true it was after the Judgt. rendered in this Cause, but this does not render it invalid, as it has a reference to the stipulation in the donation, and it is proved that the Defend. was possessed of the same moveables at the time of the Donation but this has not been contested —

~~№ 17~~
№ 2166
Duchesny
&
Cuthbert

To recover issues & rents received by Defd. — of a share of a Seigniory

Grant for Plff. Defend. offers what in nature but Plff contends that Defend. ought to pay value —

Beaubien for Defendt — Defend. not bound to pay value of the wheat, but only that which he rec'd — this is the debt Defd. owes. Domat. — the Debtor owing what cannot be obliged to pay any thing else but what he owes unless the party be en demeure

—

№ 2000
Fraser
&
Brown

L. Vezi for Plff asks Judgt for his demand deducting on article of 7/6 — balance £1. 2. 5

№ 497
Cantin
to
Trouillet

action on deed of sale —
Rolland for Pltff — Defend claims that because there are mortgages on land the action ought to be dismissed, & also on acct of a deficiency in the land, of Pltff has admitted — Defend might have tendered the money and asked caution, but Defd keeps the money —
Rollin for Defd pleads deficiency of the land, of has been admitted — The Defend asked for the title deeds there have been delivd since the action but as to the Mortgages he contends that Defend is not entitled to demand anything, inasmuch as it appears that mortgages amount to more than sum which remains in hands of the Defendt —

—

№ 1935
Wilson
vs
Thayer
Sal

action of Contract — by default —
Borton for Pltff asks for Judgt —
Walker for Defd various counts — & conclusions only to last 3 counts — objects to filing exhibit of Pltff

№ 1027
Wilson
vs
Thayer et al

similar action —
Walker for Defd — record not complete —

№ 3.
Monjeon
to
Monjeon

Action Petitoire.
Riché for Defd Pltff titles remount only to 1790 — before this he was married to Cath. Patenaude & Defend is a son of that marriage & Cath. Patenaude is dead & Defend the Defd had therefore a share in the Community property these facts appear sufficiently in declaration —
At all events Defd ought to be held to give up only to extend of 30 arpents —

No 1817
Shuter
vs
Thayer
&
Keel &
al — opp.

On oppos — claiming privilege for wages —
Rolland for Pltff — The oppt's not Clerks of Thayer
alone, but of Thayer & Clay, where the effects of Thayer
alone sold — denies privilege —
Grant for oppts — claims privilidge for last 12 months

No 1654
Frejeau
vs
Tetrau

On action for defamation. —
Gale for Defend — no evidence to support this
action —

Thursday 19th June 1823.

Present

Justices Reid Foucher & Pyke. —

No 1754
Armour
vs
Peddie

Judgt

No 1567.
Brown & al
vs
Smith

Judgt

No 256
Cadieux
vs Poirrier
&
Cartier opt.

Judgt on motion, directs that Pltff should be held to deduct from his demand monies he rec'd but omitted to be noticed in the Judgt on his demand

No 372
Sutherland
vs
Smith —
E & contra —

Judgt for Pltff and dismissing Incidental demand —

No 208 Dupuis et al v Roi.	Exceptions dismissed
No 757 Leduc v Toupin et Toupin opp.	Opposition dismissed
No 1632 Alexander v Reo.	Judgt
No 606. Dunlop v Russel & Co.	Motion for new trial granted
No 144 Robertson v Davies.	Action dismissed.
No 565 Rollard dit v Pottier.	Exceptions dismissed
No 2059. Lesperance et Lesperance	Interlocutor.
No 390 Gerrish. et Wher	Judgt on default to answer to fait & art. The testimony of Wit. rejected in so far as regards it not as a commercial transaction.

No 16 Vegiard v Piccard	action dismissed
No 1681. Foster & Ivy v Bingham	Action dismissed.-
No 27. Maitland & v Forbes et al & Gerrard et al T Saisie	Saisie-arret discharged
No 1663. McKenzie Ritchie & Co-op	Interlocutor.-
No 1924 Ogden vs Hart & Ermatinger T. Saisi	Interlocr
No 1064 Warwick Yule & Bourdeau mis a Cause	The motion of mis en Cause granted.
No 60 Dechantal v Languedoc	Pltff's mo. for verbal testimony, under Defts answers to faits & articles, dismissed.-
No 226 Kidd v Raymond	Judgt

No. 659.
Scott. v. Driscoll. } Judgt. on Verdict. — costs as in a Cause under £30

No 468.
Picotte v. Courdeau } same Judgt —

No 69
Laurain v. Prevost } Puff allowed to amend

Barsalou v. Orsiney & Gray oppts } Interlocr for proof

Surgeon v. Lepailleur & Surgeon opp^ts. } Compensation admitted & Excep^ns dismissed —

Friday 20th June 1823.

Present:—

Justices Reid, Foucher, & Pyke.

Raymond vs. Leclaire & Hart. opp^t — Judg^t ordering residue of monies levied to be paid to opp^t

No 443.— Geary.— vs. Sheldon — Plea of Exception dismissed — action not founded on deed of Sale as alledged, and mortgage set out, not shewn to whom due.—

No 246. Bouthillier vs. Preston — Judg^t for Pl^ff.—

No 1898. Reeves. vs. Vinet — Judg^t allows delay to file the act^n by 1st Sept^r fat^s which, Judg^t to be executory—

No 484 Girouard vs. Bluteau — Experts to be heard before one of Judges in Vacation by Consent.—

No 352 Robillard vs. Robinfal — Judg^t for Pl^ff agf. 3 Def^rs— D'Aout discharged

No 1882. Desrivieres & Durocher vs. Beaubien — Judg^t homol^s Report of Experts.—

№ 1889
Arnoldi. }
+ }
Bellestre. }

Judgt. In consequ. of answers of Deft. on fact & articles, the Court adjudged to Pltff. the balu only of what was due to him since the death of the husband on the Contract of Pltff to attend family at £12 p an. —

№ 1098
Embury. }
v }
Lazarge } Judgt. agt. Defendts as Partners. —
& al. —

Benoit. — }
& }
Bachamps } Opposition dismissed
+ }
Bachamps }
Oppt.

№ 477
Pepin }
+ }
Martineau } Judgt. — on principal demand
Mittleberger }
Gar.

№ 1762.
Warwick & al. }
+ }
Wilcocke. } Judgt. —
& }
E Contra

№ 753.
Vincent & ux }
vs }
Lambert } Judgt. —
+ }
Diameau

№ 614
Armour }
Ogilvy. }
Carmichl. } Judgt.

No 66.—
Donegany & Hunter— } Defendant's mo. over-ruled

No 353.
Wilson v Wisely— } Judgt. Pltff to pay Costs.
Chase Dal. v. Westmor. 5. M. & L. 180—

No 1903. A. 5. 6. 7.
Armour v Thayer— } Judgt. for Pltff.

No 220—
Blondeau v Munn— } Pltff's motion rejected.—

October Term. 1823.

Wednesday 1st. October.

Present

Justices Reid, Fowler & Pyke.—

No 346
John Forbes
Abm Bass
& Dagn, mrs
en Cause—

On Pltf's mo. to amend and for a further Judgment by the Court on Pltf's demand—

No 465
Rollard dus
vs
Pothier—

On pltf's mo. for enquête & that faits & articles proposed to Defendr be taken pro confessis, in consequence of his failing to answer

And on Defendrs motion that he be allowed to appear and answer, and also that parties be first heard en droit as to the nature and extent of the proof to be adduced in the Cause.—

Thursday 2d. October 1823.

Present.

Justices Reid Fourcher & Pyke. ex

No 1502
Landry
vs
Archambault

On mo. to quash process from short service —

No 1757
Luciniani
&
Germain ux

On mo. to quash process from irregular service

No 465
Rolland
Pothier —

On rule to shew Cause why parties should not first be heard on matter of law before going to enquete —

Mr Bullard for Defendr the Defendr has pleaded prescription agt claim of Plffs — He has also pleaded the exception de Garantie, pt he is entitled to sue up the Plffs as heirs of Madame Lauto. — Defdt. also pleads that Plffs. are not entitled to any continuation of the Communauté between Madame Lauto & her deceased husband; as Plffs never demanded it, nor the person under whose rights they claim — and it must be first decided what part the Plffs are entitled to in the Succession before Defdr can be held to render any account of the revenues —

Mr Gale for Plffs. There cannot be a delay in the proof as the whole case must be gone into at once, & not a parcells of the Cause — the facts are simple & necessary to be ascertained before any Judt can be given. —

No 125
Davis
vs
Ernatinger

on question whether curatorship shall be continued as a Work he having been the gardien of the property for pt an action is brought —

Lowell for Defdr. produces a

№ 1592
Gausselin
v
Monjeon

On Plff mo. to reject plea of exception filed by Defnde as too late —

Mcdonald for Defde although the plea was filed late, yet Defde has not been foreclosed by Plff —

№ 551
Boston
Bricault
&
Bricault
mis en cause

on rule for folle enchere —

№ 428
Houle
Chaffron —

on mots in law — & ord. whether parties shall go into proof —

№ 1654
Frejeau dit
Tetrau —

Judgt for £5. — damages & Costs as in a cause under £20. —

№ 1820
St Dizier
v
St Dizier

Interlocr ordering licitation of the property —

№ 959
Dumont
&
Forzeron
al Garant

Action dismissed —

№ 2095
The King
v
Mondelet

Certiorari quashed —

No 2111.-
The King
&
John Clay

Judgt for Fine of £15.-

No 75
Dr Veuve Dufy
&
Levêque
&
Davis oppts

Judgt of Distribution.-

No 1878
Martigny
&
Choquet

Action dismissed

No 1088
Rouville
&
Gaucher

Interlocr.-

Friday 3. October 1823.-

Present
Justices Reid Foucher & Pyke.-

No 649
Aylain
&
Cuvillier
&
Cuvillier
& Perrault
Oppts

On Petitr mo. for hearing instanter on the Opposition of the Oppost Mrs Cuvillier makes an opposition claiming the effets seized as her property, whereas she was not seperée en Justice and could make no seperate claim - The Oppost has made oath she is seperée en Justice, the Court has declared the Contrary 20 Feb. 1818 - in an instance between the same parties, & in the same Cause - and altho' there are different panels of papers, yet the proceedings are to be taken as found in the

the same Cause –

Mr Bedard for Mrs Crevillier – In the cause in which the opposn is made there has been no decision that the Opport – was not separée en biens – and this question was never before the Court either in Appeal or in the Court In the Case of Saisie-arrêt of Babet in ql Mrs C was called in as a party interested – but that proceeds has no relation to that before the Court – it was a decision ql the Court gave in regard of the monies in the hands of the Tiers Saisi –

Motion to renvoie

No 173
Lelacher
vs
Scott –

Action of Revendication –
Bowen for Pltff, states that proof is made out and prays Judt. for at least £60. –

No 183
Sears
vs
Roi –

On mo. to prolong rule of reference –
opposed by Mr Brunean –

No 218.
Gregoire
&
Contois
&
Denommé
Intervs

On Pltff – mo. to declare the enquête closed –
Mr Buchanan for Interv parts opposes motion & to be admitted to give secondary Evidence of the P. Verbal mon. which has been lost –

No 169
John Kent –
Chs vs Hogg
et al
&
Garnishees

On mo. to declare proceedings irregular as to Hogg –
Grant for Pltff – mo. unnecessary – Hogg was never served –

№ 937
Robertson & Co
alp[t] Fraser

on mo. to quash proces from Short Service —
Roi for Pl[ff]. in case of Group v St Aubin
the days of service must be juris Franc. Act.
21 № 17 rules of Court —

Bourrit for Pl[ff]. the 5 days notice have been given to
Def[ds]. serve on 26 Sept[r] at 8 o[clk] A.M. to appear on
1st Oct. which gives the 5 days —

№ 138
Clarke
VanKanslaer

action on 3 Promy Notes payable at different
periods —
Gregy for Pl[ff] - Def[d] has pleaded special plea

Sullivan for Defend[t] — In Dec 1817. the Def[t]. was a
bankrupt & being about to enter into composition with
his Creditors, Pl[ff] obtained a bond from Def[t] by which he
agreed to give Pl[ff] the notes in question As an inducement
to Pl[ff] to sign the deed of Composition — This was a fraud
& gave no ground to an action — ex dolo malo non oritur
actio — this principle has obtained in England 2 T. Rep. 763.
Cockshott & al. v Bennet — 3 T. Rep. 531. Jackson v
Lucas & al v Rox. 4. East. p. 371 —

Gregy for Pl[ff]. The action not brought on the Notes
agreed to in the Bond given by Def[t]. but Note given
subsequently — The plea refers to the Notes mentd in the
Bond, and not the Notes on w[ch] this action is brought —
The deed of Composition was passed in a foreign Country
Chitty on Pleads - p. 223 — Court cannot take notice of it
unless specially pleaded — How the law is not pleaded
— Vines abr. Fr. (a) № 4. Tit. Faits - many agreements void but not void
3 T. Rep. 531 — 1 Camp. 333 Wade v Smith — The case
must be judged by the laws of this Country — this is
no fraud on Def[t]. altho' it may be on Creditors —
Poth Pand № 320 — party must be connusant of fraud

This

this is not alledged, that Pluff participated in any fraud it should have been alledged that Creditors were defrauded & induced to enter into the Composition — but no man can plead his own fraud — Poth. obl. № 28 — the Pluff used no artifice to deceive Defdt — 1 Evans Poth. p. 19 & 20 — The Creditors here could not set aside these notes — as they are not the notes refused to in the Defdts bond —

O Sullivan for Defdt — This transaction is to be considered as a fraud upon all the world, and its nullity may be set up at any time — the notes are stated to be same refused to in Pluff. action, & given in pursuance of the bond of Defdt —

Gurley in answr Corp. Jur. Civ. p. 811. lv. 42. tit. 8. sec. 10 — Domat on same principle — that Creditors alone who are the persons defrauded can have the action —

Harbert
Papineau
& Lewis
opps

On opposition afin de annuller. —
Bonder for Pluff — oppos is made by the person who was gardien of the same effets under a former seizure —

Boston for oppt — The oppos is that the seizure is null inasmuches the effets were at the time under seizure at the suit of another creditor of Defdt — and that the oppt was named the Gardien — this the Gardien is obliged to do to save himself — bonder to save his claim for his Salaire for keeping the effets — Pro. Civ. 187 — Jousse. tit. 33 — art. 9 —

№ 1594
Lemieux
vs
Thayer
& Dyde opt

On opposition afin de conserver —
Gurley — for oppts claims amount of a certain part of the Cargo of oppt being sold in a former report in order to raise money to repair the Vessel of which had been seized by Pluff — The

oppt —

oppost claim a privilege for the ~~money~~ value of the Cargoe sold by the master of the vessel —

The Pltff gave permission to Defend^s to navigate the vessel after seizure, & thereby gave rise to the accident under which the oppt. property was sold — by allowing the vessel to sail into the open seas, the Pltff released her from all seizure — The case of selling the goods being one of absolute necessity to refit the Ship the oppost^s must by natural Justice be entitled to their privilege on the proceeds of the Sale of the vessel, & thereby became hypothecated to the oppt^s ~~Dents~~ Antoine Rogers de Droit. p. 1 Term Rep. 16. Fitzhubert. v. Mathew — 1 East, 494

Bleury for Pltff. Pltff is a privileged Creditor; over oppost^s for his wages & for money advanced to seamen for navigating the vessel in question — Repon v^s Vaissaup. this before the persons who have furnished their means for repairing the Ship — Dic. Jur. v^o Gage — Poth. Sup —

Gregg — The Pltff by allowing the Ship to sail necessarily submitted to abide by all the accidents that took place on the voyage — had Pltff retained the vessel in port and followed up his remedy, the injury complained of would not have happened to Oppost^s — Holt on Shipping. p. 396. master has power to hypothecate the Ship

No. 473
Rolland
Pothier

on objections to the admissibility of certain parts & articles proposed by Pltff to Defend^s

Bibaud for Defend^s — objects to part & part. which tend to prove the simulation of the Sale to Gibb by Defend^s — refers to a Just in appeal of Torrien v Longueuil 30 July 1817. — the case here is the same. —

Rolland for Pltff Unless the cases are perfectly similar the Judgt. in appeal, the case cited will not apply here this is not the Case here the parts & articles are pertinent — in

the

the Case of Ferrein v. De Longueuil, this was not the Case—

Salle. p. 81— Tit. 10— Fer. Dec. Droit. Vo Interrog.
Jornal du Palais par Ravant. p. 63. Supillon. p. 102–107.
2 Gr. Cout. p. 1085. Som. 3[illegible]. — The simulation in the Case of the Baroness of Longueuil was in case between all the parties to the act, of whom as participes criminis there might be objection to the parties being held to answer — but it is a third person who was no party to the act, who complains of the simulation and may have no other means of proof but the oath of the parties to the act— The exhibit. No. 10 filed by Plff shews that Defdt never meant to contest this point— No 58— Cout. Mandat— whatever the mandataire has rec[d] he must account for, under what ever pretence or name he may have received it—

Saturday 4th Oct. 1823

Present

Justices Reid Foucher & Pyke

No 937

Robertson Mason & Co vs Alex. Fraser

In this Case the process was served on the Defendt on 26th Sept. at 8 O'Clock in the morng to appear on 1st Oct. at nine O'clock, the residence of Defendt being upwards of ten leagues from the Court house qr would entitle Defendt to 5 whole days before return— M[r] Roi for Defendt took objection to the service as too short, inasmuch as according to the rule of practice Sec. 21 S. 17. the day on wh the service of the process is made is not counted, and so ruled in this Court— and so held last Term—

The Court found that their decisions had heretofore been regulated upon the principle stated by the Defendt but finding the inconvenience arising to the practice particularly in regard

of

of the default Causes, they intimated to the parties and to the Counsel in particular moving in this Cause, that if he insisted upon that motion the Court must adjudge it in his favor, but that they would in future adopt the practice of reckoning the 5 days of service by allowing only 24 hours to reckon as one day, and if it should be necessary that they would alter the rule in such way as to meet this decision — And as the Defendt had improperly availed himself of the rule of had not been altered, altho' so understood and practised upon by this Court — they rejected the motion and ordered the rule to be changed so as to meet the practice —

No 143

Chaffey
vs
Scott & al
&
Contra

Action for goods sold. — Mars on demand in chief
Grazy for Plff. refers to evidence on record as
sufficient to maintain the action — the evidence
as to goods in packages No 4 & 5 is not clearly made
out, but by the testimony of Benjn Laffey, will
make up the deficiency.

Buchanan for Defts — No evidence of goods in
packages No 4 & 5 — the confessions & admissions of Defts as
proved by Benjn Chaffey allude to no particular sum &
the Court will not presume it — The papers sent out
from England in support of the pltffs demand are irregular
the Depos: are taken before one of the bailiffs of the Borough
of Bridgeport in the County of Dorset, whereas it ought
to have been before one of the Chief magistrates — If there
was no Mayor or other chief Magistrate, but if the Borough
consists of several persons they must all sign as making
but one persons in

8 Mod. Rep. 303
4 Burr. 2244

No 689

Ob. Aylwin
&
A. Cuvillier
vs
M. C. Perrault
&
A Cuvillier
oppts

On mo. for hearing motion on oppos:n —
Bedard for oppt Mrs Cuvillier, moves to reject the
proceedings in the Cause on the Saisie-arret, as
not belonging to this Cause, but a separate cause
composed & determined & can no longer stand before
this

1Pl. Jean. 390 — The case of the Saisie-arrêt was finally determined in April Term 1818 — There is another cause 1517 — between same parties in qst — the Ermenda was a Tiers Saisie which has also been determined — & qst must also be considered as making part of the record The Saisie-arrêt is an instance qst is a distinct proceeding and judged & determined in the usual course of proceeding and when determined is no longer a matter before the Court the Nos of Saisie-arrêt is 93 — a separate one from this and at least as an incident — wh has arisen since the suing out the execution & been determined, & can have no connexion with the proceedings in the original cause — nor be connected with other incidents under other Executions — the case No 93 was not sent to the Court of Appeals as a part of the this cause — Dec. Droit. vs. Engl. Defendt — Poth. Pro. Civ. p. 197. — The Saisie-arrêt must not be considered as the execution of a Judgt — as this proceeding may be obtained in many cases before Judgt —

That Mrs Cavillier as separée en biens makes the opposition by qst she claims the property of the effets seized, and according to the rules of practice this opp ought to be determined according to the Common course of hearing on such oppositions — & according to similar questions on actions, qst is the regular course of proceeding a Pltffs action cannot be dismissed on motion however ill founded it may be —

On the supposition that Mrs C. is bound to answer yet the Engt of Sep. cannot be considered as set aside and as a matter qst has no existence in consequence of the Judgt of this Court of 20 Febr 1818 — in case of the Saisie-arrêt — this Judgt cannot be extended beyond the particular case in qst it was given — But if the Court had in that case declared the Engt null yet it could not be considered as a chose jugée

cts

cela Poth. obl. N° 851.—

Rolland for Pltff— The oppos^n of Mrs C. is not more favorable than that of her husband — the oppos^n of Pltff is to withdraw from the connoissance of the Court the Judg^t rendered on the Saisie-arrêt— and although this is an instance, yet it is an instance to obtain the execution of a Judg^t, of which there may be a great many, & yet whatever is determined in any one of these instances must be considered as applying to all the Causes between the same parties — 1 Rep. 597. Desq.— 645—

If it has not been judged that Mrs C. has been held and considered by the Court as commun en biens with her husband, the present motion must be dismissed but the Judg^t on the Saisie-arrêt marks evidently that she had not effected any separation between her & her husband —

On opposition of Defend^r Austin Cuthbert —

Rolland for Pltff— Dep^t has already made oppn to an Exon of 13 March 1822 contg different moyens — & among others that certain effets had been seized & not disposed of, and that no new Saisie could be made till these effets were disposed of — this opposition is reiterated under the present execution —

Beauvais for Oppos^t— It is just to be determined whether the parties shall be judged on a Summary hearing — this cannot be done, as Pltff's motion contains no ground upon which the opposition ought either to be heard or adjudged upon on such Summary hearing this is contrary to the ordinary & regular course of proceeding — It has been determined in this Court on a Writ of Exon sued out on 27 Nov^r 1821 — on 17 Feb 22 Pltff moved to reject the oppos^n filed by Defd^r but this was rejected & writ was quashed — The same kind of writ is now sued out & was then quashed by the Court on 19 Feb^r 1822 — The Pltff has obtained an order to sue out a writ of Venditioni exponas, whereas

he

he sued out a writ of Fieri facias, in consequence of which the present opposition has been made — because the writ is not conformable to the authority he obtained, he having sued out a different writ from that directed, namely a writ of fieri facias —

Rolland in answer — this is a repetition of an opposition already dismissed & cannot be maintained —

M^r Bearbien contends that proceedings are regular — as a writ of fieri facias & venditioni exponas are of different natures & the right to sue out one does not warrant the suing out of both. —

Monday 6th. October 1823

Present

Justices Reid Foucher & Pyke

Enquete-Day. —

N°. 138.
Clarke. —
VanRensslaer } Interlov ordering proof

N°. 135.
Chaffey
Scott & al
E contra. — } Interlov. ordering proof — The Court considering the Defend^s. plea as to the merits, & right of action, must be bound thereby and cannot plead over as by Sec. 11. S. 5 — the Defend^r. was bound to ~~contain~~ tender all his pleas to right of action at same time. —

Wednesday 8th October. 1823.—

Present.

Justices Reid, Foucher, & Pyke.—

№ 1027. and
№ 562.—
Wilson
&
Thayer

action on Special contract—
Walker for Defendt. Plff a distiller— agreement
w Defdt. to take away grains — the Plff for a
length of time did not run any slops — or at improper
hours. so that injury accrued to Defendt— The cistern
constructed by Plff was too small & a great part of the
slops escaped down lost.—
The slops &c. in Janry — were not rec'd by Defdt—
the waters rose so high that ice broke the Cistern, & the
slops were wholly lost.— The agreement mentions nothing
of a Cistern, Defendt not bound to make it or maintain
it

№ 411.
Mc Leish
&
Bethune
&
Ansell, Intervt

on Plff— mo. that the monies in the hands
of Defendt be paid over to Plff—
Gale for Intervt party claims part of his demand
out of the monies belonging to Plff—
Buchanan for Plff— the monies issued for claim of
Plff must be ordered to be paid over to Plff
Grant for Tutor— no notice given to Creditors in this case

№ 1896
Rasco
&
Duchenois

action on Promy Note. by Indorsee ag[ainst] ~~Indorser~~ maker—
Lizé for Defdt— no protest made at Bank when
drawer made his election of domicile— the protest made
not by the Plff. but by one Frans Rasco, not a Plff in
this cause — Plff is a merchant protest by Notaissier. — then

there is no transfer from the mach. to the Justices
Beaubien for Pltff. no protest necessary to maintain this
action — at the drawer —

№ 1907
Cobb & al
v
Lefevre —

hears on Exceptions
Grant for Defend — action founded on Lease — and
this action unnecessary — a motion on affidavit would
have entitled Pltff to his Ca. Sa — but Pltff does not
shew that Defend is about to leave the province — & therefore
proceeding irregular — under Pltff ought to have proved
that Defend was about to leave the province —

№ 412
Cameron
v
Clarke

on mo. for security for Costs —
Driscoll — the mo. was too late — there was no
mo. on the 4th. day only a rule obt? to shew
cause —
Walker for Defd — Pltffs are not resident in the
Province, & Defd. entitled to security for costs — and
application made in time —

№ 372
Dauger
vs
Clarke

Same case —

№ 478
Richardson
Thayer
& contra —

Both demands dismissed — no recourse —

Stone
Willing
& Johnson. mis
en Cause —

Rule absolute for folle enchere —

No 935.
Stewart
vs
McLean
&
Greece oppts

Opposition maintained

No 1817
Thiriet
vs
Thayer
&
Keel et al
oppts

The opposition of Keel, dismissed, as it claimed a privilege on goods of Thayer alone for wages due by Thayer & Kay. — The opposition of Kollmeyer admitted —

No 508
Starrs
&
Turgeon

W

action dismissed

No 389
Masson
&
Tailon

W

action dismissed

No
Chartier
&
Descelles
&
Descelles
mis en cause

W

Rule for payt of money on folle enchere absolute —

No 173
Delacher
&
Scott. —

Judgt

No 1553
The King
vs
Cuvillier

Rule discharged

No 1670
Chapman
&
Bridgeo al

Motion for rejecting plea granted —

Thursday 9th Oct 1823

Present

Dufresne & Pluckenett } On action by apothecaire — merits —
Rollin for Pltff — action for rights due to wife of Pltff — under family arrangement of parents Berthelet —

Boston for Defend — The debt is due — but Defr is desirous of having security for the payt of the debt in question — Pothier Obl. Nos 54. 57. —

No 251.

Knower & Reizzles & Berthelet Intervs } On merits & on acct rendered —
Bender for Interv3 party — Pltff obt possessn of Defts books & papers also obtd money from him — & on this the Court ordered Pltff to render an account — The acct filed is not such as ordered by the Court —

McBuchanan for Pltff — The intervention must be dismissed, the proof of the note on which it is founded is not founded. Boisseau part 2. Ch. 5. No 2 —

No 62
Cathenach v. Owanamion } action for work & labor as a Land Surveyor
on merits —
Bedard for Defr — The Defend — contracted only as the agent of the Indians of St Regis & cannot be maintained ag Defend personally — There is no sufficient proof to maintain action —
Grant for Pltff — The contract is w Defrs personally —

No 919.
Jacques vs Cabana
& Charron —

on Report of Experts —
Mr Bidard for Plff prays Judgt — of hour

Mr Brunet for Defendt — moves for hearg instanter on his demande en Garantie to be heard at same time as his Garant who is in default —

No 1006
Robinson
Beattie

on Report of Experts —
over till to morrow —

No 803
Dumouchel
Campeau

action for value of potash — merits
Roi for Defendt — waives his first plea of — & says he also pleaded payt — and has proved to the extent ale he was bound & owed to Plff under his contract — by delivery of ashes & payts in money — & Plff can have Judgt only for a small sum of about £7 —
Archambeau for Plff — There is no proof in the Cause. the two wits called speak to different facts, & therefore no proof of either —

No 1905.
George Billau
vs
French —

on Plff — mo. to reject the pleas 2d & 4th pleaded by Defendt — as inconsistent & contradictory —
Grant for Defendt — There is no inconsistency in the pleas —

No 257
Mathieu
& Duckett

on Plff. mo. to reject plea of Defendt — as irregularly filed —

M^c Callum
v
Stewart

Boston for Defend. Genhart that process be quashed as not regularly served on him — nor any service whatever made on him —

Mr Grant for Pltff — The process has been duly served —

—

No. 1670
Chapman
v
Bridges et al

On Defend^s motion to be permitted to amend his plea —

Gregg for Pltff — This case is interesting to the practice as to the time to be given — The mo. is in direct contradiction with the rules of practice — and the affidavits filed shew no sufficient ground to set this rule aside — admits a great part of the facts stated in the affidavit — The Defend^s have admitted the Pltff^s amount by their scheme — in keeping the acct in their possession, in admitting it — in making payments on acct thereof —

Montgomery ag^t 50 as partnership

Mr Walker for Defend^s — If Defend^s was in error as to the plea of abatement filed by him, so was the Pltff, as both parties treated it as a preliminary plea — Comy. Dig. tit. Amendment — Litle (M.)

Friday 10. Oct. 1823.—

Present

Justices Reid Foucher & Pyke.—

The King
vs
Louis Lacoste

On rule to shew Cause why an Attachment should not issue agt him as for a contempt for retaining in his possession the notariat of the deceased.—

Ross moves the rule — The Regulat of Oct. 1717 — Arrets p. 377 has been altered by Ordre of 1785 — here the Prothy went to the house of deceased & demanded the Notariat, qt — was refused unless the Prothy. should make an Inventory thereof before they were removed from the possession of the party — This cannot be the law, these papers are the records of the Court the instant the Notary dies, and there can be no inconvenience in removing them to the Court House qt is the proper place of deposit —

Vigé for Defendt That Mr Lacoste is not the depositaire of the Notariat, but holds them under the order of Mr Papineau who is the Testamentary Executor of the Estate of the late Mr Gauthier, & cannot be held to deliver them up without the authority of Mr Papineau — That the Notariat cannot be removed until an Inventory thereof be made by the Prothys — That Mr Papineau was mentd to the Prothys as the person who had the legal possession and controul over this Notariat, as Mr Lacoste has no interest in this question, being wholly an indifferent person —

That the present proceeding is irregular, the course would have been to obtain the Scellé, as is usual for the preservation of the effects of a deceased person — This Court has not been vested with any greater powers than the Court of Com. Pleas, and it would not have proceeded by Contrainte in the first instance —

The ordre of 1785 has not changed the antient laws touching this point, it is nearly in the same language, and ought to be interpreted thereby — according to qt an Inventory

must

must be made before the Notariat be removed, otherwise the greatest injury and inconveniences might arise, as in case of the loss or damage to any of the minutes, a recourse might be had of the heirs of the deceased —

Dirayr v^o Reports & Parfait N^re to shew in what manner this Inventaire ought to be made — That there are already several Notariats of them been brot to the Office of which as yet no Inventory has been taken any Inventory has been made, the state of the office does not allow to the Public officers the necessary time to make this Inventory but this ought to be suff^t reason for the Court not to dispense the Notariat until an Inventory thereof has been made —

—

N^o 1910
Bisson.
v
Kinsler
et al. —

Action for work and labor —

Bender for Plff. orginal agreement was for £11.5 and an additional sum of £3.15 — on verbal agreem^t Plff has examd Defts on faits & articles, one of them did not appear, the other makes some objections which cannot affect the right of Plff to obtain his Judgt —

Pelletier for Defts — Nes. Kinsler — who says, that Defend^r Poitras has made an arrangement for this demand w^h Plff — & considers only question now before the Court is in regard of Costs — there is no proof of Kinsler & the answers of Kinsler on the faits & articles do not give any right to Plff for a Judt beyond what he has offered.

—

N^o 2064
Gaudet
v
Cunningham

Action for negligence of Defend^r servant —

Grant for Plff. Defend^t is liable for his Servt —

Dic. Droit. v^o Domestique. —

Poth. obl. N^o 486. & 121.

Rep^re v^o Maitre.

Mr. Grant objects to admissibility of testimony of 2 Wits.

Mr Boston for Defdt. The servant was not in the discharge of his ordinary duties, but had gone out with the horse contrary to the orders or consent of the Defdt. Evans Pothr. p. 40. — 1 Blackst. Com. 429. — 1 East Rep. 106 6 Term. Reps. 126. Sawyer. v. Roome. — Poth. Ob. Nº 121. 122 Repr. vº Maitre — D. vº Domestique. — Domat book 1, tit. 16. —

Grant in reply, The servant by using improperly the Defendants horse of which he had the charge, will make the master liable. — 2. Bourjon. Ch. 7. tit. 3. Se. 9 no. 5. p. 205

N. Denis. vº Domestique 2 p 644. Nº 3. — 645. nº 3, Se. 7

Nº 2
Bourdon
&
Sarault
&
E conha

On action for breach of Contract. —

Mr Grant for Defendt action on contract for delivery of certain quantitys of fire wood — the action here is for the penalty, and no damages have been proved — the Defendt. rec'd goods from Pluff to amount of £84 — and has delivered wood to more than that value to Pluff — The Defendt. was to have rec'd. other goods from Pluff equal to the value of all the wood the Defendt was to deliver — this he has not done —

Pellet for Pluff. the sum stipulated here is not a peine Commination, but a stipulated dammage, the value of the wood was agreed upon in case it should not be delivered according to Contract — The Pluff acknowledges to have rec'd all the wood Defdt has proved to have been delivd and the action is for the value of the deficiency of the wood —

Nº 380.
McAllister
&
Bourassa
&
Pinconneau
Tres Saisi

Sewell for Pluff — question here is whether the Tres Saisi is liable to pay the monies claimed of him, as being considered to have the same in his hands for wh Pluff contends he wrongfully dispossessed himself — It appears that Pinconneau paid money to the Defendt, the Pluff, & another cr was due them

for a drawer by the Sanguinet, Seigneur of Lasalle he made a promise to these parties to make up the difference of the money — he says he made this promise as agent, but it appears that he or he would personally make up the difference himself, and at a subsequent period he paid a large sum of money to the Defendant

over till to morrow

—

No 1502
Landry &c. vs Archambault

Or Defts mo. to quash writ of Summons from short notice of seven

Vezi for Defts — The evidence adduced shews that the residence of Defts is at a greater distance than 10 leagues from the Court-House, & therefore service irregular

Bleury for Plff contends that there is a balance of evidence in favor of the regularity of the service

—

No 208
Dupuis & al vs Roi

Action ap Defendr for his share of contribution for existing Church in parish of

Rolland for Defendr — The action is in name of Plffs as Syndics — this they ought to have proved there is no authentic papers filed — no evidence before the Court — The signature of Thos. McCord & Mondelet not given in their public Capacity can be of no avail — The Judt of homologation without the act of nomination of Syndics proves nothing, — The act of partition is not authentic, but signed by two individuals McCord & Mondelet — The Defts produce an opposition No. 2. & reject the partition on & Plffs pretend to found their claim —

Mondelet for Plff. The Court has already determined the facts en question in judging on the exceptions pleaded by the Defendr — The

Commissioners were then heard as Witnesses and certified all the papers in question.— Contends that all the papers are now authentic and the evidence sufficient

№ 86
Schultz
vs
Barbeau

Action of Revendication for horse —
Boston for Plff — The horse has been restored — & the only question now is as to the damages claimed by the Plff, ys are the costs he has been condemned to pay in consequence of the act of Defdr in taking possn of the horse

Pelletier for Defdr — There is no fault in Defdr as he purchased the horse from one Dumas without knowing any thing about the horse having been under seizure

—

№ 1006
Robinson
vs
Beattie

On report of arbitrators
Boston for Plff demands Jugt of homologn

—

№ 1670
Chapman
vs
Bridgeland

Defendrs mo. for amending plea granted
su

Saturday 11th October 1823

Present

Justices Reid Foucher & Pyke.

No 619.
Dupuis.
vs
Piedalu.

action on obligation & on note.—
Ross for the Pltff. The Defendt has set up a plea pretending that he had delay for three years from the agent of the Pltff, what authority the agent had not stated could not give without connivance we depend.—

No 1842
Chapman
vs
Sadler &c

On action of account.—
Mr Sewell for Pltff prays Entr. on case.—

No 1670
Chapman
vs
Bridges
et al

On Defendrs mo. for Com. Rogr
Objected to by Pltff, as affidavit is insufficient

J. Dunlop
et al
vs
Russel.

Trial by Sp. Jury.—
Verdict for Pltff £475. 8. 10

Monday 13th October 1823

Present

Justices Reid Fowler & Pyke

Tuesday 14th Octr 1823

Present

Justices Reid & Pyke

Enquete days

Wednesday 15th Octr 1823

Present

Justices Reid Fowler & Pyke.

№ 299
Donegany
vs
Pickel Jr

Expts dismd

№ 236
Cassidy
vs
Guillene
&
Ecorse

an report of arbitrators
Case submitted

№ 1481
Millar
vs
Dunn

action on promy note
quest. as to indorsement — parties stated
to be mechanics & not traders

N° 1032

Gagnon
vs
Payan
&
Payan
opp^t

On opposition afin de conserver —
Rolland for Plff. contends that the opposition is not founded, the right of oppt is not made out, the substantial document on which it means to support his claim not authentic —

M^r Ross for oppt — states that the property of his Tutor has been sold, & that he has a claim agt. his tutor for a balance of ~~an~~ compte de tutelle —

N° 681

Hamburg &
Torrelle
&
Trudeau

on deed of sale —

M^r Vigé for Defend^t — claims security agt the Mortgages on Land —

N° 322

Deschamps
&
Belanger

action on deed of lease —

O'Sullivan for Defend^t — special clause by which Plff was not to have any part of premises to hucksters or other retailers of ~~drinks~~ liquors —

Beaubien for Plff — no proof that Plff has contravened the conditions of the lease —

N° 380

M^c Killop
vs
Bourassa
&
Pinsonneau

Over till to morrow —

Dubord
vs
Maynard
et
Cuthbert et al
oppts

On opposition of Mr Cuthbert &c in de conserver
The question before the Court rests upon the
right of parties to sell lands subject to charges
which have absorbed the rights of Oppt — the
charge was on condition that the adjudicataire should
retain in his hands the principal of a dower qui is
posterior in right to the oppor — and as the oppt has
become the adjudicataire oppt claims that she pay
this money to oppt as by her means & consent the
sale was made in this manner —

Valois
vs
Bizaillon
Dyn Cur.

Daigle £50.—
Plamondon 6/3.

Mr Bourré for oppt — The land was sold under
a writ of Vend. exps. in consequence of an ordre of the
Court to sell the land subject to the charges therein mentioned
and the oppt — stands in the same situation as Mr Dubord
who made a similar opposition & was dismissed — because
the publications having been regularly made on the writ
of fi. fa. the oppt — ought to have taken notice thereof and
made his opposition — The oppt — claims that the adjudicataire
being back a sufficient sum to make up the amount of
his claim — whereas the adjudicataire hold these monies
under the conditions of sale, and the application of the
oppt — ought to have been to rescind the Judgt of the Court
and demand a new sale, as the adjudicataire would not
have purchased so high upon different conditions — that
different other persons would also be injured by this course
of proceeding adopted by Oppt —

L. M. Rgi for Edouard Langevin, is also an adjudicataire
of part of the property on certain conditions of retaining part
of the money in his hands — he was no party to the proceedings
in Court — all the lots sold were sold subject to the dower
in proportion to the value of each lot. — oppt purchased lot
No 5 — subject to Dower of Dlle McBean — & he ought to retain
in his hands about £29 — part of £35. at qt — sum he purchased
the land — The Plff purchased 6 lots, amounts to £100

d

and she ought to be the person who ought to be held to bring back the money, as she participated in the proceedings which led to the Sale — at all events there ought to be no Costs of the party — This rule tends to demand the nullification of the Sale &c — cannot be granted —

Mr Pelletier for Defdt — as Curator to the Vacant Succn and Tutor to the Minor child of Mr Bean — The Tutor ought to have been made a party to this rule sued out by Oppost as she is materially interested in this Contest, as she may be deprived thereby of her right without being regularly heard before the Court — The Oppost states no grounds in his rule of the two adjudicataires.

Rolland for Opplt — the object of Oppost was to put the adjudicataires into the Cause in order that thereupon he may be permitted to proceed on his opposition against them and obtain the conclusions thereof — The Oppost could not demand the nullity of the sale by the Sheriff, inasmuch as his demand was to obtain part of his debt, and there has been money enough levied to pay it. —

—

No. 1995.
Barrett
vs
Walker

On Defdt mo. for a Com. Rogte
Marrogh for Defdt — moves rule under circumstances stated in affidavit —

Mr Bender for Pltff — The person to be exd. was subpoenaed as a witness but suffe notice not given to him — but the facts stated in the affidavit cannot be received in proof

№ 2051.
R. Ellis
vs
Dufruis

on mo. to shew Cause why action should not be dismissed without a power of attⁿ being filed from Pltff authorising same—

Grays for Pltff. The action cannot be dismissed under the rule — the Defendr has obtained security for costs which ought to waive all right to demand this power of attⁿ—

—

№ 256
I. M. Cadieu
vs
Bourg et al
&
Cadieu et al
oppts

On order of distribution of monies—

Bourré for Robertson Masson & Cie objects to the Prof of Distribn as drawn—

—

John Forbes
vs
G. Dezeir
&
McGillivray
et al oppts

№ 441.
Carmel
vs
Woolrich
et al

On Pltff. mo. that Defdr shew Cause why they should not be condemned to pay soidavant as Syndics the amount of Pltff debt—

Gale for Defdr rule in direct contradiction of the conclusions in the declaration.—

№ 251

Lesnoine de Martigny & Messier —

Action for Lods & Ventes. —

Mr O'Sullivan for Pltff — a division of property was made after decease of the Defdr father, & a sale made by a cohein of his share to the Defdr — on wh. the lods & ventes are due — a partage is a title 1 vol. Despesses. p. 163 in fo. Lebrun des Succ. p. 236 — seems of a diff: opinion, that the action of partage lasts 30 years, & is not presumed to have been made —

Mr Farrubault — only question here is whether a partage verbal is sufficient to create a right of lods & ventes to the Seignr — There is no sufficient proof of the partage between the Cohers — their mere individual enjoyment is not enough to presume such partage — Poth. Prop. 267 — D. Succ. 169 — Lacombe vo Partage Repse vo Lods & Ventes. p. 647. Id. vo Partage p. 610 — Prudhom ch 61. p. 326 —

Mr O'Sullivan for Pltff — the proof of the previous partage is sufficiently made out —

—

№ 253.

Dorions & Dorions & al —

On act. filed

Bearbien for Defdr — cites Poth. Test. ch. 7. Sec 1. rg. 1m — as to the interpretation of the will of the deceased. —

—

№ 357

Chamaltoux & Gravelle —

on act. of Tuteur rend —

Lacoste for Pltff. 2 points now in question 1 in regard of interest on real property sold, & 2. the Sommes made by Defdr & charged in the act —

Bleury for Defendr contends that the acct rendered is just and must be admitted by Plaint—

№1764
Fortin
vs
McGillivray

action on a letter of garantie — hears on exceps

№239
Telmont
vs
Masse—

On action of account.

№1735.
Allison
vs
~~Gray~~ Turgeon
&
Gray—

action for value of certain iron work furnished to Defendr Report of Experts.—

Mr Grant for Pltff. prays hom. of report of the two Experts filed by him—

Roi for Defendr— The Experts proceeded without any communication to Defendr— and refused to hear him or his witnesses— this is proved as well by the affidavits filed as by the report of the Defendr Expert.—

Grant for Pltff— The proceedings are wholly sufficient & regular & Report ought to be confirmed

—v—

№1806
Dupuis
vs
Chevallier

On action pour lesion d'outre moitié—
Report of Experts.—
Bender for Pltff demands hom. of the report and Judgt thereon.—
Laurin for Defendr— this is not a case of Sale but of Exchange— refers to authorities cited—

—v—

№1980
Dickson
vs
McDonell

action on Promy note—
Quay for Defdr— plea non ass. & tender of £14. 9/6
w. sum rec. by Pltff constitutes bal. due to Pltff—
minds Rae's note of Pltff rec. as kept—

Bender for Pltff – The Defendt produce an acct of Pltff. that Rae's note when paid wd be on acct of this demand – but Defdt does not prove that Rae's note was paid – on the Contrary that note was

No 1814
Grioux & Dr Aubin } Draw Inf

No 183
Keys & Raymond } Action for goods delivd on board Steam boat & negligently carried by them –

Rossiter for Pltff. states after the goods were delivered to Defendt to be carried, a part of the goods had been pilfered –

Cady & Johnson } action for defamation –
Trial by Special Jury.
Verdict 1/– Damages

Chapman & Bridgeland } Defendt mo. for Com. Roz granted
Returnable 10 febry next

Thursday 16th October 1823.

Present

Justices Reid Fowler & Pyke

Harbec
pr Papineau
& Lavoegue opt
and
Guerin --
pr Papineau
& Leroux opt.

Hearg on oppos

Mr Bender for Pltff - has filed an obligation by pt Defdt became Security to Pltff for a debt of Pr Papineau - the oppos to made by ante Papineau, through means of the Guardian -

Boston for oppost - the first seizure at suit of Ant Papineau was on 4 march 1823 - the Pltff seized same articles on 4 April after, & upon this the Guardian came forward and opposed this seizure as irregular - Proc. Co p. 183 - the guardian is not discharged -

ct
ant. Papineau
pr Papineau
& Lavoegue opt

Williams
pr
Ross & al
&
Ross. opt

On hearg on oppositions -
Mr Boston admits opposition founded to all the articles but the Piano Forte - pt he contends belonged to the Defdt

Monidelet for Oppt contends that proof is sufficient as the seizure was made at the domicile of the Defdt father and costs ought to be adjudged as the Pltff who has raised an useless contest

No 1667
Rouville
Daunais

action on Obligation - hearg on ~~exceptions~~ ments -
L. Vigé for Defdt obligation for arrears of Lods & Mutts & Seigneurial rights - Defdt has pleaded
that

that there is error in this Oblgt. as Defendt is now enabled to shew that he owed nothing to the Pltff at the time this obligation was granted — this he proves by the papers he has produced — The onus probandi was on the pltff in consequence of what he has alledged by his replication — but he has made no proof. —

M^r Roland for Pltff — It was the duty of the Defendt to have made proof, after having made his acknowgt by his obligation, which can be destroyed only by positive proof — It is by no means in proof that the obligation was granted for the land for wch Defendt produces the quittances, as Defendt may have possessed many other lands besides that wch Defendt alledges —

M^c Killop & Bourassa & Pinsonneau T. S.

M^r O Sullivan for T. Saisi — The service on Trus saisi was in augt 1821 — made his debt in Octr 1821 — afterwards T. S. was interrogated on facts & art. by Pltff — T. S. was agent of the Sanguinets in Augt in 1821 — pd to M^c Killop & his wife £62.10. on act. of £125 — as being the Dower of the mother of the Bourassas — as to the bale to make up the sum of £125 — The T. S. undertook to pay it to Pltff in Janry 1822 — but Mr Pinsonneau was acting merely as the Agent of the Sanguinets, all this appears by his answers to facts & art — subsd to this 17 Augt 1821 he came to be the Agent of the Sanguinets — & says when pd he had no funds in his hands belonging to Defdt — The T. S. was afterwards invested anew in Febry 1822 wth the quality of agent by the Sanguinets. On 25 March '22 — an agreemt between them Sanguinet & Pinsonneau — that he should be their agent & receive Rents & pay debts — on 2 May 1822 the T. Saisi pd to Defendt a Sum of £35 — which was due for the balance of dower due to Defendt — this T. S. paid

out

out of his own pocket and took a Subrogation from the Defend of his rights as the estate of Sanguinet — The Pltff had no right over this money, it was due to his wife and was not the personal debt of Pltff — refers to art. 249 of Coutume pl — says that the Power is the propre of the Children — The 259 art. says money is not a propre in the Succession of the Child, but it does not appear here out of what fund this money came — But T. S. was but an agent & did not bind himself but his principal but the fact is the T. S. had no money in his hands even as agent, but pd the money out of his own pocket —

L. M. Vizé for Defendt. has filed a rule of Pltff to shew that parties had settled about time of the transport from Mr Sewell to Pltff, and that the object of the obligation due to Pltff by Defd entered into this rule — The transport made by Sewell to Pltff, is not legally made out by competent evidence —

Mr Sewell in reply to Mr Vizé — the rule produced by Defd — can never be considered as applying to the obligation pl Pltff puts on his act —

It appears that the T. S. became bound to pay the monies due to G. Bowassa the Defd became his personal debtor, no matter whether as agent or not, and he could not pay over that money to Defd after the attachment issued on him —

No 1516
O'Hare
vs
Finglands
et al
& Cowtan

action for damages for breach of Contract —
Pltff for Pltff — Pltff drillers undertook to do all the drilling work of a certain part of the Lachine Canal for Defendts but on 28 Dec were dismissed from their work by Defendts without any sufficient excuse — The action is for the wages due up to time of discharge and damages in consequence thereof — refers to testimony adduced

particularly

testimony of one Coates, who was a clerk in the employ of the Commissioners and nowise interested — also of Mr. Smith — & Dr. Halpin — The damages are ascertained very clearly — & it is the difference for what the Plffs have contracted to do the business with other men. —

Mr Boston for Defts action in name of only two of the parties to the Contract — who claim the whole benefit of the Contract — but as the Contract is entire the parties must all join, or limit their demand to their undivided interest in the Contract — 1 Poth. Obl. 258. & 265 — cite Case of French v. Coon — where action was dismissed 2. Ev. Poth. p. 55. — but the agreement here cannot be considered as a Contract obligatory on the parties —

Longe 430 421 —

As to the evidence adduced, it is clear that Defendts were well founded in discharging the Plffs from the work — after the Contract made one of the parties left the work — from this moment the Contract was gone. and Defts could discharge Plffs at any time, if not satisfied with them — The Wits for Plffs are all interested wits to whom wages are due by Plffs for the work they have done under this Contract — The Plffs changed the blacksmith appointed by Defts for repairing the boring tools, and went to another blacksmith & got this done, & was contrary to the Contract — The Plffs were bound to follow the directions of one Mallory in conducting their work, which they refused — The Plffs & their men were bound to take their necessaries out of the stores of the Defendts, this the Plffs also refused to do — Bound not to lose time by drinking — or otherwise — but they were often drunk and neglected their work — The drillers were bound to be present during all labouring hours with other men — To lodge their drills every night in a Store room — all this neglected — but they concealed their drills so that the commission of them not seen —

They

they were bound always to have a suffᵗ number of drillers at work, so as not to delay the work — in this they often failed — There was a want of submission and obedience to Defendᵗˢ to the great danger of Deftˢ — But the principal object, is the reducing the size of the drills by the Pltff —

Of the monies due on the Contract the Pltff cannot have more than their individual shares, as the third person is not before the Court —

Grant in reply — The Defendᵗˢ have taken no exception to the form of the action, or the right of the Pltff to bring it — the contract was joint & several and any one of them performing the Contract is entitled to the consideration — as the payt to one would be a payt to all.

The Contract here is express and contains the respective obligations of the parties —

—

No 1902

Charron
&
Sevezny

action for work & labor —

Vizi for Deftˢ — There is no proof on the head of acknowledgment made by Deftˢ as stated in 2ᵈ Count in declar — The case rests on this Count, and the proof of work & labor as charged has not been made out — the proof made out goes to March 1822 when it appears that certain cut stone had been carried by Wᵐ to Deftˢ the witnesses when cross-exᵈ say this was in 1821 — & in this report contradict themselves — The quantity of cut stone delivᵈ is not made out, as here on the cross-exᵃᵗⁱᵒⁿ there is a proof of actual measurement of the stone in the builds — of does not amount to the quantity demanded —

Blenny for Pltff contends that the proof made on part of the Pltff is sufficient to maintain the action

No 1998
Taylor & al
vs
Raverty -
& contra

action for work done as taylors pr Defrs -
Roi for Pltffs to make out proof has exd Defr
on faits & articles, altho' their answers are not
altogether satisfactory, yet sufficient to warrant
a Judgt. agt Defendt - How the answers of
the Defendt ought to be divided, as he sets up an
agreement disputing which there is no question -
between the parties - Contends that oath of pltffs
ought to be taken as to the value of the articles deld -

Rossiter pr Defr - acknowledges to have received
the cloaths in question, but says, that it was on
a different contract from that stated in the declr -
and there is no sufficient proof upon other side
to maintain the disputed demands of the parties -

No 168
Cumming
vs
Dickie

action pr goods sold
Pltff prays Judt -

No 2092.
Ex parte
On Petition
of Wm Ker -

On Petition of Wm Ker to set aside the
appointment of Hugh Roberts as Curator
to the vacant Succession of one John Little -

Rossiter pr Petr - Hugh Roberts who was the Curt
of the demand came forwarded & without the concurrence
of the Creditors was appointed Curator to the vacant
Succession of Little, whereas the Creditors have an
interest that the property left by Little should be
secured in such way as to be productive of the
greatest benefit to them - That Roberts is a man of
no property, and is a stranger & without means to
answer for the property that may come his hands -

Mr Blenny pr Roberts - the service of the rule has
been irregular, not made at the domicile of party -

at

at all events, denies the facts stated in the petition and prays a day for proof—

No 227
Turner
Atkinson

Action for monies paid for Defdt by Plff as his Surety—

Walker for Defdt Plff should state that he had been subrogated in the rights of the person to whom he had paid. Poth. No 280 this is not done— There is also an error in the declaration writ dated 22d. May '23 — Decln dated 23d May '23

280
~~but see 429~~

Borton for Plff — cites Poth. Obl. No 429. shews what manner the authority cited by Defdt must apply—

No. 1970
Dubue
vs
Betourné

action by Plff as heir of his Son for wages, & for an amount of the property of Son in the hands of Defdt—

Sewell for the Defend— The action is mistaken— it is for wages, & not to render an account, but for a specific sum for the value of clothes left in poss. of Defdt— there is no proof of last count — the circumstances shew that the Plff is entitled to no wages—

No. 1863
Gauthier
vs
Monjeon

on action for Lods & Ventes—

Case submitted on admissions made by the parties —

№1729
Cartier
&
Piccard

On report of arbitrators & merits —

Mr Lacroix for Defdt moves for further hearg before arbitrators under affidavits produced for hearg his writ —

Bourré for Pltff — the affidavits of Defdt are not sufft —

—

№2078.
Gaudaire
&
Scott —

action to recover from Defdt damages for a fraud committed on him — in paying him bad money for a note —

Bourré for Defendt moves to reject the depositions taken in this Cause as witnesses are inadmissible but even amongst the evidence adduced, it is insufficient to maintain the action — there is no proof of the existence of the note in question and amongst the proof on Henry Greaves ought to be the Pltff. as having an interest in the note —

№1811
Schwartzfeger
&
Nelsonroad

Action on a promy Note —

Grant for Defdt note does not express value received — action cannot be maintained without this allegation — the Defendt never rec'd any consideration for the note — there is no proof what value was ever given to Defdt for it —

~~the case of~~

Friday 17th Oct. 1823.

Present

Justices Reid, Foucher, & Pyke

No 2124
Fournier
vs
Lemay

on Obligation —

L. M. Vizé for Defdt — has pleaded issue to the obligation, and contends that this has been clearly made out in evidence — The transfer to the Pltff carries with it a suspicion of fraud, as the Creditor agrees to pay all the costs that may accrue on the proceedings at law of Defendt —

Bourré for Pltff, contends that there is proof to shew that the whole money was paid to the Defendt and if the acknowledgments of the Defdt are to be considered, they must be taken in toto —

No 2126
Fournier
vs
Lemay

Similar Case

No 1515
Labille dit
vs
Persillier

action pétitoire — on Exceptn —

Vizé for Defendt — The wife of Pltff is heir for 1/3 of 1/7 in the land in question, in right of her mother — this ought to have been demanded by an action en partage and ought to have joined in the suit all the other heirs — The conclusions of demand cannot be granted as the Pltffs are not entitled to any certain quantity of land undivided in such way as their particular right can apply —

Bleury for Pltff action is regular for the right and share of the Pltffs have in the land. —

Bourassa
vs
Brosseau
&
Bourgeois
Sup — Opts

Ors oppos— à fin de distraire one half of two lots Nos 2 & No 3. seized —

Sewell for Oppt. right of Opport— is clear & admitted, but wishes the undivided half of the lots be reserved to Opposte but Oppte contend that there should be a partage made of the lots and the moiety of these lots belonging to the minors now ascertained and set apart for them. —

Rolland for Plff. — had the Plff seized the undivided half of the land of the Defd— there could be no oppos— now by the Minors — and the debt in question is the debt of the Community and the minors bound for it — demands that the opposition be dismissed as to the other lot No 1. opd— has not been claimed by Oppte — although he has stopped the Sale thereof by his opposition to the Sheriff —

—

Solomon & Johnson
vs
Lagrange
&
Anderson opts

Ors oppos— afin d'annuller —
Gale for Oppt— claims whole property seized as his property, of which he has made proof —

Bourré for Plff. contends that the Sale by Defd to the Oppose— of the land in question as fraudulent the Defendr being at the time in a state of insolvency — the deed was passed between them in a private and secret manner —

—

No 1933
Baudriault
&
Tetrault Sup
&
Provt Oppt

Ors opposition afin de conserver —
Lussier for Oppt— two Oppns are made for rent under a lease made to Defendr —

to lodge his grain in the barn of oppt- and pasture his cattle on his land- of this the Oppt has made proof, as well the quantum of rent to gr the Oppt is entitled for the part as his claim in future under the lease- and claims his privilege on the effects seized as the security for this rent.- Poth. Louage. No 249.

Bourré for Puff, moves to reject the testimony adduced in this Cause, as Oppt has alleged only a verbal lease and adduced verbal testimony to support it- there is an attempt to prove a quantum meruit, but there is no demand for a quantum meruit, but a contract between the parties- But allowing the evidence to stand for the time past, yet the situation and connection of the parties shews that oppt was entitled to nothing for the use of the barn in question

---

No 1143
Masse
vs
Levitre
&
Cartier oppt

On distribution of monies levied
Bourré for Puff- objects to claim of Oppt Kelly for a privilege for a note of hand- given for grain to Defendt to sow his land under a particular Statute- but as this St. 47. Geo. 3. ch. 2. ~~& 12~~, the Debtor having made his mark in the presence of a Notary only not explained the quantity of wheat sold-

Mr Grant for the oppt- contends that the note is sufficient to warrant the privilege.-

No 2137
Roberts
vs
Anderson

On defendt mo. to compel Pltff to give security for costs- on affidavits produced-

Bleury for Pltff- the affidavits are not sufficient the absence of Pltff is only temporary, his domicile is in this district.-

№623
Manchester
Labelle

action on deed of Sale – transfer by one Chartrand
Bender for Defr sum demanded is balr due
admits sum to be due except 80tt – as there wants
1 arpent & 8 perches of the land sold – on the side of the
domain – cite 1. Bourg. 482 – There is another lot
of land of 1 arp 1/2 quant sold to Defendr by the same
deed qt – consists wholly of a quarry, out of wh Defr
meant to draw and sell stone – this lot belonged
formerly to one Parent as composes a part of a larger
quantity – Parent limited his right to take stone out of
a quarry on the reserve only for his own use – this lot
of land has not been sold to Defr subject to this reserve
and consequently he is liable to be hindered in the enjoyment
of this lot –

Grant for Pltff – should there be any deficiency Pltff
not liable to make it good, as it was a corps certain wh
was sold, and of the contents of so many arpents environ
The 2d lot sold was not a quarry, but a wood land,
and if there be any quarry upon it, is a matter which
cannot affect the Pltff –

—

№1116
Turgeon
Gagnon

action on Obligation – on Exceptn
Roi for Pltff – the Defendr has set up an
act of Pltff for different work done by him
in compensation of Pltff's demand – to this the Pltff
has excepted as not being a liquidated debt. art.
Cod. 105 – № 228. Poth. obl.

L. Vigor for Defendr – the work done by Defendr
was in deduction of what he owed on the obligation
not in compensation, but as a part of the debt in
question – cite case of McNider & Co – v Dulongpré –

Roi for Pltff – the Defendr has not pleaded the work
done by him to have been done in part of the Pltff demand
but that it ought to be allowed him in compensation –

№ 1907
Cobb & al
vs
Lefevre

Action on Judgt —
Grant for Defendt — There was no ground for this
Cause, as the party cannot assist Defendt on
his own affidavit without shewing sufficient grounds

—

235.
№ ~~933~~
Lebrun
vs
Charles
&
Boston
Curtis — Intervs

This cause put on docket
Cause to be heard before Judges in Vacation

—

Shuter
vs
Thayer
&
Opposts

On distribution of the monies levied
question touching date of mortgage of Pltff
whether from the date of the Compromis, or
from date of Judgt rendered in this Cause
upon the report of the arbitrators made in
consequence of that compromis —

Rolland for Pltff — Rept vo Hypotheque. p. 649.
this compromis being an act before a notary passed
carries mortgage 2 Bourg. p. 531 — tit. 6. ch. 1. Sect 1 № 1 —
p. 535. — hypoth. may be granted for a debt not yet in
existence — as in case of marriage contract in favor of the wife
for her rights & reprises not yet accrued — Poth. p. 423. 5th Vol.
Fr. d'hypotheque. had the Sentence arbitrale been made on
a compromis sous seing privé — the reasons of Pothier is
right & that must be the case he alludes to —

Sewell for Gerard Moffat & Co others contest the right
of mortgage claimed by Pltff — Gerard & Co obt Judt in
Oct. 1821 — the Pltff had his Judt in Febry 1822 — The
Rept is the sole authority in favor of the Pltff — a
compromis is intended merely to settle a difference, but
not to give any security for payt — Arrêtés de Mr Lamoignon
Tit. 21. № 24. p. 120 — Poth. d'Hyp. p. 111 in 12° — Poquet
de Livonière p. 345 — № 13 — 2 Gr. Com. p. 1205. — Bardet
p. 426 — ch. 80.

Rolland for Pltff — There is no authority of law to say that a mortgage is not created from the date of a compromis on the contrary all the authorities are in favor of it —

—

№ 1786

Dubord
vs
Buchanan

Action on deed of sale —

Roi for Pltff — asks Judgt.

Grant for Defdt — says that there are several payts made, and the land was to be sold by Sheriff in order to purge mortgages — there are mortgages on the land of the Defdt shews — invites to have an opportunity of shewing the payts made —

—

№ 2140

Martinezpuy
&
Choquet

On Defdt mo. to suspend proceedings till costs of a former action be paid

Quays for Pltff. The Pltff right of action cannot be delayed by this motion, 1 Pigeau 464. shews cases when this delay may be allowed, but the present not one of them — the arrêts 1 Pigeau 39. cannot be held to apply here —

—

№ 95

Lapensée
vs
Lusher
&
Whiting & al
T. Saisis —

On Rule of the T. Saisis, why Judgt should not be rendered against them on their declaration in favor of Pltff —

M Pelton has been under the necessity of contesting the declaration of the Tiers Saisis as the transfer set up by them appears fraudulent to this Rule the T. Saisis have pleaded several matters but of — ought not to avail them — the Pltff has

admitted

the papers filed by the T Saisis in order to obtain his Judgt - of the proceedings had ag the Trus Saisis in the State of New York - the allegation they make that they are prosecuted by Defdt for the same money, which they say the Defendt made a transfer of this money to one Huntoon -

Gale for T. Saisis - the question here is whether the T. Saisis, shall be held to pay twice - The Defendt made a transfer to Huntoon of a part of the Debt and have been adjudged to pay this on a Judgt obtained ag them - if so, can this Court adjudge the T. Saisis to pay the money a second time -

Davis vs Ernstinger

On question whether Burt the gardien shall be examined as a witness in the Cause -

Rolland for Plff. this Witness is interested, as he is the person at whose door the fault lies of having made away with the property - Poth. 825. Obl. - there is here a strong supicion de partialité - Serpillon. 419 - the probity of the witness is in question -

Sewell for Defendt - great distinction between Witness incompetent and incredible - the rules in regard of incompetency are established by law - the credibility depends on circumstances - as the Servitem who is competent, but it shall appear that he is a servitem - Répre Vo Temoin p. 61. 63. in regard of partiality of Wr it must be the interest he has in the proces - The release given by Defdt renders Burt a good Witness and we cannot presume that Burt is unable to pay - The servitem is a competent Wr and must be examd - saving the reproches - Louet p. 376. on Tit. 22. art. 11 - ordre 1667.

1 T. Rep. p. 103. 4 - Com. Dig. Test. vol. 6. p. 355. 1 Pycan. 281. 282. The possibility of another action being

being brot. up Bail, is not an existing reproche

Saturday 18th October 1823

Present.

Justices Reid, Foucher & Pyke. —

No 1770 Armour vs Nicholson	}	Judgt
No 2064 Gaudet vs Cunningham	}	Action dismissed
No 1006 Robinson vs Beattie	}	Judgt on report of arbitrators —
No 1896 Rascon vs Duchenois	}	Judgt
No 2003 Verreaux vs Beaupres	}	Judgt on art. rendered
No 2106 Duchemy vs Cuthbert	}	Judgt

No 143.
Chaffey & Scott — Judgt

No 2026
The King & Lacoste — Rule discharged

No 1363
Beique & Labelle — Judgt — Def to give security

No 497
Cantin & Trouillet dus — Judgt — Def to give security —

No 649
Aylwin & Cuvillier & Cuvillier & Mrs C. — oppts — Opposition of Cuvillier dismissed
Rule discharged as to Mrs Cuvillier oppos

No 471
Harbec & Dr Papineau & Lavergne oppts — Opposition maintained

No 1029
Doyon & Arnoldi & Econtra — Report of Experts homologated

No 562
Wilson & Thayer et al & Econtra — Judgt — Incid Demand dismissed

No 1811
Schwartzfager
vs
Nelsons — } action dismissed —

No 1998
Taylor & Co
vs
Parenty
& } Judgt — and Incidental demand dismissed
E contra

No 1116
Turgeon
vs
Gigon } Plea of Compensation dismissed

No 2125
Durocher dit
Desrivieres
vs
Bourbillier
& } Plea of Exceptions & Intervention dismissed
Intervs

No 371
Hart
vs
Boucher
& } Judgt
Mercure
Intervs

No 1855
Campbell
vs
Lefrohon
& } Judgt on demand in Chief —
E contra

Monday 20th October 1823.

Present

Justices, Reid Fowler & Dyke.

No 772
Hervieux & Decarry & Leclaire } Judgt

No 248
Duplessis & Cardinal } Judgt

No 335
Dumas & ux vs Surgeon } Interlocr

No 757.
Bourassa & Brosseau & Lefort Opt } Judgt on Opposn

No 212
De Longueuil & Terrien } Judgt

No 1970
Dubuc & Betourné } Judgt

No 2028
Mower & Reid } Judgt

No 522.
Deschamps & Villanzy & Contra — Judgt. Incidental demand dismissed

No 538
Turgeon & Achin & Lavoie & Lavoie Gar — Judgt on principal demand action en garantie dismissed.—

No 1933.
Beaudreau & Tebo & Pron oppts — Judgt on Opposition.—

No
Johnson & Lagrange & Anderson oppt — Opposition dismissed —

Lafontaine & Maynard & Cuthbert oppt — Interlocr. —

No 2010
Cartier & Dundass — Judgt

No 2011
Cartier & Buchanan — Judgt

No 170
Caseau
+
Robichaud
W

Judgt rescinding adjudication & Sale — to Tutor of minor property —

McKenzie
vs
Trudel

Judgt on motion —

No 95
Lapensée
vs
Lusher
&
Whiting & al
garnishees
W

Judgt

No 2092
On Petition
of Wm Ker
W

New appointment of curator ordered

No 2146
Martigny
+
Choquet.

Defendr mo. granted for stay of proceedings
ate costs on former action be paid

No 1702
Charron
+
Sevigny

Judgt

No 1515
Labelle
+
Persillier

Action dismissed

No 1909
Cobb
vs
Lefevre

Judgt

No 293
Lussier
+
Arnoe —
W

Dismissed —

№ 1975
Lamothe
v
Fraser
} ✕ Judgt





MOIS.	SEMS.	JUILLET.
1	Mardi	Octave de St. Jean Baptiste. *Inci*
2	Mercre	Visitation de la B. V. [*pit.*
3	Jeudi	De l'Octave des Apôtres.
4	Vendre	De l'Octave
5	Samedi	de l'Octave,
6	DIM.	7 Octave des Apôtres M
7	Lundi	*Oratio Fidelium. Incipit.*
8	Mardi	ste. Elisabeth, reine,
9	Mercre	
10	Jeudi	ss. Sept Frères martyrs,
11	Vendre	s. Pie, pape, mart.
12	Samedi	s. Jean Gualbert, abbé,
13	DIM.	8. DEDICACE, M
14	Lundi	s. Bonaventure, évêq. doct. M
15	Mardi	St. Henri, II. empereur, M *Incip*
16	Mercre	N. D. du Mont Carmel, M
17	Jeudi	s. Aléxis, M
18	Vendre	le l'Octave, 6e. jour, M
19	Samedi	s. Vincent de Paul, prêtre M
20	DIM.	9. Octave Dédicace, Sol. Jac. 2 M
21	Lundi	s. Anaclet, pape, mart. (13) *Incip.*
22	Mardi	ste. Magdeleine,
23	Mercre	s. Apollinaire, év. mart.
24	Jeudi	De la Vigile, M
25	Vendre	s. Jacques, apôtre.
26	Samedi	ste. Anne,
27	DIM.	10. Sol. ste. Anne.
28	Lundi	ss. Nazaire, &c. martyrs,
29	Mardi	ste. Marthe, vierge,
30	Mercre	ss. Abdon et Sennen, mart.
31	Jeudi	s. Ignace de Loyola.

MOIS.	SEMS.	AOUT.
1	Vendre	s. Pierre aux Liens.
2	Samedi	De la ste. Vierge. M Or. *Fid.*
3	DIM.	11 (*Dom. 1 Aug.*)
4	Lundi	s. Dominique,
5	Mardi	N. D. des Neiges,
6	Mercre	Transfiguration de N. S.
7	Jeudi	s. Cajétan,
8	Vendre	ss. Cyriaque, Large, &c. mart.
9	Samedi	*Jeûne.* Invention s. Etienne, (3) 2M
10	DIM.	12. st. Laurent. M. *Dom. 2.*
11	Lundi	De l'Octave, *Incipit.* M
12	Mardi	ste. Claire, vierge.
13	Mercre	De l'Octave, M
14	Jeudi	De l'Oct. M *Lect. 8a dividatur.*
15	Vendre	De l'Octave, *Lect. è 17 Aug.*
16	Samedi	*Jeûne.* s. Hyacinthe, 2M
17	DIM.	13. ASSOMPTION, 2M *Dom. 3.*
18	Lundi	s. Joachim, 2M *Lect. 9 a S. Agap.*
19	Mardi	De l'Octave, *Lect. è 18. Aug.*
20	Mercre	s. Bernard abbé, M
21	Jeudi	De l'Octave, *Lect. è 19.*
22	Vendre	De l'Octave M *Lect. è 22.*
23	Samedi	s. Philippe de Béniti, 2 M
24	DIM.	14 s. Barthélemi, ap. Sol. Ls. 2 M
25	Lundi	s. Louis, roi, *Lect. Beat. vir. Credo.*
26	Mardi	s. Zephirin, martyr, *Incipit.*
27	Mercre	
28	Jeudi	s. Augustin, évêq. doct.
29	Vendre	Décollation de s. Jean Baptiste,
30	Samedi	ste. Rose de Lima, vierge.
31	DIM.	15s. Raimond Nonnat *D. 1 Sept.*

MOIS.	SEM.	SEPTEMBRE.
1	Lundi	st. Giles, M *Incipit. Or. Fid.*
2	Mardi	s. Etienne, roi,
3	Mercre	*Resp. Dom. 1*
4	Jeudi	FETE DU SACERDOCE,
5	Vendre	s. Laurent Justinien, évêq.
6	Samedi	de la ste. Vierge,
7	DIM.	16 *Dom. 2 Septembris,*
8	Lundi	Nativité de la B. V. M. M
9	Mardi	de l'Octave, M
10	Mercre	s. Nicolas de Tolentin, M
11	Jeudi	de l'Octave, M
12	Vendre	de l'Octave,
13	Samedi	de l'Octave,
14	DIM.	17 Exaltation de la Ste. Croix, (Sol.
15	Lundi	*Octave* Nativité, M (Nat. 2M
16	Mardi	ss. Corneille, &c. mart. *Incipit.*
17	Mercre	*Jeûne 4 T.* Stigm. s. François, M
18	Jeudi	s Thomas de Vill. év.
19	Vendre	*Jeûne 4 T.* ss. Janvier, &c. m. M
20	Samedi	*Jeûne 4 T.* ss Eustache, &c. m. M
21	DIM.	18. s. Matthieu, ap. *Dom. 4.*
22	Lundi	s. Nom de Marie, (14) M
23	Mardi	s Lin, pape mart. *Incip.*
24	Mercre	N. D. de la Merci,
25	Jeudi	*Incip. et Resp. Dom. 5.*
26	Vendre	ss. Cyprien, &c. mart.
27	Samedi	ss. Côme et Damien, mart.
28	DIM.	19 Sol. Michel, (*Dom. 1 Oct.*
29	Lundi	s. Michel, Archange,
30	Mardi	s. Jerôme, prêtre doct.

MOIS.	SEM.	OCTOBRE.
1	Mercre	s. Rémi, évêq *Duplex*
2	Jeudi	ss. Anges Gardiens,
3	Vendre	s. Vinceslas, mart. (28 *Sept.*)
4	Samedi	s François d'Assise,
5	DIM.	20. Sol. du Rosaire, 2 M (*Dom. 2.*
6	Lundi	s. Bruno,
7	Mardi	s. Marc. pape, *Oratio Fidelium.*
8	Mercre	ste. Brigitte, veuve,
9	Jeudi	ss. Denis, &c. mart.
10	Vendre	s. François de Borgia,
11	Samedi	De la ste. Vierge,
12	DIM.	21. *Dom. 3 Octobris,*
13	Lundi	s. Edouard III. roi,
14	Mardi	s. Callixte, pape, mart.
15	Mercre	ste. Thérèse, vierge,
16	Jeudi	
17	Vendre	s. Hedwidge, veuve,
18	Samedi	s. Luc, évang.
19	DIM.	22. N. D. de Victoire, *Dom. 3.*
20	Lundi	s. Pierre d'Alcantara, (hier) *Inc.*
21	Mardi	s. Hilarion, abbé,
22	Mercre	
23	Jeudi	
24	Vendre	
25	Samedi	*Jeûne.* De la ste. Vierge, M
26	DIM.	23. Sol. ss. Simon et Jude, M
27	Lundi	De la Vigile. Or. *Fid.*
28	Mardi	ss. Simon et Jude, ap.
29	Mercre	*Lect. Fer. 2. Resp. Fer. occur.*
30	Jeudi	*Lect. Fer. 3. Resp. Fer. occur.*
31	Vendre	*Jeûne.* De la Vigile,

MOIS.	SEMS.	NOVEMBRE.
1	Samedi	TOUSSAINT, (*d'obligation*)
2	DIM.	24. M. Messe du Patron. *Dom. 1.*
3	Lundi	Trépassés. (*Dom. 4 Epiph.*)
4	Mardi	s. Charles, évêque.
5	Mercre	De l'Octave,
6	Jeudi	De l'Octave,
7	Vendre	De l'Octave,
8	Samedi	Octave de la Toussaint, (*D. 5 Epi*)
9	DIM.	25 Dédic. Basiliq. s. 2 M *Dom. 3.*
10	Lundi	s. André Avellin, *Incipit. Dom. 3*
11	Mardi	s. Martin, évêq.
12	Mercre	s. Martin, pape, martyr,
13	Jeudi	s. Didace,
14	Vendre	Or. *Fidelium,*
15	Samedi	ste. Gertrude, vierge,
16	DIM.	26. M. *De Dom. 6 post. Epiph.*
17	Lundi	s. Grégoire Thaumat, év.
18	Mardi	Dédic. Basiliq. s. Pierre et Paul.
19	Mercre	ste. Elisabeth, veuve. *Inc. fer. 3*
20	Jeudi	s. Félix de Valois, prêt. *Inc. fer. 5.*
21	Vendre	Présentation de la B.V. [6, *et Sab.*
22	Samedi	ste. Cecile, vierge, mart.
23	DIM.	27. M. *Dom. 5. Nov.* et ult. post Pent.
24	Lundi	s. Jean de la Croix.
25	Mardi	ste. Catherine, vierge, mart.
26	Mercre	s. Clément, pape, mart. (23) M
27	Jeudi	*Incip. Fer. 4, et 5,*
28	Vendre	*Incipit. fer 6, et Sab.*
29	Samedi	*Jeûne.* De la Vigile, M *Cessant Suff.*
30	DIM.	1, de l'Avent Sol. s. André,

MOIS.	SEMS.	DECEMBRE.
1	Lundi	s: André, apôtre, (hier) M
2	Mardi	ste. Bibiane, vierge, mart.
3	Mercre	s. François Xavier, *L. Beat. Credo.*
4	Jeudi	s. Pierre Chrysologue, évêq. 2 M
5	Vendre	M
6	Samedi	s. Nicolas, évêque,
7	DIM.	2 Sol. François Xavier.
8	Lundi	CONCEPTION, [*d'oblig.*] 1.cl
9	Mardi	s. Ambroise, évêque, doct. (7) 2 M
10	Mercre	De l'Octave, 2 M.
11	Jeudi	s. Damase, pape,
12	Vendre	De l'Octave,
13	Samedi	ste. Luce, vierge, martyre,
14	DIM.	3 de l'Avent. M
15	Lundi	*Octave* de la Conception.
16	Mardi	s. Eusebe, évêq. mart.
17	Mercre	*Jeûne 4 Tems, Ant. O. Ad Laud.*
18	Jeudi	[*et H. Ant. propriæ.*
19	Vendre	*Jeûne 4 Tems.*
20	Samedi	*Jeûne 4 Tems.* M. Vig. à la Messe.
21	DIM.	4. Sol. s. Thomas, *Ant. Nolite.*
22	Lundi	s. Thomas, apôtre, (hier)
23	Mardi	*Ad Bened. Ant. Ecce completa.*
24	Mercre	*Jeûne.* de la Vigile,
25	Jeudi	NOEL, [*Fête d'obligation*]
26	Vendre	St. ETIENNE, 1er. mart. [de dévot.]
27	Samedi	St. JEAN, ap. et év. [de dévotion]
28	DIM.	*Vacat.* ss. Innocens, martyrs
29	Lundi	s. Thomas, évêq. mart. (hier)
30	Mardi	Du Dimanche dans l'Octave,
31	Mercre	s. Silvestre, pape.