# Kings Bench Montreal

## Civil Pleas.

---

February Term. 1824.

April Term. " "

June Term. "

October Term. "

## JANVIER. Le Soleil entre au Verseau

Nouv. Lune le 1 à 3h. 14m. Mat. | P. Quart. le 9 à 7h. 43m. Mat. | Pleine Lune le 16 à 3h. 57m. M | D. Q. | Nouv.

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

## FEVRIER. Le Soleil entre aux Poissons.

Premier Quartier le 7 à 10h. 25m. Soir. | Dernier Qu
Pleine Lune le 14 à 2h. 31m. Soir. | Nouvelle L

| MOIS. | SENS. | FETES |
|---|---|---|
| 1 | DIM. | 4 Sol Purification, |
| 2 | Lun. | Purification de Marie, |
| 3 | Mardi | s. Ignace, évêq. mart. M |
| 4 | Mercredi | s. André Corsin, evêq. |
| 5 | Jeudi | ste. Agathe, vier. mart. |
| 6 | Vendredi | ste. Dorothée vierg. mart. |
| 7 | Samedi | s. Romuald, abbé, |
| 8 | DIM. | 5 s. Jean de Matha |
| 9 | Lundi | ste Apolline. V. M. |
| 10 | Mardi | ste. Scholastique, vierge, |
| 11 | Mercredi | |
| 12 | Jeudi | |
| 13 | Vendredi | |
| 14 | Samedi | |
| 15 | DIM. | SEPTUAGESIME, M |
| 16 | Lundi | |
| 17 | Mardi | |
| 18 | Mercredi | S. Simeon, év. m. |
| 19 | Jeudi | |
| 20 | Vendredi | |
| 21 | Samedi | De la Ste. Vierge |
| 22 | DIM. | SEXAGESIME, Sol. s. Mathias, |
| 23 | Lundi | Chaire de s. Pier. à Ant. M |
| 24 | Mardi | De la Vigile. |
| 25 | Mercredi | s. Mathias, apôtre. |
| 26 | Jeudi | |
| 27 | Vendredi | |
| 28 | Samedi | De la Ste. Vierge |
| 29 | DIM. | QUINQUAGESIME |

## MARS. Le Soleil entre au Bélier, le

Premier Quartier le 8 à 9h. 16m. Matin. | Dernier Qu
Pleine Lune le 15 à Minuit 44m. | Nouvelle L

| MOIS. | SEMS. | FETES. |
|---|---|---|
| 1 | Lundi | |
| 2 | Mardi | |
| 3 | Mercredi | *Les Cendres* |
| 4 | Jeudi | s. Casimir, prince 2 M |
| 5 | Vendredi | |
| 6 | Samedi | |
| 7 | DIM | 1 Du Carême, M |
| 8 | Lundi | S. Jean de Dieu M |
| 9 | Mardi | ste. Françoise, veuve M |
| 10 | Mercredi | 4 *Tems* ss. Quarante Martyrs, |
| 11 | Jeudi | s. Thomas d'Aquin, doct. M |
| 12 | Vendredi | 4 *Tems* s. Grégoire, pape. M |
| 13 | Samedi | 4 *Tems* |
| 14 | DIM | 2 Sol. St. Joseph. M |
| 15 | Lundi | |
| 16 | Mardi | |
| 17 | Mercredi | s. Patrice, évêq. M |
| 18 | Jeudi | |
| 19 | Vendredi | St, Joseph M |
| 20 | Samedi | |
| 21 | DIM | 3 |
| 22 | Lundi | s. Benoît, abbé. M |
| 23 | Mardi | |
| 24 | Mercredi | |
| 25 | Jeudi | ANNONCIATION. [*d'obligat.*]M |
| 26 | Vendredi | |
| 27 | Samedi | |
| 28 | DIM | 4 |
| 29 | Lundi | |
| 30 | Mardi | |
| 31 | Mercredi | |

## AVRIL. Le Soleil entre au Taureau.

Premier Quartier le 6 à 5h. 25m. Soir. | Dernier Quart
Pleine Lune le 13 à 10h. 54m. Matin. | Nouvelle Lun

| MOIS. | Sems. | FETES. |
|---|---|---|
| 1 | Jeudi | |
| 2 | Vendredi | s. François de Paule, M |
| 3 | Samedi | |
| 4 | DIM. | De la Passion. |
| 5 | Lundi | s Vincent Ferriée. M |
| 6 | Mardi | s Isidore, évêque. M |
| 7 | Mercredi | |
| 8 | Jeudi | |
| 9 | Vendredi | N. D. de Pitié. M |
| 10 | Samedi | |
| 11 | DIM. | RAMEAUX. |
| 12 | Lundi | |
| 13 | Mardi | |
| 14 | Mercredi | |
| 15 | Jeudi | Jeudi Saint, |
| 16 | Vendredi | Vendredi Saint |
| 17 | Samedi | Samedi Saint |
| 18 | DIM. | PAQUES, |
| 19 | Lundi | (Fête de dévotion) |
| 20 | Mardi | (Fête de dévotion) |
| 21 | Mercredi | de l'Octave |
| 22 | Jeudi | de l'Oct. |
| 23 | Vendredi | de l'Oct. |
| 24 | Samedi | de l'Oct. |
| 25 | DIM. | 1. QUASIMODO. |
| 26 | Lundi | ss. Clet & Marcelin, *Abst. Proces.* |
| 27 | Mardi | s. Marc. évang. |
| 28 | Mercredi | s. Léon, pape. M |
| 29 | Jeudi | s. Pierre, martyr. |
| 30 | Vendredi | ste, Catherine de Sienne, vierge. |

## MAI. Le Soleil entre aux Gémeaux

Premier Quartier le 5 à 11h. 22m. Soir. | Dernier Q
Pleine Lune le 12 à 9h. 41m. Soir. | Nouvelle L

| MOIS. | SEMS. | FETES. |
|---|---|---|
| 1 | Samedi | ss Philippe et Jacques, apôtres. |
| 2 | DIM. | 2 s. Athanase, évêq. Sol. Phil. M |
| 3 | Lundi | Invention de la Ste. Croix, M |
| 4 | Mardi | ste. Monique, veuve. |
| 5 | Mercredi | s. Pie V. pape, |
| 6 | Jeudi | s. Jean Porte Latine, |
| 7 | Vendredi | s. Stanislas, évêq. mart. |
| 8 | Samedi | Apparition de s. Michel, |
| 9 | DIM. | 3. ste Famille. M |
| 10 | Lundi | s. Antonin, évêq. M |
| 11 | Mardi | s. Anselme, évêq. |
| 12 | Mercredi | ss. Nerée ; &c. mart. |
| 13 | Jeudi | s. Fidèle de Sigmaringa, mart. |
| 14 | Vendredi | s. Grégoire de Nazianze, évêq. |
| 15 | Samedi | s. Hermenégild. |
| 16 | DIM. | 4 Après Pâques, |
| 17 | Lundi | s Paschal Baylon, |
| 18 | Mardi | s. Venant, mart. |
| 19 | Mercredi | s. Pierre Célestin, pape. |
| 20 | Jeudi | s. Bernardin. |
| 21 | Vendredi | s. Soter, &c. mart. |
| 22 | Samedi | st. George, mart. |
| 23 | DIM. | 5. |
| 24 | Lundi | *Rogations.* s. Ubald. |
| 25 | Mardi | *Rogations.* s. Grégoire VII. 2M |
| 26 | Mercredi | *Rogations.* Philippe de Néri, 2M |
| 27 | Jeudi | ASCENSION, [*d'obligation* |
| 28 | Vendre | ste. Magdelaine de Pazzis, M |
| 29 | Samedi | De l'Octave, |
| 30 | DIM. | 6. du Dim. dans l'Octave, M |
| 31 | Lundi | De l'Octave, M |

## JUIN. Le Soleil entre à l'Ecrevi

Premier Quartier le 4 à 4h. 16m. Mat. | Dernier Quart
Pleine Lune le 11, à 9h. 45m. Matin. | Nouvelle Lune

| MOIS. | SEMS. | FETES. |
|---|---|---|
| 1 | Mardi | De l'Octave, |
| 2 | Mercredi | De l'Octave, M |
| 3 | Jeudi | *Octave* de la Ascension |
| 4 | Vendredi | |
| 5 | Samedi | *Jeune.* De la Vigile. |
| 6 | DIM. | PENTECOTE |
| 7 | Lundi | (Fête de dévotion) |
| 8 | Mardi | (Fête de dévotion) |
| 9 | Mercred. | *Jeûne* 4 *Temps.* de l'Oct. |
| 10 | Jeudi | De l'Octave, |
| 11 | Vendredi | *Jeûne des* 4 *Tems.* |
| 12 | Samedi | *Jeûne des* 4 *Tems,* M |
| 13 | DIM. | 1. ste. TRINITE', M |
| 14 | Lundi | St. Basile, évêq. doct. |
| 15 | Mardi | s. Barnabé, apôtre, M |
| 16 | Mercred. | s. Norbert, évêq. |
| 17 | Jeudi | FETE DIEU. [*d'obligat.*] |
| 18 | Vendredi | M |
| 19 | Samedi | ste Julienne, 2M |
| 20 | DIM. | 2. Procession 2M |
| 21 | Lundi | De l'Octave, |
| 22 | Mardi | De l'Octave, M |
| 23 | Mercredi | De l'Oct. |
| 24 | Jeudi | s. Jean Baptiste, |
| 25 | Vendredi | s. Guillaume, abbé. |
| 26 | Samedi | *Jeune.* ss. Jean et Paul. M *Eclipse,* |
| 27 | DIM. | 3. Sol. st. Jean Baptiste, M |
| 28 | Lundi | *Jeûne.* s. Léon. 2M |
| 29 | Mardi | ss. PIERRE et PAUL. (*d'obligat.* |
| 30 | Mercred. | Commémoration de s. Paul, 2M |

# A.

| | | | | |
|---|---|---|---|---|
| Aylwin — | Cuvillier & opt. | 12 | | |
| Abbot — | Tyler & opt. | 17 | | |
| Armour & al | Brown. — | 17 | 36 | 62 |
| Adams. — | Gamelin — | 37 | 71 | 75 |
| Alger — | Ransom — | 41 | | |
| Allison. — | McLean & al | 43 | | |
| Alsopp & al — | Welsh & al. — | 48 | 55 | |
| Arnold. — | Tierney & Gat. | 55 | | |
| Archambault | Fullum & opt. | 114 | 125 | |
| Aubertin. — | Gagnon. — | 158 | | |

# B.

| | | | | |
|---|---|---|---|---|
| Barlow. — | Archambault & opt. | 12 | | |
| Bourassa. — | Brosseau & al | 15 | 26 | 201 |
| Bank of Canada | Brown. — | 17 | 78 | |
| Bouc. — | Bouc. — | 17 | 200 | |
| Bourdon — | Sarrault — | 26 | | |
| Barsalou — | Orkney & opt. | 29 | 155 | 186 |
| Bistodeau — | Giard. — | 52 | 76 | |
| Bowman. — | Reid & opt. | 57 | 76 | |
| Bellows — | French — | 65 | 77 | |
| Bellair — | Pigeon & ux. | 66 | 75 | |
| Beaubien. — | Morley — | 67 | | |
| Brown. — | Dunham & opt. | 68 | 76 | |
| Baird. — | McNider & Co. | 82 | 179 | 235 |
| Brouillet. — | Adam. — | 87 | 205 | |
| Barret. — | Walker. — | 88 | 93 | |
| Boston & al. | Dalrymple — | 94 | | |
| Bransdon | Dickie & Co. | 106 | 124 | |
| Bowron. — | Linley. — | 130 | 234 | |
| Barnard. — | Wallace — | 153 | | |
| Barsalou — | Gray. — | 155 | | |
| Bronsdon — | Wilson. — | 157 | 238 | |
| Blackwood | Guy. — | 162 | | |
| Baron & al. | Watson & al. | 176 | 184 | |
| Berthelet — | Plucknett | 178 | | |
| Bergeron. — | Parodeau — | 195 | 234 | |
| Bender. — | Durand. — | 196 | | |
| Beattie. — | Phonix Co — | 218 | | |
| Brisson. — | Manchester | 222 | | |
| Beauchamps | Monjeau — | 229 | | |
| Brunet — | Handyside | 231 | | |

## C


| | | | | | |
|---|---|---|---|---|---|
| Charbonneau | Ayet d'. Malo | 13 | | | |
| Connelly | Fingland & al | 16 | 18 | | |
| Charron, Vve | Charron & opt | 26 | | | |
| Chaurette | Graville | 26 | | | |
| Chapman | Bridge | 37 | 135 | | |
| Cartier | Piccard | 41 | 86 | | |
| Chaurette | Cholette | 45 | 132 | | |
| Connolly | Bagg & E cont. | 50 | 75 | 95 | 185 |
| Clement | Poirrier | 64 | | | |
| Chevallier | Bourque | 69 | | | |
| Collins | Moor & E cont. | 86 | 138 | 182 | |
| Cates | Kittson | 86 | 93 | 145 | 234 |
| Cartier | Masse & Guertin | 95 | 123 | | |
| Clarke & al' | Torrance & al | 106 | | | |
| Cuyler | Holt | 114 | 154 | | |
| Cartier | Degen & oppt | 123 | | | |
| Cartier | Charon & opt | 142 | 235 | | |
| Cassidy | Guillerie & al | 155 | 183 | | |
| Chauvin | Langevin | 157 | | | |
| Campbell | Haas | 157 | 182 | | |
| Cliff | Morgan & al | 170 | | | |
| Calcoff | Boucher | 187 | 194 | 213 | |
| Cadieux | Cadotte | 188 | 237 | | |
| Connel & al' | Tunstal & ux | 193 | 194 | | |
| Crysler | Simmons & al | 199 | 238 | | |
| Chorette | Boyer & E contre | 219 | | | |
| Corbeil | Dagenais & al | 228 | 235 | | |


## D


| | | | | | |
|---|---|---|---|---|---|
| Donegany | Pickle, Jr | 14 | | | |
| Dunlop & al | Russel & al' | 19 | 83 | | |
| Duplessis | Wilson | 21 | 56 | | |
| Dupuis | Perrault & Lb3 | 24 | 78 | | |
| Davies | Ermatinger | 26 | 71 | | |
| Dupuis & al' | Roi | 27 | | | |
| Davies | Pickle & al opt | 29 | 98 | | |
| Dessaulles | Robichau | 34 | 56 | | |
| Dewitt | Pierce & al' | 38 | 56 | | |
| Dumas | Turgeon | 48 | 78 | | |
| Durand & al | Rolland | 51 | 139 | | |
| Dupuis | Piedalu | 55 | | | |
| David | Hervieux & al | 62 | 77 | | |
| Deschamps | Leduc | 63 | 76 | | |
| Dumouchel | Campeau | 65 | | | |
| Demers | Patenaude | 67 | 124 | | |
| Duplessis | Cardinal | 74 | 122 | 190 | 235 |
| Dorions | Dorions | 78 | 126 | | |
| Descelles, Ant. | Petition | 78 | | | |
| Davies | Ermatinger | 88 | | | |
| Dupuis | Perrault | 99 | | | |
| Desrivieres | Ayers | 99 | 134 | | |
| Dubord | Mayrand & al | 121 | 124 | | |
| Dessens & ux | Dubois | 169 | 184 | | |
| Donegany | McConnell | 171 | | | |
| Donegany | Main | 212 | 237 | | |
| David | Hervieux & al | 221 | | | |
| Desrivieres | Stoliker | 221 | | | |
| Dubreuil | Decret Volonte | 236 | | | |

## E. F.

| | | | | | |
|---|---|---|---|---|---|
| 053 | Ellice | Dupuis | 22 | 78 | 151 |
| 051 | Ellice | Dupuis | 23 | 78 | |
| 761 | Ellice | Dupuis | 158 | 182 | |
| | Ermatinger | Serenny | 195 | | |
| | Ellice & Co | Diganard | 214 | | |
| | Fontaine | Langevin | 18 | | |
| | Fournier | Lemai | 27 | | |
| 781 | Froste & al' | Spragg & al | 65 | 183 | |
| 1898 | Froste & al' | Spragg & al | 65 | | |
| | Fraser | Campbell | 71 | 77 | |
| | Fabrique de Montreal | Cuvillier & ux | 123 | | |
| | Foretier | McGillivray | 185 | | |
| | Froste & al' | McKenzie | 197 | 238 | |

## G

| | | | | | |
|---|---|---|---|---|---|
| Garrish | Douglass & opt | 12 | | | |
| Gosselin | Monjeau & al | 13 | | | |
| Gagnon | Payan & oppt | 19 | | | |
| Guernier | Campeau | 24 | | | |
| Gagnon | Bourassa & opt | 26 | 132 | 179 | 184 |
| Gaudet | Scott | 27 | | | |
| Galusha | Tecmen | 28 | 93 | | |
| Gerrish | Wehr | 34 | 55 | | |
| Grasset | Campbell | 46 | | | |
| Greece | Gilchrist | 60 | 77 | | |
| Gagnon | Metras & opt | 61 | 105 | 124 | 191 |
| Gardener | Johnson | 89 | 129 | | |
| Gerrish | Wher & E contra | 102 | 187 | | |
| Gibb | Kollmeyer | 112 | 154 | | |
| Gibb & al' | Arthur | 140 | | | |
| Gray. q. t. | Forfeited Goods | 141 | 183 | | |
| Guay | Guay | 160 | 234 | | |
| Garrish | Douglass & opt | 168 | | | |
| Guertin | Lapointe | 169 | 184 | 188 | 214 |
| Gravelle | Charbonneau | 189 | 231 | | |
| Guy | Bunker | 195 | | | |
| Gamelin | Fullum | 201 | | | |
| Gingras | Trudeau | 209 | | | |
| Gratton | Roi | 211 | 214 | 231 | |
| Gagnon | Metras & opt | 235 | | | |
| Guertin | Audet & Lapointe | 235 | | | |

| | | | | | |
|---|---|---|---|---|---|
| Hunters | Donegany | 13 | 18 | 48 | 55 |
| Hunters | Townsend & ors | 14 | 57 | | |
| Hotchkiss | Raymond | 14 | 27 | | |
| Hebert | Thomas | 25 | 42 | | |
| Hart | Warwick & al | 32 | 154 | | |
| Hart | Goodsell | 56 | | | |
| Hart | Fraser, & 2 cont | 68 | | | |
| Holt | Holt | 69 | 128 | 186 | |
| Hunter | Donegany | 83 | 103 | 123 | 135 |
| Hebert | Toupin & al | 88 | 134 | | |
| Hall | Stern & al | 91 | | | |
| Haykes | Kerp & 2 cont | 128 | | | |
| Hall | Campré | 131 | | | |
| Huberdeau | Martin | 236 | | | |
| Hunter & Co | Perrault & al | 186 | | | |

| | | | | | |
|---|---|---|---|---|---|
| Johnson | Gardener | 82 | 98 | 221 | 236 |
| Jordan & al | Spragg | 134 | | | |

# K.


| | | | |
|---|---|---|---|
| Keyes & al' | & Raymond | 27 | |
| Keyes & al' | & Weed | 35 | 56 |
| Kinsler | & Rochon | 87 | 237 |
| Kidd & al' | & Raymond | 181 | 186 |
| Kent | & Burkat & op$^{te}$ | 191 | 236 |
| Kuper | & Molson | 230 | |


# L.


| | | | | | | |
|---|---|---|---|---|---|---|
| Leroux | & Trottier & al | 29 | | | | |
| Leroux | & Huot | 31 | 77 | | | |
| Lewis | & Eissenhart | 32 | | | | |
| Lamb & ux | & Williams & ux | 40 | 57 | 203 | 235 | |
| Languedoc | & Palin | 43 | | | | |
| Longueuil | & Titus & op$^{te}$ | 43 | | | | |
| Lacroix | & Labelle & op$^{te}$ | 44 | | | | |
| Labelle | & Labelle & op$^{te}$ | 44 | 121 | 126 | | |
| Lemyer | & Robertson | 57 | | | | |
| Leduc | & Cloutier & Ecurl | 61 | | | | |
| Laporte | & Laporte | 74 | | | | |
| Lacroix | & Labelle & opp$^{ts}$ | 93 | | | | |
| Lewis. Anne | & Petition of | 124 | | | | |
| Lacroix | & Brunet | 136 | | | | |
| Lepailleur | & Jurgeon & op$^{te}$ | 145 | | | | |
| Lesperance | & Lesperance | 156 | | | | |
| Langlois | & Gunlach | 158 | | | | |
| Lacroix | & Duevillon & al | 167 | | | | |
| Loban | & Handyside & al | 169 | 184 | | | |
| Lamb | & Wilson & al | 170 | | | | |
| Langevin | & Cousineau | 180 | | | | |
| Larocque | & Bertrand & al | 213 | | | | |

## M.

| | | | | | |
|---|---|---|---|---|---|
| Martigny. | Choquet. | 11 | 17 | 38 | 55 |
| Magnan | Throop & op^ts | 16 | | | |
| M^c Connel | Probib^d. Goods & C^te | 23 | | | |
| Mathews. | Newton | 25 | 77 | | |
| M^c Leish. | Bethune & al. | 26 | 156 | | |
| M^c Killip. | ~~Bourassa~~ & J. S | 27 | | | |
| Martigny | Messier. | 27 | | | |
| Manchester | Labelle. | 27 | 128 | 182 | |
| Millar & al^l | Diganard & op^t | 37 | | | |
| M^c donald | Atkinson & op^t. | 47 | 75 | | |
| M^c nider | M^c Leish | 50 | | | |
| M^c Roberts & al | Berthelot & al | 51 | | | |
| M^c Kenzie | Turgeon. | 61 | | | |
| M^c Intosh. | M^c Millan | 62 | 77 | | |
| M^c Cord. | Laforce. | 68 | 75 | | |
| Martigny. | Choquet. | 84 | 144 | | |
| M^c Killip. | Descelles | 87 | 97 | | |
| Molsons. | Kuper & E contra | 97 | | | |
| M^c Kenzie. | Roi. | 102 | | | |
| Mathieu. | Plucknett & al | 125 | 158 | 190 | 200 |
| M^c Tavish. | Sweeney. | 131 | | | |
| Metzler. | Bleury. | 148 | 210 | | |
| M^c Intosh. | M^c donald | 149 | 183 | | |
| M^c Callum | Eissenhart & al | 157 | | | |
| M^c Kenzie | Gauthier. | 179 | | | |
| M^c Callum | Stem. | 183 | | | |
| M^c Pherson | M^c donald & al | 184 | | | |
| Masson & C^o | Delagrave. | 193 | 194 | | |
| M^c Callum | M^c Martin & al | 201 | 239 | | |
| Mix. | Jones. | 204 | 235 | | |
| M^c Pherson | Summers & ux. | 210 | | | |
| M^c Farlane | Finchley | 210 | 238 | | |
| Marteau | Mondelet | 211 | | | |
| Mathe | Pinçonneault | 214 | | | |
| Martigny | Choquet | 215 | | | |
| Monjeon. Avt. | Requete | 220 | | | |
| M^c Kenzie | Moffat, Ex^tr | 226 | 238 | | |
| Mathieu | Plucknet & al | 237 | | | |

## N. O.

| | | | |
|---|---|---|---|
| Nolan. | Gebert. & E cont. | 153 | |
| Ogden. | Gray. | 52 | 183 |
| Ogden. | Hart & al^l. | 144 | 171 |

Pagé. — — — & Nicholson — 13 17 153 185
Potts. — — — — & Burton & J. J 56
Perrault. — — & Godain. — — 67
Plessis — — — & Pegeon & — 75
Piché & ux. — & Bourré. — — 79 124 156 238
Patenaude & ux — & Marille. — — 91 126
Perrault. — — & Fraser & Ewt. 100 154
Piccard. — — & Hetier & al' — 107
Pacquin. — — & Proulx & al' 123
Papineau. — — & Papineau & al 125
Poissan & al'. — & Bertrand — 133 201
Perrault. — — & Bistodeau — 135 154
Pothier. — — & Foucher & al 154 188
Potts. — — — — & Burton & al'. 167 185
Page. — — — — — & Nutt. — — — 185
Prince. — — — & Ferguson. — — 203
Piedalue — — — & Cartier. — — 211
Piché & ux. — & Marraigne & al 238

Rex. — — — & Empey. — 22
Robertson & Co. & Tunstall. — 28 35
Richardson & Barber. — — 40 89
Rolland. — & Pothier. — — 45 69 84 88
Rouville — & Gaucher. — 58 93
Rex. — — — & Holt — — — 77
Robertson & Co & Gamelin — 89 124
Read. — — & Foley. — — 90
Rex. — — — — & Wallace. — — 103 104 185
Rolland — & Pothier. — — 120 148
Rouville — & Saurel. — — 125
Reynolds — & Dickie & al — 131
Rouville. — — & Dame. — — — 159 208 236
Ross & al'. — & Williams & ors — 167 203 236
Reid. — — — & Phonix Co — 173
Reiter. — — & May & al'. — 177 235
Roux. — — & Trottier & al 185
Rex. — — — & Derick. — — 187
Rouville — & Hamel. — — 208 236
Rouville — & Deshautels 208 236

## S

| | | | | | |
|---|---|---|---|---|---|
| Shuter | Thayer & opp^ts | 24 | | | |
| Santuaire | Consigny | 32 | 77 | | |
| Sawyer | Belleray | 69 | | | |
| Sutherland | Stem & al | 73 | 135 | 183 | |
| Seaver | Kendal | 80 | 124 | | |
| Spragg | Porlier | 91 | | | |
| Stayner | Smith | 107 | 125 | 137 | 154 |
| Siccard & ux | Whiteford | 115 | 154 | | |
| Senecal | Raymond | 130 | 182 | | |
| Seguin | Fleurimont | 138 | | | |
| St Blin | Forrest | 153 | 233 | | |
| Smith | Porlier | 189 | | | |
| Scott | Phœnix Co | 222 | | | |

## T.

| | | | | | |
|---|---|---|---|---|---|
| Texier | Sarrault | 16 | 19 | 90 | |
| Tachereau | Pion | 32 | 88 | | |
| Turgeon | Lacroix | 64 | 189 | | |
| Tierney | Phœnix S. Boat | 107 | 116 | 186 | |
| Toupin | Carmel & Ecout. | 128 | 183 | | |
| Taylor | Doucet & al opt | 132 | 144 | | |
| Turgeon | Achin. & opp^t | 139 | 207 | 234 | |
| Tetu & ux | Masse. & al. | 170 | 234 | | |
| Terrien | Perrault | 215 | | | |
| Thibaudeau | Martin | 220 | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Vigé & ux. | Pasteur. | 94 | 123 | Williams | Ross. & Ross ofs. | 11 | 13 | |
| | | | | Warwick. | Clarke. | 21 | | |
| | | | | Wagner. | Chevallier. | 27 | | |
| | | | | Warwick & al | Millichaps | 41 | 75 | |
| | | | | Woolrich. | Malhiot | 55 | 76 | 87 123 |
| | | | | Warwick & al | Raymond | 68 | 134 | |
| | | | | Woolrich. | Porlier. | 81 | . | |
| | | | | Whitford | Crevier. | 90 | 126 | |
| | | | | Wright & al. | McMillan | 134 | | |
| | | | | Watson. | Yule. | 134 | | |
| | | | | Ware & al' | Adams. | 137 | | |
| | | | | Whiteford | Filiatreau | 138 | | |
| | | | | Ward. | Carmel. | 142 | 182 | |
| | | | | Warwick & C. | Welson & ofs. | 176 | 184 | |
| | | | | Wagner. | Chauvette | 178 | 185 | |
| | | | | White. | Metzler. | 194 | | |
| | | | | Ware & al' | Adams. | 199 | | |
| | | | | Watson. | Heath. | 199 | 237 | |
| | | | | Wragg | Dwight. | 201 | 237 | |
| | | | | Wright. | Eisenhart | 204 | | |
| | | | | Wright | | | | |

# February Term. 1824.

## Monday 2.d Febry.

Present.
Justices Reid & Foucher. —

No 1551
Williams
vs
Ross & al
&
Ross. opt

Mondelet for Oppost. moved for Judgt. on Opposition granting main-levée w.t Costs.
Boston for Plff. agrees that main-levée be granted, but that opposants ought to pay Costs

No 2146
Martigny
vs
Choquet

Mr Gugy's motion for Plff. that a pleading filed by the Defendr. titled, "repliques aux "reponses aux Exceptions du Defend.r" be rejected and taken from the files as irregular and superfluous

# Tuesday 3d February 1824.

## Present

## Justices Reid, Foucher & Pyke.

No 245
Garrish
n
Douglass
&
Smith oppt

On rule to shew Cause why the opposition should not be dismissed as opposte has not complied with the order of Court.—

Boston for Oppost. the oppost. having changed her residence could not be found to serve rule on her. & the affidavit now produced shews facts—

No 441
Barlow
n
Archambault
&
Archambault
oppe

Boston for Pliff— The opposition is without proof—

Rollin for Oppost. submits the Case.

No 93.
Aylwin
&
Cuvillier
&
M. C. Perrault
oppe

On opposants motion for delay to fyle two exhibits till this day—

Rollard for Pliff, no delay can be allowed— the moyens d'oppos. were filed only 31st ultd after a months notice to do so— these moyens were filed too late & moves to reject them—

Bedard for oppost— The notice he recd for filing his moyens d'oppn was irregular, having been given for 3 days whereas by rules of practice the Oppost is entitled to 20 days for filing his moyens— they were filed on 2. inst. before the Pliff made his motion to reject them.— Offers now the two exhibits to be filed— & offers an affidavit to shew reasons why they could not be sooner procured—

No 1592
Gosselin v Monjeau & al. — Mr donnell for Defendt Chas Monjeau moves to be allowed to fyle certain papers which had been omitted to be fyled wt Plea

Rollin for Pliff - the application to fyle papers on which the plea is founded cannot be now granted after issue joined and an order for enquête. —

Charbonneau v Frs Ayet & Malo — On trial before sp. Jury in action for defamation. —

Verdict for Pliff 1/ damages & Costs.

No 2110
Hunter v Donegany — Pliff's motion for a Jury rejected as made too late —

Williams v Ross & al' & Ross - oppt — Main-levée granted to the Opposant on his Opposition, and Defendts condemned in Costs. —

Pagé - v Nicholson — Gugy for Defendt stated that on an appeal from an Interlocutory order of this Court, the same had been revised with Costs to the Defendt the appellant, and now moved that all further proceeds in the Cause should be staid until the Plaintiff should have paid the said Costs, taxed at £33. — as # taxed bill —

Rossiter for Pliff opposed the motion, and contended that neither according to law, nor the practice of the Court was the defendt entitled thereto, but ought to be left to enforce the Judgt of the Court of appeals in the regular course —

# Wednesday 4th Febry. 1824.

## Present

No. 299
Donegany
Pickle Jr

Case submitted.—

Hunters
v.
Townsend
&
McConnel cpt

On opposition a fin d'annuller.—

Morrough for Oppost. claims 2 lots of land seized as to first lot, evidence is very clear— as to 2d. the evidence not so positive— owing to a defficient description of the lot, but it is evident the lot in question is meant, and the possession of Oppt. for 10 years makes this evident—

Boston for Pltffs. Ph. Wright sold the 2 lots to Defdr. in 15 March 1804— Defendt. gave a bond to one Cameron for £400, or to make a title to Cameron of the lands— Some time after Cameron took poss. of the lands, and transferrs his right in bond to Oppost— who obtains a title from Wright of the same lots, altho' Wright had already sold the lots to Defendt— As to one of lots, there is no evidence in favor of Oppost— The Oppost. claims under prescription of ten years— but his title is insufft— & clandestine— Resp.— v. Clandestinité. p.— the conveyance here is made without any participation of Defendt. who was the real proprietor—

Morrough for Oppost— Before Pltff obtained Judgt— Oppost had obtained a right in the land in 1812—

No. 783
Hotchkiss
v.
Raymond &c

action for damages for loss of goods given to Defdts to be carried—

Rolland for Defendt— There is no liability on Defdt

Defendts — There are two Counts in the declarn — 1. for Contract to carry goods from Montreal to Laprairie — The evidence to support this, is that the goods were safely carried, but Pltff were not ready to receive the goods at Laprairie — the consequence was that the goods were put in a shed qt. Defdts had there as a temporary security for such goods as were not claimed — The shed was broken open and the goods stolen in the night — The Defendts never undertook to store the goods, no charge of this kind stated — and the storage made must be at the risk of Pltff The 2d Count is founded on an undertaking of the Defendants to pay the goods lost — The evidence on this head is insufficient — the answers of Mr Jeremie, and Mr Goodsell, cannot bind the Defendts who have a very small share in the Concern —

Mr Rossiter for Pltffs — The goods were never delivered by the Defendants to the Pltff as they were bound, and whether the goods were kept in a hangard or elsewhere is very immaterial to Pltff who are entitled to the delivery — But Defdts delivered the property to another person who carried it to St Johns, it was brought back and again put into the charge of Defendts —

see. Poth. Charte Partie No 40. — 2 Esp. Rep. 693. Wardell. v. Mowilly &c
Hyde. vs The Trent & Mersey Navign Co — 5 T. Rep. 389. —

No 757

Bourassa
v.
Brosseau
&
Lefort & al
oppr

On rule obtained by the Pltff on Opposts to shew Cause why parties should not be heard again on the Opposition —

Rolland for Pltffs — The Interlocr given in this Case ~~was~~ ordering a partage of the property has not been followed up by the Opposts and therefore Pltff is entitled to his Judge for the sale of one undivided half of the property seized — 1 Pigeau. p. 728. 9 — The

The Judgt. to be given in a case of this kind is in conformity to what Pltff asks, and to what is stated here by Pegram—

Sewell for Oppost— The Pltff cannot obtain this Judgt. as the Judgt. by the Court has been final & must be executed— this rule would be setting aside that Judgt— The Pltff might have proceeded to execute the Judgt. — the Pltff is equally in default with Oppost—

—

No 2131
Texier
vs
Sarrault

Hearing on Law.
action on deed of sale—
Grece for Pltff— The Defendt has set up a demand in damages against the liquidated debt of Pltff, to this the defendt has demurred—

Rollin for Defendt— is entitled to be admitted to prove the facts as they constitute a sufficient defence to the action—

—

No 399.
Connelly
vs
Finnland et al

On Defendts motion to quash process. —

Mr Grant for Pltff— The Declaration was served on the Defendt by the Sheriff

—

M. A. Magnan
vs
Throop
et
Lespailleur et al
Opposts —

On Report of Experts— on the opposition afin de conserver—

Peltier for Pltff— only question is what sum shall be allowed for the rent for view—

—

№1885
Bank of Canada
v.
Brown —

action on protested note —
Grant for Defendt — no sufficient notice of protest of non payt within 6 days —

Gale for Pltff note 3d June, payable 60 days after date — a protest was legally made, and 10 days after making the protest is allowed for giving notice to the indorser — Protest on 8th August — notice to Defendt on 15th —

Grant for defendt contended that the notice was not given in time as it must be given within 10 days after the note becomes due, and not after it is protested here the note became due on 3d augt — and the notice ought to have been given to the Defendant as Indorser before the 13th — whereas it was given only on 15th Augt — refers to Prov. Stat. 34. Geo. 3. ch. 2 §. 4 —

—

№1713
Bouc
v.
Bouc — } Judgt

№1520.
Abbot —
v.
Tyler
&
Tyler opp. } Judgt — on Rule —

№2146
Martigny
v.
Choquet. — } Plaintiffs motion rejected. —

№1891
Page
v.
Nicholson } Defendants motion rejected. —

Armour et al
v.
Brown — } Trial by Sp. Jury —
Verdict for Pltffs

# Thursday 5th Febry 1824.

Present.

Justices Reid Foucher & Pyke.

~~No 1668.~~
No 2110
Hunter
vs
Donegany

On rule obtained by Pltff to setting aside the order of the Court rejecting Pltff's mo. to have a trial by Jury.

Sewell for Pltff. The Pltff was unable to make his application for a Jury from a prior motion made by the defendt. and granted for staying proceedings until the Costs of a former action should be paid.

Fontaine
vs
Langevin

On trial before Special Jury, for Seduction.
The Pltff having failed in his proof a Juror was withdrawn.

No 399
Connolly
vs
Finnegland
& al.

The Defendants had been attached on a writ of Cap. ad respondm and had been served with a notice under the rule of practice that a declaration would be filed at the office of the Prothy within five days. this was not done, but some weeks afterwards, and two days before the commencement of the Term a copy of the declaration was served personally on the Defendants.

Boston for Defendts moved to quash the process, as the declaration had not been filed at Office according to notice, nor served with the writ according to the practice before the late rule.

But the Court considered service sufficient.

N°2170.
Dunlop et al
vs
Russel et al

The writ of Summons was returnable on the 20th October last, when a default was entered agt the defendants.— On the first day of the present Term the default was taken off and appearance entered by Counsel who moved that Pltffs not being resident within the Province should give security for Costs. To this it was objected that the application came too late not being within the four days from the entry of the action — But the Court were of opinion that the four days must be days in Court and not in vacation — when the parties could not appear nor apply for such security.— and granted the motion.—

N°2131.
Tessier.
&
Sarault.

The Court rejected the first and third grounds of defence set up by Defendr and admitted the parties to proof on the Second.—

Gagnon
&
Pavan
&
Leclerc
Opt

In this case the Sheriff returned, that he had taken in execution the lands & tenements of the Defendant, which he had advertised for sale on the 9th day of December last, but that the sale thereof had has been prevented in consequence of an opposition made by the Opposant afin de distraire, which opposition had been given in on the 24th Novr last.—

The Pltff now moved that the said opposition should be rejected and dismissed, inasmuchas the same has not been made and signified to the Sheriff 15 days before the day appointed for the sale of the property seized as required by law, and further

becaus

because no sufficient affidavit accompanied the said Opposition as required by the rules of practice —

Buchanan for oppos[t] stated, that Prov. St. 41 Geo. 3. ch. 4 sec. 11. in the latter part requires only that the Oppn be deposited with the Sheriff 15 days before the Sale, wh he considers to be what is requisite, although the first part of the section would seem to require that such oppn shd be made 15 days previous to the day of the Sale — That the affidavit made w[h] the oppos[n] is sufficient, although more is requisite, as the rules of practice do not regard oppositions afin de distraire. —

# Monday 9th February 1824.

## Present

## Justices Reid Foucher & Pyke.

No. 41.
Duplessis
v.
Wilson

Action agt. Defendt. to compel him to fulfill certain contract respecting lease of a house —

Rossiter for Pltff. process of Ca. was sued out agt. Defdt. to hold him to bail to answer Pltffs. action — mo. to reject depo. of Work

Boston for Defdt. action vexatious — Defdt. owes Pltff nothing — The Defendt. bound to give no security beyond what he had already given — The copy of lease is not authentic, being merely a translation — & not a copy of the original —

McRossiter for Pltff. moves that depositions respecting what was said by Defendt. at time of passing the lease be rejected as irrelevant and inadmissible —

No. 16
Warwick
v.
Clarke

Action for work & labor —

Henshaw for Defdt. The Pltffs agreed to cast metal according to certain models at £6 5. each — Defendt. sold the model to Huntoon, who undertook to pay Pltffs. what remained due to them. & discharged Defendts. Pltffs. agreed to this — The only sum Pltffs. can at all events claim is £12.10 — & if they are condemned to pay this the model ought to be delivd. up to them immediately. —

Boston for Pltff — The Pltffs. had no action agt. Mr. Huntoon, but agt. Defendt. only, to whom the Stores were delivered and wh. whom the Pltffs. made their Contract — The evidence of Huntoon cannot be received as sufficient

No. 751
The King
v.
J. Empey

Action petitoire —
Ross for Pliff moves for Judgt —

No. 2053.
Ellice
v.
Dupuis

Hearing on Law

Boston for Defendt. This a Petitory action — the Defendt. has pleaded among other things. first a demurrer. The Pliff does not shew a sufficient right of action — but Pliff does not shew his title sufficiently — The lands were granted to Pliff jointly with the heirs of his father, whereas Pliff sues alone — It is necessary in a case of this kind that all the proprietors should be pliffs — that Defendt. may be enabled to claim agt them — Even if Pliff were agent for the other heirs, they must be plaintiffs — but action is brot as well for himself as for the other heirs of the late Alex. Ellice, gt is irregular —

Gergy for Pliff The title here is to the Pliff for himself and in trust for the other heirs of the late McEllice, this gives a right of action to Pliff alone — in the capacity in which the grant was made. — this action has been brought, which gives him a right agt. the Defendt — and all others

The Defendt — has also pleaded a plea of prescription but insufficiently — in such case a party must allege a title translatif of property — Tit. 6. Cout. Paris — art. 114 — The dates are insufficiently stated, as to the original title of Mr Destimonville, not positively stated — the acquisition made by Defdt from Destimonville is not sufficiently set out to be a right of property — The Defendt. claim is contradicted by matter of record — we cannot presume the Kings grant to be irregular — or made to divert another proprietor — but if it were the party must come agt. it by monstrans de droit, or by Scire facias — 2. Bl. Com. 344. — 3 Bl. Com. 260 — 4. Cock. Int. 116 —

2. Bl. 346

Jurk. 215. 219.



where no title set out by the subject, the right must be in the King —

Lovel. Instit. Cont. p. 243 —

2 Ev. Poth. p. 56. Boston for Defendt. The declaration states that the grant was made to Pltff to himself & in trust for other heirs of late Mr Ellice — this gives no right of action to Pltff as Trustee — but action must be in the name of all the heirs — 1 Pig. 77. Action is not even brought by Pltff as Trustee, but in his own name alone, & the conclusions are that the lands be adjudged to him —

That the plea of prescription is sufficiently set out, the Defendt will be enabled to prove the existence of Letters Patent from His Majesty of a prior date to that of Pltff, under gt Defendt is in possession, and is entitled to retain that possession agt the subsequent Letters Patent of Pltff —

~~No 2051~~

No 2089

McConnell 20 chests Tea & Donegany claimt

McRolland for claimt — contends that the Informn is informal and insufficient — the only allegation in the Informn is that Informt seized in the Town of Montreal in June or July last 20 chests of tea — this is not enough either to enable Claimt to claim or to found a Judgt of Condemnation — It ought to be stated the particular time and place where the seizure was made —

Ross for Informt states that the Informn is sufficient particular description of the articles seized not required — then the usual forms have been followed —

No 2051

Ellice & Dupuis

Hearing on law

Boston for Defdt — action en voye de fait —

In this case it is not stated the Pltff entered upon or had the possn Defendt has pleaded prescription — & Pltff was bound to have

brot

this action in the year & day – ordce 1667. tit. 18 –
Repn. vo voye de fait –
Gugy for Pleff – This is action in factum – qt. even is granted to a farmer +
Poth. Pos. 286. 7. No. 100 –
Denis. vo – voye de fait +
Daveau – p. 196 –

No. 517
Dupuis
Perrault
Ellice Interv.

On Intervention. –
Hearing on law –
Boston for Pleff – has demurred to the Intervention and has also pleaded, litis pendence – to shew which Pleff shews the two other actions already in qt. same damages are claimed as in present Intervention – There is no allegation that any trees were cut down by Pleff, or by Perrault, to entitle Interv. party to claim the money in the note here sued for –
Gugy for Interv. party – The Defendr. has obtained value out of Intervening party's property, but cannot be allowed to benefit by it –
Dec. Droit – Intervention – where party has any interest in a suit, he has a right to intervene +

No. 1973.
Guernier
Campeau

action for value of potash qt. Defdr. undertook to deliver –
Roi for Defdr. – The obligation founded on a Judgt. obt. by Pleff agt. Defendr. – and is for more than double the amount of sd. Jugt. – this is an unjust consideration & not valid, being evidently for more than Pleff's just debt –

Shuter
Thayer
Opposts.

The Court gave its opinion as to the right of Mortgage claimed by the pleff from the date of the Compromis –

№ 354
Mathews
vs
Nicolon

action of separation —

Grant for Defendt — The action is not founded all the provocation proceeded from the Plaintiff —

№ 393
Hebert.
vs
Thomas

On motion to quash writ of Capias. —

Gugy for Dfdt — The affidavit does not allege that Defendt was about to leave the Province such as its limits were under Ordre of 1785 — The law is penal, and ought not to be extended beyond the letter — The subsequent law does not repeal this one — It is not here alledged that the Defendt was about to leave the Provinces of Upper and Lower Canada which were comprehended within the Province of Quebec in 1785 —

This law must be considered by the division of this Province to have become virtually repealed,

By the Stat. 34. Geo. certain Ordres are repealed, but this Ordre of 1785 is not repealed, or altered — & it must therefore subsist as it originally was made, or not at all

That the Plaintiff's action being founded on a Tort and not in a Commercial Case, the Plff was not entitled to have arrested the Defendant — as this remedy was given only before Judgment as appears from the wording of the Ordre of 1785. unless where party obstructs the course of Justice by opposing the seizure of his effects, or in conveying away his property —

Mondelet for Plff — The ordre of 1785 is still in force in this Province — as are all the Ordres are not specially repealed — The laws &c were in force before division of the Province are continued & limited as to effect to the respective Provinces &c they were made — Subsequent Statute

recognize

this — particularly the Stat. respects the Army bills —
Stat. 33 Geo. 3. ch. 31. Sec. 33 — determines point

No 578. —
Gagnon
v
Bourassa
&
Leclerc. oppt

Opposition dismissed with Costs. as lodged too late with Sheriff —

No 947.
Vve Charron
Charron —
&
Quintal opp.

Judgt hom. report of Experts. +

No 357
Chauvette
&
Gravelle

Judgt on acct rendered by Deptn —

No 1657.
Bourassa
&
Brosseau
&
Lefort opp.

Interlocr —

No 125.
Davies
&
Ermatinger

Objection to the witnesses Burt & wife maintained —

No 411
McLeish
&
Bethune
&
Creditors

Interlocutor —

No 2
Bourdon
&
Sarrault
&
Contra

Judgt for Plff + Incidental demand dismd —

| | |
|---|---|
| No 208. Dupuis & al. v. Roi. | Judgt for Pltffs. |
| No 1806. Wagner v. Chevallier | Judgt for Pltff. – rescinding Deed of Exchange |
| No 783. Keyes & al v. Raimond & al | Judgt for Pltffs |
| No 380 McKillip v. Bourassa & Pinconneau T. S. | Judgt discharging T. Saisi. – |
| No 2078 Gaudert & Scott – | Action dismissed |
| No 451 Martigny & Messier – | Action dismissed |
| No 623 Manchester & Labelle – | Interlov |
| No 2124 Fournier & Lemai – | Judgt & disallows evidence as to usury pleaded |
| No 2126 Fournier & Lemai | Judgt – similar case. – |

# Tuesday 10th Febry. 1824.

## Present.

## Justices Reid Foucher & Pyke.

No 1213
Robertson Masson & Co
v
Tunstall & al

On Defendts. mo. to quash process —
Rossiter for Defendt — There is a variance between Declaration & writ — Pltff. stile themselves to be two persons —
over —

No. 127
Galusha
v
Tecmen

On action for Promissory note —
Beaubien for Defendt. — The note made in the State of New York where parties resided at time — The note is not mercantile — is proved only by one witness — The Defendant has produced an authentic document to shew he had been discharged from this debt in the State of New York in consequence of the law of that state — Prev. de la Jannes. Sec. 14 ap. 2. p. 70. The Pltff cannot have greater right here than he would have had in the place where the note was made

Henshaw for Pltff. the Cession made by Defendt. is not an authentic paper —

No. 1933.
Barron
v
Watson
&
E contra

action for breach of Contract —
papers wanting.

No 1349.

Leroux. — & Trothier & Langevin & Cousineau et Gart.

On motion of Langevin to reject the inscription en faux made by Cousineau, as no moyens have been filed.

Bedard for Cousineau, states his having filed the Inscription en faux & served copy, & produces affidavit to this effect, and another copy of the moyens de faux.

No 1675

Barsalone & Orkney & Gray opp.

On Rule to shew Cause why Report of Exp. shd not be homologated —

Gale for Oppost. demands hom. of the report, and that the monies laid out in rebuilding the house be ordered to be paid over to Oppost — The enquiries of the Exp. have been directed to four points — That as the value of the house and lot before the improvements is estimated £1559 — and as they sold at Sheriff's sale only for £1375 — there should be a diminution of the improvements in the same proportion as the house sold less than the value —

Rolland for Pliff — objects to report and moves that it be rejected — 1st Because the Experts have not complied with the Interlocutory reference — the nature & objects of improvement have not been detailed so as to determine whether such objects of improvement were allowable — That there must be a deduction in the estimation of improvements as well as in the value of the lot & house at Sale —

Gale in reply — The Experts have found that the house sold for so much more as the improvements amounted to and this is easily believed, as any person would pay much more for a finished house, than a house in ruin

Davies & Pickel Jr & Delorme oppt & Lusignan oppt

On question of law between opposts. Delorme, and Lusignan —

Beaubien for Delorme — claims privilege on monies for having built the house sold for Defd

for a sum of £380 - was settled between parties as balance Belanger sold on 2 April 1817. the house to Pickle Jr who undertook to pay Oppost - & pd him in part & now remains £137. 16. 9 a balance due, & by an act passed between them delay was given by Delorme to Pickle but without waiver of right or privilege on his part -

Roi for Lusignan &al - contends that Delorme has lost his privilege - the only question now before the Court is whether the facts stated in the answer to the claim of Delorme vrt. Novation - shall be allowed to be proved, & whether such Novation can be considered to have taken place from the facts alledged - it being contended by Delorme that the novation is not sufficiently alledged - nor by what act committed - Contends that this was not necessary to state the particular act the novation was incurred, it being enough to alledge novation generally. & he may prove it out of the mouth of the appt Delorme -

Beaubien in answer - the facts contd. in the ~~opposition~~ answer of Lusignan are insufficient to admit him to proof thereof he states a Novation by different acts, but does not state by what acts - Novation is not to be presumed, it must be shewn by what what and in what manner incurred -

Hearing also on merits of opposition of Lusignans -

Obl. No. 75. Roi for opposts - contends that the opposants have a right of mortgage upon the property in question - but if Hypolite Lusignan has no right of Mortgage upon Bellanger's property but from the date of his ratification of the sale made in his name, still the Court may maintain the claim of the other Opposants, and dismiss that of Hypolite Lusignan -

Buchanan for Pickle - the Persons selling do not appear to sell in their own names, but as se portant fort pour

Hypolite

Hypolite Lusignan's — in this case the deed of sale was perfect only from the day of ratification — cite. Dec. Droit vs Ratification. Denizt vs Hypothèque. sec. 2. No 9 — Poth Hyp. Vol. 5. p. 429. 2 Bourg. p. 535 — Repn vs Ratification.

Rolland for Oppost contends that the opposition is founded that it is the act passed, and not the intention of the parties, which gives the mortgage — Poth. obl. No 55. there was an obligation here contracted, and the persons contracting gave all the rights of a purchase to the purchaser Bellanger — The persons selling here were really sellers, by undertaking absolutely for Polite Lusignan, the sale was perfect — and the purchaser promises to pay to these sellers — By this sale a debt became due and a mortgage created, and this mortgage was created upon all the property of the Debtor — It was not necessary to shew that Polite had any thing in the property to enforce the sale — At all events the other persons are entitled to claim the amount of the Debt, as they have conveyed an estate to the purchaser for which he became their Debtor —

No 245
Leroux & Huot }

Action agt Defend to restore to Pliff certain articles left in his possession in pledge for 14 dolls. lent Pliff

Bourret for Defendt — This action ought to have been instituted in the Inferior Court, the only question between the parties is as to the damages claimed by the pliff — the Pliff witnesses are not able to say that the effects to which they give a certain value, are the property of the Pliff, or the objects now in contest, — the defendt has proved by the neighbours the true value of these effects, qt does not amount to the sum of £10 Sts — & at all events therefore the Costs in the Cause ought to be limited to those allowed in the Infor Court —

Bleury for Pliff. contends that he has made sufficient proof of damages beyond the Jurisdiction of the Inferior Court, and in a case of this kind exemplary damages ought to be given —

No. 1668
Lewis. — Eissenhart

Action for damages for not restoring certain effects to Pliff

Rolland for Defendt. This is a second action for the same effects claimed by the Pliff by her Opposition in a case of McGillivray vs Wilcocke & Lewis. Oppost. There is no evidence in the Cause, except that of Wilcocke who is alone, and besides has an interest in the Cause —

Bleury for Pliff moves to reject the extract of letters filed. & for Judgt. on his demand as sufficiently proved —

No. 19
Santuaire — Consigny

Action for term of payt. on deed of Sale —

Grant for Defendt. The Pliff is not entitled to maintain this action — the money in question was to be paid to the minors of Pliff when they came of age, and upon Plaintiffs producing the discharge of Jn. Bte. Santuaire, qh. Pliff does not shew

No. 332
Tachereau — Pioue

On Report of Experts —

L. Vigé for Defendt. The Defendt. has authorised Pliffs. attorney to confess Judgt. on this report, qh. he submits —

No. 1669
Hart — Warwick & Stanley. Con

Action for value of articles given to Defendrs. to be kept and transported to Montreal —

Buchanan for Defendt. has pleaded in abatement that one Goodsell a joint proprietor of the Steamboat has not been joined — this is fatal to action — 1 Com. Cont. 327. — Poth. Soc. No. 96 — observs on Ordre. 1673 observes that solidité holds only

among

among merchts only in mercantile contracts — see also No. 103. Repre vo Societé. p. 333. — Dec Droit. Marchand — & Id. vo Commerce — Dig. lev. 5. tit. 1. last law. § 5. —

The contract here was between the Pliff & the whole Steam boat Company & the contract must be proved as described That one Sanford has no interest in the Steamboat —

That the Defendt took all necessary care of the goods which were lost by an act for qt Defds are not responsible The contract was besides altered by the consent of parties so as to liberate Defds from all responsibility — It was by Pliffs fault the goods were lost — And lastly Pliff has no interest in this action —

It appears in evidence that the doors of shed were generally left open — were locked up by Defds Lest — That goods were refused to be taken on board the boat as liable to seizure — Pliff told of this & directed to take charge of the goods — qt he agreed to — The goods were afterwards carried away from the Store by some persons unknown. while Pliff was absent from the goods —

Dec. Fer. vo Voiturier. — Instit. lev. 4. tit. 5 last par. — Jones on bailts — Carrier for hire responsible only for ordinary neglect — Godefroy. — to shew carriers bound only for ordinary Care —

That Pliff took these goods forcibly & with arms from the possession of another — he had no authority for doing so

Ross for Pliffs This case must be considered as Commercial.
27 Geo 3 - ch. 19. Every vessel must be registered in the Custom House by different
7 & 8 Wm 3. ch. 22 Statutes, in order to ascertain who are the proprietors, and no
26 Geo. 3. ch. 60. one can claim an interest in such vessel without a transfer
34 Geo. 3. ch. 68. to him & indorsed on the original Register — This applies here
3 & 4 Ed. 21. that Goodsell is no joint proprietor of the Boat in question
54 Geo. 3. ch. 171 Sec. 1. Exp. rules for giving Ev. on assumpt. ship owners — Thompson Rep. in Com. Pleas. Dual. v Manning & al. —

Buchanan. The Registry acts do not apply to vessel employed in the Inland Navigation — The Defendts. here are mere watermen — Possessn. of Ship is prima facie evidence of Ownership —

No. 596
Desaulles
Robichaud

action for Lods & Ventes —
Hearing on law

Rolland for excepn. that Pltff is not Seigneur of the whole Seigniory of St. Hyacinthe — & therefore cannot maintain the action —

No. 493
Gerrish
Wehr

action petitoire. —
Hearing on Law

Gregs of counsel for Defendt. Poth. Prop. 297 — action ought to be agt the person in possession, — Poss. No. 6 — 10 — shews different kinds of possn. No. 31. & 35-36 — The first Count in decla alledges a sale by Defdt. to Pltff — on same day a lease from Pltff to Defendt. Pos. No. 49. Defdt. is only the farmer of Pltff

Walker for Pltff, the Defendt. held originally under a lease but that being expired, he now retains the property animo domini — The plea of Demurrer is irregular, it alledges & refers to facts not in the declaration — There is a great number of pleas set up by Defendt. to all which the Pltff has demurred

Wednesday 11th Febv 1824.—

Present.—

Justices Reid & Foucher.—

№ 1213
Robertson Masson & Co
vs
Tunstall & al— } On motion to quash process
Rossiter for Defdt— 1st variance between writ & declaration — Robinson Masson & Co & in Declr Robertson Masson & Co— 2d the pltffs call themselves & Co— qr must mean some other person than the two named —

Bourré for Pltff— The variance ought to have been pleaded by plea — not admissible by motion — but there is no variance — The 2d objection is wholly frivolous —

№ 513
Heyes & al
vs
Weed } On defendr mo. to quash process
Mondelet for Defendr— The pltff & Defdt— are persons resident in the United States of America — they come into this Province & the Pltff sues out a Ca. on a Judgt. he had obtd against Defendt— in the State of Vermont where Defendt— is not liable to arrest for the debt— and as the parties are domiciliated in the State of Vermont the law of that Country ought to be applied here —

The Statuts personnels of Vermont ought to apply here 1 Jannes. Dec. 4. reple. 9.— as regulating the Contracts of the domicile of the parties and their execution.—

Introd. gen. d'Ordon. ch. 1. §1. № 8—

Jannes— the Statuts personnels regard the contractes to be had in the acts entered into between the parties 3. Dic.— pan. 11.

No. 12 Introd. à la Cout. d'Orleans. — No. 13 — change of ~~residence~~ domicile delivers from the effect of the laws of place of contract — No. 24 — Repre. vo. Statut. regulates the personal actions to be exercised. There is a loi d'instruction — & a loi de decision — first only to be fol[illegible] — Denost. vo. Statut. No. 6. 2de division des Statuts — No. 7 — 8 — 15. Repre. vo. Preuve — same principles are laid down Lacombe. vo. Statut — No. 3. 4. — Id. vo. Interets Memoire de Froland. Dissertations de Boullenois — Chassanie sur la Cout. de Bourgogne — 2. Bur. Rep. Robertson & Bland — 5 East. 124 — 1 Do. Smith. v. Buchanan Cooke's Bank Law. 347. ~~Ballantyne v. Guillay~~ Ballingalls vs Gloster. 3 East. 481. Comyns Usury. p. 8. — Prelexiones — Duberus — Tot. liv. 1. tit. 3. No. 7 — & No. 3 —

O Sullivan for Pliff. The Pliff acquiesces in all the authorities cited as to the rule of decision of the Contract — The present proceeding has nothing to do with the decision or effect of the Contract — but only the course of legal proceeding before the Court —

Mr. Mondelet — in reply — The contraintes in Vermont cannot cumulé, and the Defendts. property is now under seizure in Vermont for the payt. of this debt —

No. 148
Armour & al
v.
Brown —

On Defendt. mo. for a new Trial —

Beaubien for Defendt. It is here essential to know what are the laws of Canada relative to the civil rights of parties — Dupuis. Lettres de Change Ch. 7. p. 53. 54. 55 —

No. 1670
Chapman
Bridge

On defendts mo. for extension of rule for return of Com. Rogn on affidavit filed —
Gugy for Pliff —

Millar & al
Diganard
& Gaudet oppt

On opposition afin de conserver for house rent.
Gugy for Pliff — There issued a Saisie-Gagerie in this Cause under gt the effects were seized under a droit de suite over the effects —
That Diganard in this Cause was a Competent witness in the contest between Pliff & oppost he was an indifferent witness — That subsequent to the seizure on 10. May 1823 were sold by Diganard to one Fizette — This sale was illegal — after seizure — & without deplacement. — 1 Bourg. p. 124. ch. 6. —

1 Bourg. 124 ch. 6

Blaury for Oppost — The oppt rented a house to one Fisette of Quebec — he enters in possn and the Defendt was merely the agent & Clerk of Fizette on 7. May the Pliffs seized the effects of Fizette as belongs to Diganard — there is no proof that the effects belonged to Diganard — & were never seized on 7. May — Diganard is not a competent witness because he is interested that his debt should be paid with effects of Fizette — There was no seizure on the 7. May of these effects — Ball the bailiff a Wit says he never saw the effects — & therefore could not seize them —

No. 2001
Adams
& Gamelin

action promy Note — hears on Exceps —
Cherrier for Pliff — The Defendt has pleaded a plea of compensation without stating on what founded —

Bleury for Defend^t. The Defend^t. shews that he had a demand ag^t the person from whom the Pliff rec^d. the note — & that the note was p^d. when transferred to Pliff, as he will know —

No 1154
Dewitt
Pierce & al

On defend^ts mo. to quash process —
Henshaw for Pliff has moved to discharge this motion as founded upon irregular grounds, viz: that the domicile of the party is not at Argenteuil, but at Montreal —
Walker for Def^t. objection made by him is to the sufficiency of service, & that Defend^t had no domicile where the process was served, y^t is a point regarding regularity of process and not the jurisdiction of the Court —
Henshaw — Def^ts mo. will not be admitted in face of the return of the Sheriff, without some affidavit

No. 2146
Martigny
Choquet.

Hearing on law — action for Lods & Ventes —
Cherrier for Defend^t — pleads chose jugée
Pandecta Inst. liv. 44. tit. 2. de l'Excep. de chose jugée — to shew what the excep. applies. liv. 75, sur l'Edit — p. 554. 556. — Poth. ob. A^o chose jugée —
That the present action is for same object as the first same demand, title, & parties — cite Poth^r — as to what is passé en force de chose jugée — No. 39 — as to new facts come to knowledge of party since first action — No 50 — as to any difference in the demand — yet excep. applies — 6. Cochin. p. 57 - 59 — —

The

The demand here made is the same as the first — The acts of donation may in some instances be considered as a sale, so held by the Court in the Case of Martigny. vs Beauchamps — here the same demand is made as first under pretence that it is a simulation, but that simulation cannot be the ground of a new demand upon the same deed — The Pliff should have made all the demands he he had to make upon the deed in question, when he instituted his first action. — The fraud here is generally alledged, no specific facts shewn, to presume a different contract from that stated between the parties — Repn. vo Simulation p. 324. — Specific facts must be alledged to maintain an action agt. any contract apparently good and valid in law

3 Empt. 224. §. 29.

Mr Gregg for Pliff — the point before the Court is whether the same question is renewed. Poth. Ob. p. 384 2 vol. 12e three Circumstances should concur to make chose jugée — there must be the eadem causa petendi — qt. Defendt. did not notice in his argument — the original action here was a demand on a donation apparently between strangers, for lods & Ventes — the question turned out to have been decided on a donation between father & son — but here the demand is on a fraudulent transaction, charging this deed to be no donation but a real Sale under concealed deed so as to deceive the Seignior — If the law said that under no circumstances any deed between father & son do not carry lods & Ventes the exception here pleaded wd be right — but there are acts between such relations qt. do carry lods & Ventes — Repn. vo Profits. 14. vol. p. 17. Poth. Fief. Des accommodemens des familles par pere & mere entre leurs Enfans — p. 256. — Freedhom. 257. 5 Fremville. p. 740 —

It has been argued that first action was on a deed which carried on it all the rights of a donation from father to son

That it is not necessary in an action of this kind nor is it possible to alledge all the facts of fraud which may have attended the execution of an act, it is enough to say that it was made fraudulently Traquean Glosc. 14. No 58. — fraud is to be discovered by every possible indicia — Repr. vo Indices — 1 Pizan 656 —

Cherrier in reply — Facts to shew fraud must be alledged without which the Defendr. cannot be safe to answer —

No 1040
Richardson
&
Barber —

On mo. to quash process from irregular service
Ross — for Defendr. service of process at Russeltown, when Defendr. never had any domicile —

Gregg for Pltff — This nullity, if any, has been cured by the Defendant's appearance — Jacob. Law Dec. Tit. appearance — The motion made too late — after taking off default — Reg. pra. 44.

Ross for Defdr. Every Defdr. allowed to make this objection & his appearance must be made to make it. — The rule says the mo. must be made on the return day — but this must be the day of his appearance —

No 1625
Lamb & ux
vs
Williams & ux

On Report of Experts — Sewell for Pltffs —

2. Gr. Cont. art. 18. p. 1501. No 13 — Judges may determine according to what is reasonable notwithstands the opinion of Experts — Denizt. vo Expert. — The ~~Exp.~~ Wits. say that from £20 to 30 ℔ an. was enough for maintenance of Children — the rent of house to be about £200 — ℔ an — The Experts say that as to eldest girl £390 shd be allowed for her maintenance — Andrew £390 Margaret £400 — the rent of houses has also been estimated too low —

Grant for Defendr. The Experts were the proper persons to settle this point — & their opinion must prevail —

No 1729
Cartier
v
Piccard

action on deed of sale — & for rent & pension. —
Reference to Experts — & report. — order for
new reference & 2d report —

Lacroix for Defendt — there is a preliminary question to be determined — that Defendt has a right to be subrogated in the rights of the Pliff, so as not to pay more to Pliff, than he paid to the person who made the transfer to him — this being a droit litigieux —

2. p. 7 Pars 1st

Denizt. vo Transport — Poth. Vente. No. 596. 597. —

Bourré for Pliff — This question should have been previously determined, and was waived by Defdt — but there is no proof of the value which Pliff pd. for the transport here — but this is not a droit litigieux —

No 2140
Alger
v
Ransom

Pliff moves for Judgt —
no person appd for Defdt —

No 1596
Warwick sal
v
Millichap

action of Indeb. assumpt — for goods sold &c
Gugy for Pliff — Plea. non assumpt — except as to
Two — refers to depositions of Witnesses, particularly
Mellter & Munn who speak to the quality & value of the work and materials delivd — The only question arising in this case arises out of the evidence set up by Defdt that there were specific prices agreed on for some of the articles, which Defdt ought to have pleaded, before he can be allowed to prove it. — Under a plea of general issue the Defendt would be allowed to shew any deffect in the article delivered — 1 Bos. 1 Puth. 354. Cook. v Munston — 1 Wilson. 117. —

Mr —

Mr Boston for Defendt — In this case no credit has been given to the Defendt according to the rules of practice on a general indeb. assumpsit — whereas Defendt shews by receipts given by the Pliffs payments made to Pliffs of £130 — The articles were overcharged — & different statements of acct delivd in by Pliffs — The principal Wr is Mr Jones, who from his intimate knowledge of the Circumstances is able to give a clear and positive evidence The sum Pliff are entitled to recover is £80 9. 2 as per statement — That all the costs from the time of the tender ought to be paid by Pliffs —

No 393
Hebert
&
Thomas } W Defendants motion dismissed —
see Stat. 31 Geo. 3 ch. 31. sec. 33 —

# Thursday 12th Febry. 1824

## Present

### Justices Reid & Foucher.

No 1105
Languedoc
Jn Bte Palin

On Pliffs motion to discontinue this action without payt. of Costs.

Quesnel for Defendt. a Stat. was made for relief of Defdt. to maintain him & others in their possessions on certain Conditions — the last clause in the act is what interests the parties here, as to the Consent of the Censitaires, the act is not in force until such consent is filed on record — In Septr '23 — the Defendt. had a notice that Pliff had accepted a title accords to sd. Act. — on 18 Septr. the bills of Costs of the parties were taxed with consent of Defendt. — on the supposition that all these matters were settled & that the money voted to defray the Costs was sufficient to pay all the parties —

No 146.
Allison
Mr Lean
Mr Vey —

Draw Judgt. —

Longueuil
Titus. —
Henshaw

On opposition afin de conserver —

Henshaw for Oppt. — The Pliff has filed an Opposition for the Capital of the Rente, which cannot be allowed, and therefore the Opposts. must be paid 1 Bouj. 322.

Mr Sewell for Pliff — The Pliff has filed an oppn. for certain rights — question now raised is on the opposition of Mr Henshaw who claims under a Judgt. and obligation — the Pliff acts

up

up a prior mortgage and a privilege on the land for her claim — on a sale and concession in 1810 of a lot of land, and on qh the Pliff obtained the Indt under which the sale here was made & for qt Indt her claim is preferable to the oppost — The lot of land at St Johns sold, was a continuation of the lot sold to Defendt but of the grant or sale of the continuation the Pliff has no title to produce, but her mortgage will attach upon it by virtue of the deed of 1810, without any title of such concession, as it has been sold as the property of the Defendt — as to sum of £4. 3. 4 Pliff waives her right to it — The great question here is whether the Pliff would make her oppn afin de conserver for the Capital of the Rente Constituée, which cannot will be doubted, & if this be allowed the whole monies levied by the Sheriff must be pd over to Pliff wh she claims —

N. Denizt. 4e Vol p. 55. No 19 —

No 121
Lacroix
Labelle
&
Labelle oppr

On opposition afin de ~~conserver~~ distraire —

Lacroix for the opposts for rente & pension viagere contends that as the land is mortgaged for this rente there can be no division of the property in favor of the minors, as the claim of the opposts affects the whole —

No 314
Labelle & ux
or
Labelle
&
Lapierre oppr

On opposition afin de charge —

Lacroix for Pliff the Defendt after he acquired the land imposed on Pliff another rente in favor of the opposants for which the opposants claim that the land be sold à la charge unless the opposant gives security for the Pliff rent —

No. 1621
Chaurette et al
v
Cholette et al

Action de compte et partage –
Hearing on law
Rolland for Pliff –

Peltier for Defendt. The father of Parties gave his property to three of his children on condition of their paying a certain sum to their brothers & Sisters for their legitime. The Pliffs. cannot come agt this division of the property, as they recd from their father their legitime and confirmed the donation their father had made to Defendants – The receipt given by Pliffs to this effect not being sufficient the Defendants moved to examine the Pliffs on faits & art. touching their ratification of the Donation –

Rolland for Pliff. The renonciation here set up cannot be available as it would be a renunciation to a Succession future. – The only thing the Defendt could set up here would be a garantie on the part of the Pliffs to maintain the Defendts in possn of the property given – but there is no privity of contract or obligation between the Pliffs and Defendants, no value recd. from Defdts by Pliffs –

No. 475
Rolland
v
Pothier

On objection made by Defendt to testimony of Benaiah Gibb, adduced as a witness by Pliff to prove the simulation of a deed executed between the Defendt and Mr Gibb –

Bedard for Defendt – ~~The~~ a party to an act cannot be admitted to destroy the act he has passed – If Gibb were a party he could not be examined on faits & articles, much less can he be examined as a witness in the Cause – arrêts de Louet. lettre T. No. 7. A No. 5 –

Rolland in answer – Every man is a legal witness unless there be some law to exclude him – here there is no law to exclude one of the parties to the act to be a witness to shew the simulation. Danty ch. 7 – The Pliff here is a third person and more readily admitted to make proof of the fraud – here Gibb is not a witness attesting the authenticity of the act, but he is a party having full knowledge of all the facts – he is not interested – and although he is required to prove a simulation to gt he was a party, yet if he makes no objection, as touching his character or conscience, he ought to be held to answer – It is no reproche to the Wt. that he was a party to the act – Danty. ch. 11. additions No. 5. cites case of fraude in a Retract – on action by a Seignior, the party to the act is a good witness – Fer. Gr. Cout. art. 136. glose. 4 no. 9 – Poth. Retract. No. 14 Prudhom. Ch. 9. p. 506. 1. Jour. Palais. p. 934 – arrêt 1678.

Bedard for Defd. Gibb must be considered as an interested Wit. – either to support or to destroy the act he has passed. –

No 19
Grasset
v.
J. E. Campbell

Action for medical attendance for Defds mother Gugy for Pliff. states that evidence is not altogether complete, but prays that the serment suppletoire be referred to the Pliff. 2 Poth. No. 829 – in 12°.

Buchanan for Defendt. has objected to testimony of Dr Smith to bind him as an undertaking for the debt of a third person. & is above 100th – but even in this case there is only one witness – the action is to recover fees as a physician – the evidence goes to chirurgical dressings – only –

M'donald v Atkinson + Cameron. Opp^t

On Opposition afin d'annuller –

Walker for Opp^t – The Ren. to the Community was made by Opp^t ~~only~~ on 2^d June 1823 – altho' the separation was long previous –

The oppos^t after her Sep.^n carried on business in her own name – the goods seized were seized in May preced. The exon of the Judg^t of separation was necessary 2 Pigeau. 195 – 3 Vol. Gr. Cout. p. 367. acte de notoriété du Chatelet de Paris in explanation of the Custom – Here all the effects seized had been purchased by the Oppos^t only a few days before the seizure – this property she had paid for out of her own Estate – Poth. Comt^é No 521 Renon^n – has a retroactive effect & extends to day of Judg^t de separation – Rep^re v^o Separation. p. 221 –

Boston for Pleff – action is for house rent – and wife equally liable for it – The Oppos^t never executed by her until after the seizure in this Case – viz on 30 May. That the purchase of the goods was always made by the Defend^t – altho done by him in the name of his wife, and after this Sep. the name of the wife was entered in the Merchants books as the purchaser and it is remarkable that a few days after the defen^t the oppos^t appeared to be possessed of considerable money – That the separation without being followed up is of no avail. 2 Pigeau. 194. 5. 6 – Comt^é No 521. it is usual for the wife to renounce to the Comt^é in a case of this kind before Judg^t rendered – No 518. on 3. Fr. Gr. Cout. p. 194. – if Dep^t carries on business after the separation in name of his wife, it is of no avail 3 Fr. Gr. Cout. p. 367 – the wife is Commune until Renonc^n here the Ren^n was 6 or 8 days after the seizure –

Walker in anr Poth. Comtr No 512 - gives a reason why a woman who has no rights to claim may bring her action in separation - 3. vol. Gr Cont. p. 183. - No 18 - renonciation to Comts does not require that an Inventory should be made Offers apposts vath -

No 2110
Hunter
Donegany

Ore Pliff. mo. to discharge order setting aside Pliffs mo. for trial by Jury -

Rolland for Defdr. That application for the trial by Jury came in too late, it must be made on day of Defdr appearance, and Pliff mo. to stop Pliffs' proceedings could not affect the Pliffs' application for Jury -

Mr Sewell for Pliff - the application for Jury must be moved for, and this could not be done, when Defendr obtained an order to stop all proceedings till Costs be paid On 16e day of Octr the Costs were paid & the motion was made -

Dumas & al
Turgeon

On account of Tutelle -
new hearg in consequence of Defdr answers on serment Judiciaire. -

Roi for Pliff, contends that the Court ought not to receive the acct produced by Defdr nor admit the charges in it. -

No 1881.
Alsopp & al
Welsh & al

Hearing on law
Action of Detinue & trespass -

Gugy for Defdr - diffr Counts on declaration specifying voie de fait & trespass wr two fold

conclusions

conclusions — The grounds of demurrer are two 1st from misjoinder of two actions which by law cannot be joined together — voie de fait — and Revendication. — from the different pleas to be made and the Judgments to be thereon rendered — 1 Pigeau 36 - 37. — 198. — Chitty on pleads. 200. 201 — Comy. Dig. Tit. action (G.4). Bur. Rep. 31. Bull. N. P.

2. The declaration is insufficient as the property upon which the trespass is said to have been committed is not sufficiently described — Jousse. tit. 2. art. §. 5 — 1 Chitty. 217 — 2 Pigeau. p. 9. —

Gale for Pliff. action is of revendication — in 9th it is usual to state the trespass committed & claim which the Pliff founds thereon — these counts are conjoined cites ~~Du Droit~~. Repr. vo. voie de fait — shews the kind of remedy which is given in this case — The only general rule agt the Cumulation of actions in the French law, is that Civil & Criminal actions and the Poss. & Pet. shall not be joined — but beyond this the law is favorable to the joinder of actions. N. Denist. vo. Concours d'action —.

N Denist. p. 89 Vol. 5. vo Concours d'action —

Gugy for Defdt — were the 2 kinds of action contained in this declaration of the same kind & had same conclusions the authorities referred to by Pliff would apply —

# Monday 16th Febry. 1824.

## Present.

## Justices Reid & Foucher.

No 615.
McNider
v.
McLeish

action for goods sold —

Buchanan for Defdt — action brot by the surv. partner & rep. of deceased partner — but there is no proof of the marriage between Robt Aird & the person bringing the action to shew they are repo of the deceased — no proof of the Etat of Pluff —

Walker for Pluffs — considers proof sufficient as to the quality of the Pluff —

No 1164
Connelly
v.
Bazar
&
Econtra

Action on bill of Exch. accepted by Defdt — Walker for Pluff — The Defendt has pleaded a plea of compensation for goods sold &c to this Pluff answers that Pluff cannot be barred from recovering his demand as it is for a liquidated debt & the plea of compensation for an unliquidated debt — and including damages for a breach of contract — Poth. Obl. No. 623 — 626. — shews when compensation is allowed. No 628 — Repn vs compensation. p. 232 — 2 Gr. Cont. 90. No. 6. The demand in compensation is here uncertain and contested. Id p. 108. No 10 — This demand ought to have come before the Court in the Shape of an Incidt demand, Repn vs compensation. p. 271 1 Pigeau 336 —

Pluff has demurred to the Incidental demand The Defendt has set up the same right of action by his Incidental demand as he has pleaded in compensation — it is besides uncertain — being partly

for damages and tending to delay the Pltff in his demand — accords to 106 art: this is no plea to the Pltff action, nor arise out of it — 2 Gr. Cont. p. 108-110 No 10 — Repre vo Reconvention —

Boston for Defendt — The plea of compensation here is founded for money paid and advanced to Pltff, & the Pltff action is of same nature, & Defdts plea is right. Dic. Droit. vo Reconvention. — not necessary that the Incidental demand should be connected with the demand in chief. Poth. obl. No 635.

No. 1614
McRoberts
vs
Berthelot

action for breach of Contract.

Mr Grant for Defendt — did not appear

No 49
Durand & al
vs
Rolland

On Defendts mo. to quash Cap. as affidavit not suffit and not sufficiently stated that Defendt was about to leave province —

Bruneau for Pltff, the affidavit is sufficient and no proof ought to be allowed agt it, nor the Pltff bound to justify the grounds upon which Pltff made the affidavit

Grant for Defdt — Pltff does not state positively that Defendt is about to leave the province —

No 66
B. Durand
vs
Rolland

same motion — & objection —

Bruneau for Pltff — the affidavit is sufficient in all points —

Grant for Defdt — does not appear by affidavit that Defendt is indebted to Pltff in any sum of money whatever

No. 2121
Bistodeau
to
Giard —

Bleury for Pliff — action for goods —

Defd. objects — action for account for goods sold during rents & for goods since sold

No. 1948
Ogden
Gray —

action for amount of a note guaranteed by Defendt. to Pliff

Gregy for Pliff. The evidence adduced is made by Mr ~~Ogden~~ Hogg, a wit and the answer of Defd. on facts & articles — the wit is one of the persons who drew the note — but is a good witness — the consideration for which Defendt. subscribed the note is suffte

Fell on Guarantee p. 3 —

2 Conf. Bor. 449. 450 — Where a person signs his name to an aval, is bound without specific promise to pay —

The Defendt. in his answers to facts & articles, says he signed the note as an indorser & considered himself liable as such only — & not otherwise. —

7 N. Denizart p. 754. —

The error of fact must be made out to exist to exonerate a person from his obligation —

1 Montague on Part P —

The Pliff not bound to take proceedings agt the makers of the note — cites case in Infr Court Mr Connel v Lukin — in Infr Court — Irvine McNaught & Co v Fleming.

Gale for Defendt considers the case not made out, it is grounded on a principle of implying a greater liability on a person's subscribing a note than the law imposes — it would have required an express agreement to further obligation, but this does not exist — In Oct 1822, Hogg & Forsyth made a note in favor of the Pliff — the note is misrecited in the declaration not same proved — by this note the Drawers promised to pay severally to Pliff, not jointly & severally —

the Defend^t — inscribed his name on this note — & would have been liable for whole had diligence been done — the day of pay^t lapsed & 3 months more before Defend^t was called upon, & in the interim he settled w^t makers & p^d them a large sum than the am^t of note, q^t Defend^t tho^t was paid to Pl^ff — but on principle that Defend^t had inscribed his name on the note, not as an Indorser, but as a garant, he was afterwards called upon —

The Defd^t objects to testimony of Chas Hogg as an interested witness & moves to reject it — 1 because he was one of the makers of the note — If this is a commercial case, the rules of evidence accord^g to English law must be adopted, but contends this is not a commercial cause, as Defd^t not sued as an Indorser — The interest of W^m is further evident, as he is separately indebted for the note — & would be exonerated from pay^t of one half of it by throw^g burden on Defd^t —

But the evidence given by Hogg is deserving of no credit he asserts a fact in his ex. in chief & denies the whole of it in his cross-exam^n —

If the Defend^t were bound as Surety, he could be bound only upon equitable conditions — if Pl^ff did not obtain his debt it was his own fault, he did no diligence to get his money from his debtors while there were means — in further the Defend^t must be exonerated from this debt q^t now subsists only by Pl^ff's negligence — If Defd^t had given a separate bond he would be discharged — Muilman v Degueno. 2. Hen. Black — 1 Sav. Parf. Neg. p. 218-621 — if this were an aval, the holder must give notice and do diligence as much as if Defd^t had been a common Indorser — Chitty 264 — party entitled to notice, altho' no party to the bill, where he has promised to pay it — Rep^ce v^s aval — the engagement of the subscriber to an aval entitled to same rights & privileges as an indorser of the note — 2 Savary. p. 94. p. 260 — Poth. Change. 213 — Lacombe. v^o Lettre de change sec. 1. Garantie —

Gregg for Pluff The Defend^t by becoming answerable for a debt, must be bound to discharge his obligation — The Defend^t here was not an Indorser, nor an indorsee, he was liable to nothing as such —

The Promissory note may be set out according to its legal operation — Chitty 627. 628 — on pleads — The Defend^rs here were Copartners, & both liable for the whole amount of the note — Let is so described in the declaration —

The W^s Hogg is a competent Wits. . this a transaction between Merchants, & must be considered as Commercial — would be cognizable by the Juges Consuls The W^s must have a direct Interest in the event of the Suit here he can neither gain nor lose — Pl. in Ev. p. 45 — 47 — case of underwritters to Policy of Insurance — p. 56 — 60 Persons liable to Costs of action — 63. 65. 124 — Even by the French law the Obligor may be a witness for the fidejussor at least there is no authority to the contrary, and witnesses are competent unless there be a law to the contrary —

Defend^rs not bound to sue obligors & discuss them Poth. Ob. No 414 —

Notice it is said should have been given — some authorities cited — these may be reconciled by having recourse to general principles — the authorities cited, refer to billets de change — this not the object here — there was no obligation to furnish a bill of Exchange — but to pay money — Rep^n ve billet. No 382 — The obligation of the fidejussor is accessary to the principal obligation — and no notice requisite, that principal has not paid — The Defend^t should not have p^d the signers of the note till he had ascertained whether the note was paid, as he was a joint debtor with them —

No 449
Woolrich & Malmot } action agt Defdt as Indorsers of note — hears on law

Roi for Defdt — Pliff has instituted another action agt Persons who made note — 2d The Pliff does not state enough in his declaration to maintain his action — Pliff had no right to institute this action till he had proceeded on action agt the makers — but has no right to both actions at same time —

The Pliff ought to have alledged in his declaration protest for non payt & notification to Indorser — Pliff only says that due notice was given; but does alledge the day on which the notice was given —

Driscoll for Pliff. Poth. change 2' parte art. 2. Sec. 2 both actions may be instituted at the same time — The declaration sufficiently states the notice given to Defendt —

No 619
Dupuis & Piedale } Judgt

No 307
Arnold & Tierney & Besse Gart } Rule on Gardien absolute —

No 1881
Alsopp & al & Welsh & al } Exception à la forme pleaded to first Count in declaration maintained — Defendt ordered to answer over to the second Count

No 493
Gerrish & Wehr & al } Judgt on Pliffs demurrer maintaining it as to the 1st 4th 5 & 6 pleas pleaded by Defdt

| | |
|---|---|
| No. 41. Duplessis v. Wilson | Action dismissed |
| No. 2146 Martigny v. Choquet | Exception of chose jugée dismissed Poth. Obl. No. 894. 896. |
| No. 1154. Dewitt v. Pierce & al | ~~Defendr.~~ Pltff mo. granted for rejecting mo. of Defendr. for dismissing action for irregular service |
| No. 596 Dessaules v. Robichaud | Judge reserving to adjudge on Excepn. till hearing on merits. |
| No. 1135 Potts v. Burton. & T. Saisy. | Defendr. motion rejected. |
| No. 513 Keyes & al v. Weed | Defendr. motion to quash process dismissed |
| No. 2110 Hunter v. Donzany | Rule absolute for trial by Jury |
| No. 1033 Hart v. Goodsell | Defendr. motion to fyle another plea granted |

No. 1625
Lamb & al
v.
Williams

Interlocr. ordering new Report

No. 92
Hunter & al
v.
Townsend
&
Connel opt.

Opposition allowed, & Seizure set aside —

Tuesday 17th Febry. 1824.

Present

Justices Reid & Foucher.

No. 352
Lecuyer.
&
Robertson

action for ~~balance~~ first term of payt. on a deed of sale transferred to Pliff.

Bender for Pliff — The plea sets up a payt. to the principal of a part of the sum, wr. a tender of the balance proof has been adduced, to the proof adduced the Pliff has objected, and now moves to reject it — The Defendr. has exd. Pliff on faits & articles, who acknowledges to have received only 500# —

Grant for Defendr. states having pd. to Pliff at diff. times £33.10.11 besides monies paid to her son & to others on her account — the difficulty between the parties was on acct. of what was paid to her son — The proof adduced is made out by the Pliffs. answers to faits & articles —

No. 1748.
Bowman
&
Reid
&
Leprohon

On heard on merits of opposition. —

Ross for Oppos. it is admitted that Oppts. had poss. but had no title, & the present opposn. cannot be maintained

maintained without a title. —

2. Dunty. Chs. 10. add.
Arrets d'Albut.

№1088
DeRouville
&
Gaucher

} on hearing on execution of the Judgt. rendered in this Cause.

Rolland for Pltff. The Defendt has refused to pass a new title in respect of certain charges mentioned in his deed of Concession, viz., to measure & bound his land — give copy of measur. to Seignior — also the right of retrait on each mutation — the reserve of wood — cites, 1.st Traminville 262 —

Vigé for Defendt — In consequence of the Judgt. the Defdr went to perform his obligations thereon — The Pltff demands a new title for all the clauses in the deed of Concession but there are extraordinary rights in this deed of Defdt. is not bound to renew — a part of these extraordinary rights has been prescribed, and on this account the Defdt. is not bound to them — The only right of a Seignior are the droits de Cens & rente. — the right of retrait is an extraordinary right and Defendt is not bound to it — The principles of the Custom of Paris must regulate this point — the Defendt has made an offer to renew his title for all the objects which by law he is bound towards the Seignior, and by the return of the Commissaire it will appear what he has refused — The land mentd in the deeds was conceded in 1783 — since which time the presumption of all extraordinary rights has accrued in favor of the Pltff — 1. Gp. Comr. p. 314 — Had the Contract of Concession been lost or had never existed, the law of the land must in this case govern — The object & design of a Papier Terrier is to preserve to the Seignior his extraordinary right in the deed of Concession, which are prescribed in 30 years — The right of retrait is also an extraordinary right & has also been prescribed — cites Cass of Lacroix & Tenzion — Pltff claims also a reserve of wood

mill

mill places, and other rights — qt. Pliff had no right to stipulate — refers to case of Dezery v. Meloche — where the right was reserved by the Seignior to cut down wood on the land of his tenant, but which the Court judged illegal, but in this case, even if such stipulation were legal, it is also prescribed —

The motion made by Defendt. is to ascertain the offers made by the Defendt. in conformity to the Judgt. and to shew that he has offered all he was bound under that Judgt. — qt. comprehended all the titles of the different lots of land he possessed in the Pliffs. Seignior — as to the deed of Concession he did not produce it, as it was not in his possn. — and was not bound to take out a copy from the Notary's office to exhibit to Pliff — the Commissn. on this account refused to accept the declaration of the sd. Defendt. — but Defendt. contends that he was bound to exhibit such titles prior to his own acquisition as he had in his possession, & was not bound to go to the expence of taking out copies. —

The want of ensaisinement is no cause of interruption of prescription in favor of the Seignior, the possession of the Tenant without such ensaisinement is sufficient — The reserves made by the Seignior in the acte d'ensaisinement cannot preserve his right, nor can he by this means make a title to himself

Rolland for Pliff contends there is no prescription agt. the rights claimed by the Pliff — if it exists, it can be only in favor of the tiers detenteur, — Poth. Retrad. 2 partie — article preliminaire — The right can not be prescribed before it accrues. — the Defendt. can prescribe only as a Tiers Detenteur by 30 years — The Defdt. produces his own deed of purchase of 16 March 1795 — on qt. there is an ensaisinement of the Seignior carrying the reserve of retrait in the terms of the deed of Concession — The title of Defdt. ancestor is in 1791 — but the ensaisinement is within the 30 years after the Lettres de Terrier were granted altho' not published. — The Defendt. cannot invoke the title of his ancestor, as he has acknowledged the right of the

Seignior

Seignior in the acte d'ensaisinement. & cannot prescribe agt his own title — But it is contended that the Seignior had no right to make such reserves in the deed of Concession — The Censitaire is bound to cause his land to be bounded & measured and a copy given to the Seignior. —

The Defendrs offers are insufficient — he is bound to exhibit his titles, or to make oath, that he is unable to procure them —

Vigé in reply. The Pltff does not shew that all the extraordinary rights reserved by the Seignior are legal, or can be exercised by him — the right of Corvées & retrait are recognized by the convention of the parties, but the other extraordinary rights cannot be admitted — But the prescription must run agt all these rights from the day of the date of Concession — & Freminville lays it down as a principle that the Seigniors are bound to renew their Terriers every 30 years to exclude the prescription, which shews that this prescription must apply to the date of the Concession

The Defendr has produced a P. Verbal of the borneage of his land qt he has exhibited to Pltff — qt sufficiently complies with the Ordre in this respect —

Freminville 279, imposes certain duties on Commissaire where the Censitaire does not produce the old titles the Seigr ought to produce them —

---

No. 434
Greece
Gilchrist

action on Promissory Note —

Greece for Pltff, note given in prison, but is notwithstanding valid, Fer. Dec. vo Prison —

McMillan for Defdr. The Defendr gave a new note for one he formerly owed & to which a sum of £12 — was added

Gagnon & Metras & Metras opt

On opposition afin d'annuller —
Mondelet for Defdt & oppost — states that Pliff had no right as Curator to absentees to obtain any Judgt. agt Defendt — because one of the absentees had died and the other had returned to the Country. — the Pliff had no qualité de proceder — cites Lacombe. vo Procureur — 1 ~~arrêts~~ Journal du Palais. 928 — the cases where the procuration does not cease in case of the death of the Constituant, but Pliff is not within any of these exceptions — Poth. Mandat. No 111 — Oblig. No ~~528~~. 512. Nouv. Denvt. vo Curateur — to shew how Curatelle determines in this case — The Defendt alledges that he cannot be admitted to contest without tendering the amount of his debt — but the Pliff had no qualité de recevoir. — The Judgt. obtd by the Pliff was void & null being rendered after the qualité of Pliff had ceased — Poth. Obl. No 880. Here there was a signification of the death of the party before the Cause was heard or Judgment given. —

1 P. 489. & suiv. Rolland for Pliff — It is not by this kind of opposn that the party can come agt the Judgt — gt is executory in its nature — on the party of the Saisi this cannot be received but the party should apply by petition to the Court to revise its Judgment, or appeal from it. — Here the opposition is made on the principle that the Judgt is null, before the Court has declared it so — whereas a proceeding must be had to obtain this nullity. —

No 2113 McKenzie & Turgeon

Action on Obligation. —
retrax it filed for what has been pd. since action

No 1795 Leduc & Cloutier & Econtra

Action for wages as a Clerk — & moneys pd. to Defdt —
Roi for Defendt — pleads payt. of all that was due to him as Clerk — & further that by bad conduct of

of Pleff he has occasioned loss & damage to Defdt — which has occasioned an Incidental demand on part of Defdt —

No 159
McIntosh
v
McMillan

Action for Promy Note —

McMillan for Defdt — Defendt was a minor when notes were given & not binding on him. — the subsequent promises since the action was brot — ought not to be admitted, —

Henshaw for Pleff. the notes were not void, even if the Defendt was a minor. and his subsequent acknowlt ought to bind him — Chitty on bills. p. 129. 4th Edit. — Obl. p. 30. — Indorsement by an infant will transfer the bill. Taylor. v. Croker 4 Esp. 187. Holt. v Ward. 2 Stra. 938 —

No 148.
Armour & al
v
Brown

On motion in arrest of Judgt.

Motion dismissed

No 526
David
v
Hervieux
&
Lacroix
Sal T.

Hearing on Law

Panet for Defendt — Defdt does not contest the validity of debt, but of the regularity & validity of Saisie — arrest in this Cause — The monies attached do not belong to Defendt but to his minor child — this by donation of Mr Bte Hervieux uncle of Defendt — the Defdt has only the jouissance & usufruit of the money — & it was stipulated that in case of the sale of the realty the monies should be employed in the same way — The Tiers Saisis are the persons who purchased the property and by the Judgt of distribution the money was ordered to be paid over to Defendt, but this money cannot be seized as the Defendt can be considered only as having

the

the jouissance and not the property in the money— upon this the Pltff claims that the money remain in the hands of the Srs Saisi and that the interest of the money be paid to the Pltff in the mean time — but this would be contrary to the intentions of the Donor. but would be affecting the rights of the minors and of the Berthelot who have a right in their respective right to claim the money.—

Beaubien for Pltff. The Pltff claims the execution of the act of donation cited by Defendr — but it was the duty of the Defendr to have purchased a property on which to invest the money in question, but this he has not done — on the contrary by the Instr of distribution he claimed the money as his own property and did not then state it was the property of his son — The Pltff has no objection that the money be given to Mr Berthelot on the conditions of the donation, but Mr Berthelot is not desirous of taking the money — and the money is secure in the hands of the Srs Saisis, who are willing to keep it and to pay the interest —

—

№ 1122

Deschamps
&
Leduc —

Action to obtain indemnity for a piece of land of which he has been divested.

Hears on Law

Bowen for Pltff the Commissioners were authorised to take necessary land for opening the Lachine Canal the ground in question belonging to His Majesty they took possession of it, in consequence the action is brt to obtain an indemnity from Defdr from whom the Pltff purchased the land —

Grant for Defendr — The Pltff allowed the Commrs

to take possn. of the land wrongfully — but case is set down the cause for hearing on law — the decln. is insufficient, inasmuch as he complains of a force majeure which Defendt. is not bound to warrant. — and by his own act the Pluff has put it out of the Defendt. power to warrant him as the act of the Commissioners. —

Boston for Pluff The action offers to Defendt. the means of defence he may have to shew his right of property in what he sold to Pluff — Poth. Vente. No. 81 — No. 85. — 86 — 95. —

No 681
Clement
&
Poirrier

action on deed of sale —

Thibaudeau for Defendt. The land sold belonged to the Community between Pluff & Chance her former husband so that it is liable to all the burdens of that Community — Chance was a widower when he married Pluff — who was also a widow — both had children by the first marriages — & Pluff herself had her right of Dower & other matrimonial rights on the land. —

Roi for Pluff — The Pluff in confirms the sale ought to have made her reserves on the land — but there is no proof of any of the allegations set up by Defdt.

No 1996
Turgeon
&
Lacroix

action for Licitation — hearing in law

Beaubien for Defdt. — Pluff alledges matters contradictory, namely that he had enjoyed the land par indivis and in another place he says that he enjoyed in common wt. Jos. Lacroix —

Roi for Pluff — The exception is founded upon one word jouir — to determine what signification shall be put upon it

No. 781
Froste & al
v.
Spragg

Action on a Promy Note —

Gale for Pliff. Pliff has proved his demand. & also the Defdts. acknowledge that he had recd the security he required & also the evidence of Brown that he was always ready to give the security — The Defendt cannot avail himself of his own laches not to have taken the security when he could have done it — Poth. Ob. No 212

Mr Grant for Defdt — The condition of giving Defdt the security required before any action could be brought — the note was an accommodation note & Defdt. required the security before he would agree to note —

No 1898
Froste & al
v.
Spragg & al

action on note —
case submitted —

No 403
Dumouchel
v.
Campeau

Action for delivery of potash +
Defendt was heard on his suppletory oath

No 1905
Billous
v.
French

action by Pliff as bearer —

Gale for Pliff — The note made payable to Banks Co there are several pleas set up alledging want of consideration, fraud and coven — but no proof — The Pliff is entitled to his action without shewing any consideration — cites Chitty p. 83 — transfer by delivery is good — Chitty p. 8. King v Milson — 2 Camp. Rep. 5. Pliff not bound to shew how he came by note — there being no evidence of fraud shewn by Defendt — The Pliff has been exd on facts & art. to shew how he came by the note — 1 Bos. & Pullen 651 Collins v. Martin —

Grant for Defend. The action cannot be maintained, Defend. not bound to adduce evidence for want of consideration when Pluff shews no title, no claim agt Defendt — & the Pluff in his ex. on faits & articles that he has no interest in this note, he is a mere agent - besides the Pluff rec'd the note from one of the Debtors makers of the note - who alone could claim the money from Defendt —

Gale for Pluff. The Defend. cannot question the title of the Pluff without shewing some suspicion agt him and if evidence is to be considered it shews suff. value —

—

Wednesday 18th. February 1824

Present

Justices Reid & Foucher.

—

No. 57

Plessis Belair
vs
Pigeon
&
E contra

Action on deed of lease for rent

Bender for Pluff, lease made for one or three years at the option of the lessee — Pluff obliged to build stables cont. 26 feet — not stated when the stables should be built — but began in June — they were finished in Sept. after — the Defend. then expressed no objection — but afterwards went before the notary & acknowledged to have the whole in good order —

Cherrier for Defend — The plea set up to this action, is the breach of Contract on part of Pluff — as he did not erect the stables according to the terms of the lease — it was not said that the stables should be of Stone & they might have been made in April in Wood — and even of Stone in June the want of these stables has occasioned a great injury to the Defend. which he is entitled to oppose to the Pluff's demand by his claim in damages —

As

As to the receipt for the stables, it has not been regularly pleaded, nor proved —

Bender for Pliff — The allegation of the receipt of the stables and the proof of it, are sufficient — The Defendt acquiesced in the delay of delivery, as he made no complaint or protest, either when he took possn on 1st May nor at any other time, but took possession of them after they were built. —

Viger in reply on the Incidental demand. — The receipt given by the Defendt of 21 Septr 1823. contains nothing to the prejudice of the Defendants demand for damages, but merely states a fact as to the state of the buildings at the time — There was a delay in delivering the stables, which has occasioned a damage to the Defendt. The Defdt has agreed to pay £10 — for improvements —

No 102
Perrault & Godain } Action for goods sold —
Bruneau for Defendt — The action is agt the Defendt as Caution of one Bertrand — this the Defendt denies. the Pliff. have made no proof of a debt, nor delivery of goods to Bertrand —

No 1793
Demers & Patenaude } Action for debt on Obligation, and for monies had and received. —

Bleury for Defendt contends that the proof is not sufficient, of the act produced as an acte sous seing privé.

No 434
Beaubien & Morley } On report of practicians ascertaining Pliff rights —

No 1614
Brown
Quilliam
Bibaud opt

On oppn afin de conserver —
Bourré for Oppt claims privilege for wages —
Grant for Pleff. contests the privilege —

No 1198
McCord
Laforce

action for two years arrears of rente ~~Constituee~~ Foncière
H. Bidard for Defdt — One Sanburn purchased a lot of ground from Pleff subject to the rente, and afterwards sold the land subject to the same rente — That Pleff has no personal action agt Defendt — cites Argou liv. 3 ch. 25. tit. des Rentes foncieres. — It is not stated at what time the Defendt was bound to pay the rente in question — or that by any act or deed there was a day of payment stipulated — Code liv. tit. 2.

McCord for Pleff, cites 101 art. Cout. Pleff. entitled to his personal action —

No 1666
Warwick set
Raymond

action for Iron work furnished by Pleff to Dfdt
Rolland for Defdt — There is no evidence to maintain the action — no proof of the weight of the Castings — so that the Court cannot draw any conclusion and the Cause must be sent to arbitration. — a great many other articles are charged to Defdt than what he agreed for —

Boston for Pleff. The agreement between the parties settles the prices at which the principal articles were to be furnish, according to which all the inferior articles were to be regulated —

No 1567
Hart ✓
Fraser
E contra

action for Rent of House —
Hearing on demand in Chief
Morrough no proof of occupation

No 1234
Chevallier & Bourque } action to have Judge declared executory agt Defendt — ex parte —

Grant for Defdt objects to the course of proceeding by bringing in the Defdt by the Kings Writ. —

No. 188.
Holt v Holt — } On action of Acct of a Community & Sewell for Pliff — Defdt has not rendered any account, and Pliff have proceeded to establish the state of the Comts according to Commune renommée. —

No 1651
Sawyer v Belleray } Action en separation. —
Dutd.

No 473.
Rolland v Pothier } On objection to the testimony of Ls Guy. —

Bedard for Defdt Wit called to prove that a certain act of sale & retrait, is simulé — The Defdt had a right to sell as he chose, as Exer, and the Proc. who sells is entitled to exercise the right of retrait in his quality of lignager. Poth. Retrait. No 158. The Wit was the notary who passed the act and by law cannot be examined as to any thing which took place at the time or since the passing of the act — any conversation the Defendt may have had with the notary since the act was passed touchs that act — proof of conversations in any case ought not to be admitted, as it would be in the power of any man to procure Wit to prove such conversation

that

that in this case the facts of simulation must be set out, and here this is not a fact, nor is it set forth by the Pltff. ~~that~~ facts only & not conversations must be proved Danty. Ch. 7. Somn. 8 - and additions No. 52. That no person would be safe if the proof of an avowal were admitted in cases of this kind, qt may be compared to case of High Treason, where facts and not acknowledgts must be proved

Rolland for Pltff. Simulation can be proved only by witnesses - The wit. is competent in this cause in the question proposed, it has no reference to the Ws as a notary, - it was not necessary to set out the particular conversations he means to prove, but the fact to be proved from such conversations. - Dec. Droit vo Confession - Repre vo aven. p. - Id. vo Confession - p. 425. Poth. obl. No. ~~409~~. 834 - Desquiron. p. 20 - 393 - Danty Ch. 11. on head of simulation - to shew that the acknowledg. of the party - and if in the common cases such proof be admitted, à fortiori in cases of simulation

Bedard in answer the Ws is called to prove what tends to destroy the act he has passed, which cannot be admitted, his mouth is shut as such proof. - In case of Gibb refers to authority cited by Mr Rolland touching the seller in case of retrait. Danty Ch. 11. - but it refers to 136 art. of Custom, by which the Seignior is authorised to take the oath of the purchaser, & this may be well extended to the seller, but this cannot be applied to the present case - and if it was necessary to have a special authority to warrant the examn of a party in one case, it ought not to be extended to another -

No. 2001
Adams
v.
Gamelin

Action on Promy note —

Bleury for Defdt — has taken facts & art. be taken as confessed as pltt has not appeared to answer

McBruneau for Pltff — the service of facts & art. not regularly made — was returnble 16 — return made on 17th — the facts enquired are not pertinent to the issue. —

No. ~~576~~ 157
Fraser
v.
Campbell

Action for house rent & for damages done to the house —

Morrough for Pltff. refers to the evidence adduced.
Grant for Defdt — when this action was instituted there was no rent due to the pltff — the evidence of Defdt shews that the property was in better state when he left it than when he got —

No. 125.
Davies
v.
Ermatinger

Action agt. Sheriff for damages for goods lost in consequence of an attachment sued out agt the Pltff's Effects —

Sewell for Defendt This action can be maintained only by written evidence — there is only one Wit who speaks to any material fact to maintain the action, one Borman — Borman says, he did not know that all the goods in the P. Verbal were seized — there is also a charge that goods were lost which were not put in the P. Verbal — but under this action the Defdt can be liable only for what is included in the P. Verbal — there is no evidence that the Defdt was dispossessed of all his goods in the house, the contrary is the fact —

Is —

It does not appear that the cause of proceedings and oath by wife of the Pltff are sufficiently compleat or regularly proved – the writ and declaration filed ought to have been certified by the Sheriff, as the original writ is still in his possession, but the original declaration was never in his office. – The Pltff ought to have called on the Sheriff to make a return on the writ of Saisie sued out by the Pltff. – In one part of the declaration the value of the goods is stated at £35 in another place at £55 – There is a charge in the declaration of a felony having been committed in this case, either by Bent or some other person – It does not appear that there was any recollement made of the facts when delivered up – this was necessary to be alledged, as being a record, & the only legal proof in the Cause – When the Gardien left the poss. of the property there was a duty incumbent on the Pltff to acquaint the Sheriff with the circumstance, & the state of the effects – Bollman is the only W– to prove the loss of the articles but he does not know which of these articles was included in the P.Verbal – It is not true that Pltff was dispossessed of all his effects, on the contrary Pltff left Bollman to take charge of the articles &c. had not been seized – at least must be so presumed, as the articles seized were under charge of Gardien – and it even appears that Bent gave up several articles to Pltff – and it is uncertain what effects may have been removed by Pltff himself – Bollman is contradicted in his evidence by Austin Adams – who states that Bollman has said he knew nothing about the furs which were missing

Rolland for Pltff. The gardien appointed, was an insolvent character, notoriously so known – There was no necessity to obtain a return of the Process, nor any occasion to shew the original declaration. – the only question is whether

Dpt

Defendt has attached the Pltff property, and that property has been lost — Moves that the Interrogs put to the Defendt be taken pro confessis, as he has not fully answered them —

The Defendt must be answerable for every article which were missing in the house whether included in the P. Verbal or not — otherwise the greatest injury would arise, as his officer took possn of the whole and Defendt must be accountable for it, otherwise it would easy for a bailiff to include only a part of the property, in the P. Verbal and leave out what he chose to remove in another way — The fact is, that it was with difficulty the Pltff was allowed to take a clean shirt out of a drawer in the house — Objects to the testimony of his brother in law, a witn produced by the Defendant, as incompetent — That Bollman is a sufficient witn to prove the fact of the loss of a part of his property — Pltff wanted no witnesses as a man who has taken all his property into his possession and to return only a part of it —

---

No 1027.
Sutherland
v
Stern & al

Action on Promy — Note. —

Greece for Defd — There never was any right of property in the note in Jones to transfer the note to the Pltff. Not a commercial note — no chain of commn between the payee of this note and the Pltff

Boston for Pltff — Jones put his name on the note, which in law makes him a caution & answerable for the amount jointly wt the maker —

Repn vo aval
Change. No 50.
No. 152. p. 144.
2. Conf. de Bor.
p. 605.
Obl. No 366.

No. 1081

Duplessis
Cardinal

action to render acct. founded on Judgt.
Rolland for Pliff. The plea is no plea — as it does not meet the Plaintiffs action — as it is merely saying that he was always ready to file an acct. Pliff is entitled to have a Judgt. that Defendt. be held to account —

Vigé for Defendt. There are allegations in the declaration yt. are not proved, the Cause being now set down on the merits, the objects which he claims by his declaration he must be considered as having abandoned —

No. 480.

Laporte.
&
Laporte.

action for Rente & pension viagere —
hearg on report —
Vigé for Pliff. demands hom. of the Report —

Thursday 19th Febv 1824.

Present.

Justices Reid & Foucher.

| | |
|---|---|
| Nº57 Plessis vs Pigeon & contra | Judgt for Pltff, Incidental demand dismissed |
| Nº1198. McCord. vs Laforce. | Exceptions pleaded by Defendr dismissed |
| Nº1596. Warwick & Millichap | Judgt for £100 |
| Nº15 Longueuil & Titus. & Henshaw | Pltffs right of mortgage being anterior to that of Oppt monies were adjudged to her. |
| Nº1950. Mcdonnell vs Atkinson & Cameron opp | Opposition dismissed upon the principle that the renunciation of the Opposant was made subsequent to the Seizure. |
| Nº1164 Connolly vs Bagg & Contra | Judgt on demurrer raised by Pltff maints it in regard of the plea of Compensation pleaded by Defendr but overruling it as to the Incidental demand. |
| Nº2001 Adams vs Gamelin | Judgt for Pltff. |

| | |
|---|---|
| No 2121 Bistodeau & Giard. | Action dismissed – Defend.t sued in two diff.t capacities. – |
| No 449 Woolrich v. Mathiot | Exceptions pleaded by Defend.t dismissed |
| No 1748 Bowman & al v. Reid & Justus Opp.t | Judg.t granting the 4 feet of land in question |
| No 1122 Deschamps v. Ledue | action dismissed – Conclusions irregular &c |
| No 1614 Brown v. Quilliam & Bibaut opp.t | The priviledge of Opposant, disallowed |

Friday 20th Febv. 1824.

Present

Justices Reid Foucher & Pyke

| | |
|---|---|
| No 434 Greece v Gilchrist | Judgt for Pltff — note given in Court — |
| No 159 M.c Intosh v M.c millan | Judgt for Pltff — note given by Minor |
| D. Rex. — v Pr. J. Holt | Rule for an attachment absolute. — |
| No 19. Sanctuaire v Consigny | Action dismissed — |
| No 1905 Bellows v French | Judgt for Pltff. |
| No 354 Mathews v Newton | Judgt of Separation. |
| No 152 Fraser. v Campbell | Judgt |
| No 284 David v Hervieux & Tiers Saisis | Interlocutor. — |
| No 245 Leroux & Huot — | Judgt — |

| | | |
|---|---|---|
| N°335. Dumas vs Turgeon | | Judgt. |
| N°254 Dorions vs Dorions | H | Action dismissed |
| N°304 Ant. Desalls. | H | Petition for alimentary allowance rejected. |
| N° Ellice vs Dupuis | H | Action possessoire — Dismissed |
| N° Dupuis. Perrault vs Ellice Intervs | H | Intervention dismissed |
| N° Ellice vs Dupuis | H | Demurrer pleaded by Defend^t over-ruled and Demurrer to plea over-ruled |
| Canada Bank vs Jas Brown | H | Judgt for Pltff^s |

# April Term 1824.

## Thursday 1st April

Present.

Justices Reid & Foucher.

No 681.
Pichet & ux
Bourret & al

Hearing on report of Experts —

McRoss for Pliffs objects to the hom. of the report as an evident injustice has been done to them. In the Case of Manninger, the Experts say that the Seignior derived no profit from the Defendr land which is insufficient, as it is not what he derived but what he might have derived from it. — The Improvements on the Contrary are valued at a high rate, altho' the improvements were never made for the use of the Pliffs — The expence of clearing the land is charged to Pliffs, at a high rate although nothing is allowed for the enjoyment of what had been so cleared — contends that the report ought to be set aside. —

Rolland for Defendr — the fixing the Cause for hearing on the report, is merely to ascertain the regularity of the proceedings of the Experts, — when any party is dissatisfied with the report, he must state his grounds of objection & give the adverse party an opportunity of answering thereto. — without this the Court cannot enter into any objections as to the opinion of Experts and the valuation they have set upon the property

Ross in answer – The Court has a right to set aside the report of the Experts where they see that injustice has been done without any motion of the party –

No. 1780.
Seaver
vs
Kindall
&
Corporation
of Clergy Reserves
opposts

On opposition afin d'~~annuller~~ de distraire –

Hearing on merits. –

Sewell for Oppots. The opposts hold the right under the Letters Patent granted by the Crown, to claim the property seized as part of the Clergy Reserves – It is contended here that the opposition came in too late, as having been made after the sale by the Sheriff – as the rights of the Crown have been devisted by that sale – this is contested by Oppts. this opposition is on the part and behalf of the King – The claims made by the Corporation is on behalf & for the benefit of the Crown. – No person can plead a chose jugée agt the King Respre vo. Roi – 2 Chopin. p. 594 – Jenkins Rep. 215. 219 – 2 Hawk. ch. 26. sec. 52. King cannot be non-suited – 16 Viner ab. tit. Prerogative p. 539. Laches shall not be adjudged agt the King –

Boston for Pliff. None can claim the rights of the Sovereign in his Courts but his Atty Genl – but no other persons have this right – and this opposition ought to have been made by the Attn Genl had this claim been intended for his benefit – the Corporation cannot claim this right – There was no affidavit affixed to the opposition – nor any domicile elected, as by law required – Hericourt – sets out formalities formerly required for the validity of the sale by decret

but which are unknown in this Country — the Ordce of 1785 determines the mode of sale so as to conclude the King and all his Subjects — The moyens in support of the opposition do not apply to the Case, where the sale has actually taken place — At all events the opposants here ought to pay the Costs on this opposition which has arisen from their negligence. —

The law says that no opposition shall be received but within a certain period before the sale, and neither the King nor the Subject come ag^t this law. The King might as well claim all the Estates in the Country by virtue of the Conquest, in face of any title recognised by law. —

1 Pigeau. p. 728 – 729 after adjudication no opposition can be received in regard of the property + the persons the most favoured in law +

2. Bony. p. 718 – 721 — art. 346 × Cout. Paris.

+ art. 354. — 7 Poth. 235. 255 as to costs.

His Majesty's rights must be bound by a general law in the same manner as those of the Subject — The King here concurred in making the law, and cannot be supposed to have a right to break the law —

Sewell for opposts — The Corporation have the right to claim the property as well as the rents issues and profits of the Clergy Reserves — That adjudication by the Sheriff without a title does not transfer the property even in the case of a subject, much less in the case of the King. — There can be no costs allowed here as ag^t the King — he never pays costs —

No 340 Woolrich v Porlier

On Defds mo. to reject Pltt's proceedings on Enquête

Friday 2d April 1824

Present

Justices Reid Foucher & Pyke

No. 606
Johnson
Gardner

On Defendr mo. to reject Pltffs application for trial of this Cause by a Jury.—

Gugy for Defdr— The Pltff complains of an injury done to him by ~~a~~ the suing out of a Saisie arret & arresting his property — cites, case Perkins & Legrange Cane v Castonguè — where trial by Jury for an injury done to the property only has been refused

Driscoll for Pltff— The action here is for injury to the reputation of the Pltff. & not merely the attaching his property—

Gugy in answer contends that the action is not for defamation, but for an arresting his property—

Baird.
vs
McNider & Co

On Trial by Special Jury
Verdict for Pltff £45. 5. 10

Saturday 3.d April 1824

Present

Justices Reid, Foucher & Pyke.

Dunlop & Co. } Russel & Co. } Verdict for Defendants –

Hunter & Donegani } On Defendants motion to reject Application filed by the Pliff as not containing a sufficient answer –

# Monday 5. April 1824

Present

## Justices Reid Foucher & Pyke

Rolland. v. Pothier — Objections to testimony of B. Gibb over-ruled — also to the question proposed to Mr Guy. —

No 2146

Martigny & Choquet Lux — On hearing on law action for Lods & Ventes on a deed passed by fraud between the parties. —

Vigé for Defendt — The Pliff has alledged fraud generally, but has not stated any particular grounds of fraud upon which the party can be admitted to make proof. — When a transaction takes place between father & son in regard of the Estate of the father, of whatever nature it may be, the Seigr has no right to enquire into it, nor obtain Lods & Ventes — 1. Pigeau. 269. 399 — the moyens & grounds must be set out which the party means to prove to substantiate his demand — The facts upon which the fraud is pretended are not shewn — Facts not alledged cannot be admitted to be proved — so held in case of Stebb. Vr Bunker — Danty. Ch. 7. p. 229. No 21 — where the dolus bonus is used by the party, it is lawful — & here this kind of dol might be used without injustice to Pliff — Id. p. 239 — grounds of fraud must be stated —

Stebb. & Bunker

Dequeron. tr. preuve par Temoin —

Gugy for Pliff — The mode of pleading by the Defdt —

requires only of the Court to declare whether enough is stated in the declaration to entitle Pluff to maintain his action – not whether ~~he~~ any particular facts are to be set out or qt only proof can be admitted – It is enough that the Pluff alledges fraud – the Defendt should have pleaded an exep. à la forme, if he had thot. sufficient facts had not been stated in the declaration –
The code Civil requires that the moyens de la demande should be set out sommairement, which is the case here – The authority taken from Danté by the Defendant makes agt him if the principle be considered upon which he establishes his principle – Dh. 7. p. 226 – the dolus malus applies only to the Contracting parties – p. 228. No. 17 – this appears more clearly stated – The citation from p. 239 refers to this kind of fraud, but does not apply to the Case of a third person, who cannot be instructed of the particular Circumstances of a fraud in a deed to qt he was not a party –

Repn vo Simulation. p. 323. Simulation is a kind of fraud which is meant to affect the rights of third persons – and p. 234 – allows proof generally of this simulation without any other fact alledged. – And p. 235 – where there is no other proof can be had of the simulation, simple presumptions may be admitted –

Vigé in reply – The defendt has not controverted the principles contended for by Pluff, but denies their application – It matters not here whether the act passed was a donation or not, as between the parties under whatever shape it was made it could create no right in favor of the Pluff – If there is a fraud between the parties, it ought to be alledged in such way that it may appear to be of that kind to entitle Pluff to the action he now sets up –

Poth. Comte. No. 146 - Deguerron. Traité de preuve par Temoins. p. 146 - p. 68 - p. 173. - Danty. ch. 7 No 23. 24. 26. 27.

No. 170
Collins
&
Moor
&
E contra

On Defendr. mo. for extension of time for granting a Com. Rogatoire. -

Morrough for Incdl. Pliff - The Pliff has joined no issue on the Incidental demand, to gt the present application applies - refers to affidavit filed to ground motion -

Walker for Pliff - admits payt. of £50 - to him by a draft on Mr Atkinson at Quebec - to preclude the necessity of delay for a Com. Rogr. to prove that fact - the other £50 - alledged by Defendr. to have been paid at different, no proof thereof can be received by this nor does the affidavit filed by Defendr. - shew specifically what monies had been pd. to Pliff beyond the £50. -

No 594
Cates
&
Kitson

On action petitoire.
hearing on law

Sewell for Defendr. - Decln. not suffte. it does not contain sufficient conclusions to maintain the action - nor is stated, at what time Defendr. did take possessn. complained of - no data to estimate the fruits & revenues from -

Gugy for Pliff contends that declaration is sufficient -

No 1729
Cartier
&
Piccard

Judgt.

No ~~430~~ 519
Brouillet
Adam. –

On Defendt mo. to continue the Enquête

No 794
McKillip
Deselles

On Defdt mo. to quash Ca. from insufficiency of the Pleffs affidavit. –

Greece for Pleff. the Defendt does not deny the fact stated in the affidavit – but says it is not suffit –

No 449
Woolrich
Malhiot

Action by Payee agt Indorser of a note.

Roi for Defendt – The Pleff must make a protest & signify it to the Indorser before he can bring his action agt him – but here no notice of Protest on the drawer was given to Defendt – it must be sent to the party, that is a copy of it, and verbal notice or other information is not sufficient – all the forms of acts of this kind require this to be done – The offer of the notice is not sufficient service of it, nor of any legal proceeding –

No 543
Kinsler
Rochon –

Action on a transport –
hearing on Exception. –

Rolland for Defdt – The debt for gt Defdt is sued, is not a personal debt, but the debt of the parish of which he was only the Syndic – No 74. Obl. No 82.

Lacroix for Pleff – The action is correct – Defendt is sued as Syndic –

No 1158
Hebert
Toupin & al } On action on deed of Donation for building a house &c
hears on law

Bleury for Defendt. The Defdt. contends that the house occupied by the Pltff is in good order, & if any repairs are wanting to it he is ready to make them. —

No 332
Taschereau
Prou } on mo. to revise Interlocs order of Court

No 656
Boissoneault
Cartier } — noths 1d —

No 1995
Barret
Walker } action for work & labor —

Bender for Pltff — contends that proof of his demand is made out —

Morrough for Defendt — contends that there was never any contract between the parties for the carriage in question —

No 125.
Davies.
Ermatinger } action dismissed.

No. 473.
Rolland
Pothier } Objections to testimony of Gibb & Guy over-rated

Thursday 8th April 1824.

Present.

Justices Reid Foucher & Pyke.

No 1139.
Gardner
Johnson

On Defendr mo. to quash the proceedings from insufficient copy of writ served on him —

Gugy for Pltff, the original writ is perfect the defect in copy is merely clerical & not sufficient to quash the process — This application irregular ought to have been by excepn à la forme —

No 1140
Richardson
Barber & al

action of Trespass —
Gugy for Pltff — proof made agt all Defendrs except Trueman Barber —

No 1212
Robertson & Co
Gamelin

action for goods sold and delivered.

Mr Driscoll for Defdt — The goods are said to have been sold to one Parlier as the agent of Defdt — contends that the evidence is not sufficient — Parlier the agent says, the goods were not bought by him at the time of the Contract as the agent of Defendt — but that after his failure he told Pltffs so —

Mr Bourret for Pltff — contends that evidence is sufficient. —

No 1793
Whiteford
& Crevier — } action hypothecaire —
hears on merits —

Vigé for Defendt — has proved there existed Legr rights, and Pltff ought to give Security that Defdt be not troubled in his possession in future —
Pltff has called in his garant. —
Lacroix for Pltff — not bound to give Security in this case, the Defendt must Dequerpit or pay —

No 180
Read
Foley — } action en voye de fait —
hears on exceptions

Bleury for Defdt — Pltff does not alledge that he had the possession of the lot of land in question at the time of the voie de fait. — the original declr appears to have been corrected —
Morrough for Pltff. contends declr is suffte & altho' there is an omission in copy Defdt ought to have availed himself thereof in another way — but original was right when writ was sued out. — That Defendt has also pleaded other pleas of exception en droit in which he complains that Pltff does not shew he is the proprietor of lot, this is irregular & Pltff has demurred to this exception — this not necessary to be alledged in a cause of Voie de fait — cites Fer. Dec. vo — Voie de fait. — Moves to reject the exhibits filed by Defendt in support of his plea —

No. 2131
Lavigne
& Sarrault } action on deed of Sale —
Rollin for Defdt. did not appear —

No. 1220
Spragg & al
v.
Porlier

action on a Promy note –
hearing on law

Grant for Pliff – has demurred to plea – as it is not alleged that the matters alleged refer to the note in question. –

Roi for Defendt. The Defendt. states the transactions between the parties, and shews that the accounts between them have never been settled, and that it is only for such settlement the action ought to be instituted & not on this particular part of these transactions. –

~~No. 1646.~~
~~Patenaude~~
&
No. 1134
Hall
v.
Stem –
&
Econtra.

action on Promy note –
Excep. to Incidt. demand

Grant for Pliff has excepted to Incidt. demand as insufficient – and is too vague to be set up agt. Pliff's demand. –

Greece for Defendt. Incidt. demand is founded on several points – as well for damages as for goods sold & delivered. –

No. 1646.
Patenaude
&
Marcile –

action for rescision of an acte de Partage for Lesion. – hearing on law

Vigé for Defendt. This action is an action petitoire instead of an action en rescision – in this there is a contradiction between the different parts of the demand

so

so that the conclusions of an action petitoire cannot be founded thereon — and no conclusions are taken as in an action in rescision of a Contract or Partage for lesion — the 12 to 4th heads of exception apply to this point. —

That even if the declaration were regular, the action cannot be maintained, cPoth. 564. Tr. des Sub. the substitué may before ouverture of the substitution make an agreement with the grevé. — after the decease of the substituant. —

Repre vo Substitn p. 541. 1r Col. — When the arrangement is made in the form of a pacte, it is lawful, even before the substitn is open. — The act here is not so much to be considered as a partage, as a pacte touching the disposition of their respective rights. —

Beaubien for Pliff. Whether this acte be a pacte or partage, it goes to make a division of the property among Coheirs, & is void if there is a lesion. Lacombe vo Partage. Sec. 4e No. 6. even if it were on transaction it is liable to rescision in case of lesion. — if not made on a law suit between the parties —

That Defendt became possessor under the title given to him by Seraphim Lamarre. — The Pliff here gave the property of two lots of land for the jouissance of two lots, in ye there was the lesion —

Vigé in reply — Seraphim Lamarre for a sum of 1800# acquired the property in the lots of which he had only the usufruit, & being thus proprietor made over his rights to Defendt & Pliff's action

ought

ought to be in rescision of the sale made to Seraphim Lamarre –

There is no lesion in case of sale of droits successifs –

Substitn Lacombe. dist. 5. –

~~Friday 9th April 1824.~~

~~Present~~

~~Justices Reid Foucher & Pyke~~

No 1088.
Rouville & Gaucher } Judgt. on motions of the parties in last Term.

No 127
Galusha & Tecmen } Judgt

No 1995
Barret & Walker } Action dismissed

No 121
Lacroix & Labelle fils & Labelle fils Tub – Oppt } Opposition admitted –

Cates & Kittson. } Defendrs excepn à la forme – over-ruled, as irregularly pleaded Judge Pyke gave a very full explanation of the order of pleading & the distinction between excep. per. à la forme, & excep. per. en droit. –

Friday 9th April 1824.

Present

Justices Reid Foucher & Nyke.

No 2047.

Boston & al. v. Dalrymple } Action on Prom. Note

Gale for Defend. no proof of transfer nor of the existence of the note.

Boston for Pliff. the transfer to Pliffs by Nicols & Sanford is in proof.

No 1274

Vigé & ux v. Pasteur } Action en reddition de Compte.

Lussier for Defend. By the marriage contract between the pliff it is stipulated that the Tutor shall not be liable to account to the Pliff for the rights of his pupil when she came of age and she is not yet of age.

Vigé for the Pliff. This clause cannot be admitted in favor of the Tutor, as allowing him to retain in his hands the property of the Minor to his own use. the obligation of Tutor is to account. Introd. an Tit. Comte Poth. the marriage contracts do not admit of stipulations agt the principles of right. The clause at most does not restrain Pliffs right to have an account from Defend.

Cartier & Masse & al & Guertin oppt

On Opposition afin d'annuller. — Mr Mondelet for Oppost Guertin had a priveledge and preference on a land which he gave to one Bousquet in exchange. qt land was sold by him to Defdt and under a delaissement by Defendr a Curator was appointed on whom the decret is now prosecuted. The present opposition claims that the land be adjudged to Oppost on the estimation of Experts or that the Pltffs be held to give security that the land be sold high enough to pay the amount of the Opposants claim agt it —

It is a right principle that a land cannot be mortgaged beyond its real value — any stipulation beyond this is useless — Henry. liv. 4. Ch. 6. q. 29. No 4. — Hericourt. Ch. 6. No 21 — establishes that the oldest Creditor in mortgage is entitled to have the estate at its just value without going to the expence of a decret — Nouv. Denzt. vo adjudication. p. 242. No 4. Repre vo adjudication p. 50. — Fer. Dic. vo adjudication — Poth. Proc. Civ. p. 238. Ch. 2. art. 8. Sec. 3e — 2 Bourjon. tit. 18. Sec 7. §. 14. p. 527. 2 Bardet. Tit. 9. ch. 20. p. 605.

Rolland for Pltffs This doctrine cannot hold in this Country, we have neither law nor usage in the Country on this subject — How could the other Creditors of the Defdt have a knowledge of a sale made in this way so as to give them an opportunity to come forward with their rights, or to compel them to come forward at the risk of losing their rights.

The Opposant here is not actually a Creditor of Defend^t - but is expond to be troubled for a debt for the indemnity whereof he is intitled to his Mortgage on the land in question - but there may be other Creditors who have an equal claim with Opposant.

Mondelet for Oppos^t - the sale of real property by the prisée d'Experts is allowed in this Country, it is - equitable - here it is not necessary to call in any Creditors when the Oppos^t - is the only Creditor, and if there are any, the Opposant oblizes himself to pay them.

No. 1164.
Connolly
n
Bagg & al
&
E Contra

action on an accepted draft by ~~Draft~~ Defd^s -

Boston for Defend^s - principal demands is admitted, and on the Incidental demand a tender has been made of a certain balance after compensating to a certain extent the Incid^l demand By a contract between the parties the Pliff was bound to do certain work on the Lachine Canal, which he failed to perform, and hence a damage arose to the Defendants, as they had advanced more money to the Plaintiff than the work he had done -

Walker for Pliff. the Defend^s were themselves the cause the work was not done in time w^h Pliff undertook, as they sent him to do other work - that Defend^s have not expended all the money they alledge as there is still a sum of £45 - q^t they say they are bound to pay to One Ryan for part of the work q^t Pliff had undertaken, but which they have not yet paid, - nor is the work yet done. -

Boston for Defd. The Contract wh Pliff being a written Contract cannot be explained away or altered in its execution by verbal evidence, and the letter written to Pliff to go and finish another job, neither required him to abandon the work he had undertaken and was written after the expiration of time when Pliff should have finished the work - as to the sum of £45. not paid by Defds for the work not done - it is right, as they are entitled to retain it, and at all events the Pliff cannot demand the payt of more than the work he performed. -

No 1114
Molson
vs
Kuper
&
E Contra

action on note -
Boston for Defd. Pliffs have demanded a much larger sum than was due to them which compelled Defd to make an Incidental demand, which has been admitted to go towards extinguishment of principal demand. -

Beaubien for Pliff - the Incid. demand has not been admitted, but on demurrer has been dismissed, except as to £4 - qt has been allowed The Defendt has allowed this sum on the Defds plea of compensation - and has demurred to the Incidental demand as being a double claim for the same money -

No 794
McKillip
vs
Descelles

On action on special contract & for general assumpsit for goods sold & delivered -
Bleury for Defendt The goods were contraband articles, & were seized as such. -

No 606
Johnson
v
Gardner

Action for maliciously suing out an attachment agt Pltffs goods, and for defaming Pltffs character —

hearing on demurrer

Gregy for Defendt — no action can be maintained for suing out an attachment agt the property of his debtor — on his complying with the requirements of the Ordre of 27 Geo. 3 — there can be no reparation for defamation on an affidavit of this kind such as law requires — nor is it libellous to use any proceeding requisite to ascertain a Civil right —

That it does not sufficiently appear that the action in which the process was sued out has been determined — 1 Sanders 228 — 229 — Peake on Ev. 2 Selwyn N.P. Ph. Ev. 112. 116 — 1. Pigeau 114

The words maliciously & falsely are not equivalent to want of probable cause in the affidavit. 2 Ph. 111 & 116 — Peake 320. 1 T. R. 545. 519. 529 5 Tout. 2 Selwy. N.P. 76. 4. Bur. 1972.

Action not favorable. 1 T. Rep. 518. 2 Selwy. 38 —

Davies
v
Pickle
&
Lusignan
& al —
&
Delorme opts

The opposition of Lusignans dismissed and demurrer to Plea of Lusignan's to opposition of Delorme maintained —

# Saturday 10th April 1824.

## Present.

Justices Reid, Foucher & Pyke

No. 1764.
Foretier. & McGillivray } Hearing on the merits.

No. 1517
Dupuis & Perrault } action on a Promy Note — hearing on law

Bourret for Defendt — The Defendt promised to pay only on getting security that he should not be troubled in his right to cut the wood for which the note was given —

Boston for Pliff — Pliff not bound to give any security, he never became bound to give any — the promise of the Defendt is to pay the money, and Pliff never promised any surety, except a receipt for the money. —

No. 16
Desrivieres & Ayers — } On Defendants motion to quash writ of attachment sued out by Pliff

Bourret for Defendt — There is no proof by the affidavit that the property attached belongs to the Pliff — The Depont only speaks to information he received, but he does not speak positively to any fact —

The Defendt has also pleaded an exceptn à la forme — as Defendt lives in Mannoir & not in Stanbridge — it is objected that this ought to have been made by motion — & has moved to reject the plea — but Pliff cannot have this course after having answered the plea. —

The defendant has also moved for delay to plead till the 1st June next in order to call in his garant.—

Morrough for Pltff — action en Revendication for wood cut down on Pltffs property — The affidavit here is sufficient — states positively that wood has been cut on two lots belonging to the Pltff. — There is no law which requires an affidavit to be made in the case of revendication, except the rule of practice, & this extends only to the Judge being satisfied in granting the Writ. There is also a plea of abatement as to residence of Defendt — on this Pltff moved to reject it, as being irregularly pleaded under 26. Sec. of Rules of practice the word process in the rule applies to the service & residence of Defendt — but Pltff has demurred to the plea of abatement, as insufficient — besides the service of the process here has been made personally on the Defendant — besides the issue on this point is connected with the merits — As to the motion for time to plead and call in the Garant, appears as to time to plead but not to call in the Garant which cannot be admitted in an action of this kind —

No 210.
Perrault
vs
Fraser
& Contra

On Report of arbitrators —

Mr Beaubien asks for hom. of Report of 2 arbitrators — they appear to have decided on 2 point 1 on Closing acct. of 20. Febr 1817, which the 2 arbitrs consider as settling the transactions of the party to that day. 2d as to the loss on the proceeds of goods sold at auction — The acct. of 20 Febr 1817 contained sales of goods under limited prices, and on the amount without any objection on 21 Febr 1817. £85 14.5

Grant for Defendt that the award of the Defds arbitrator ought to be homologated, as the point touching the liability of the Pltff for the limited prices has been established by the Judgt of this Court – the acct on which Defendt received the balce of £85.14.5 was no settlement of accounts, but was a payt made to Defendt on acct merely. –

The Defendt shews that the notes on gt the action is founded were satisfied that action must be dismissed – & Defdt is entitled also to his costs on the Incidental demand, on gt a balance has been found for Defdt & although the arbitrators were authorised to look into other transactions between the parties on gt a balce for goods sold & delivered to the Defendt has been established agt him, yet there can be no Judgt in favor of Pltff on this balce as it is not demanded – yet Defdt agrees that the balce found for him on his Incidt demand be compensated with the balce so found agt him – including the interest on the sum so allowed him on his Incidental demand

Beaubien for Pltff – The Pltff was ordered to account for all the goods she had sold for Defendt as well in her own name as the Partner of Perrault & Cartier, and in doing so, the Pltff was entitled to charge the Defendt with what he owed to Perrault and Cartier. – There is no Judgt which adjudges Pltff to be liable to Defendt for any limits at which she had sold the goods for Defendt but to account generally –

No 1148.
Armour & al
~
Beauchamps

Draw Ingt —

No 285
Gerrish
~
Wher
&
E contra

action on deed of Lease for rent —
Walker for Pliff —
Bourré for Defendr — the Pliff should act to Defendr for the enjoyt. of a lot of land wh. Pliff enjoyed belonging to Defendr — according to the acct. filed by Pliff, there are many articles to be deducted wh. Defdr is not liable to pay, viz. costs on Vend. exp. costs on exon — &c as ff. statement which he offers to file — objects also to the note being set up ag. him, as being prior to the transactions on gt. the deed was made & included therein — As to the demand of deguerpissement it is founded on no just ground, the lease is not expired, & the possessn is secured to Defdr during that lease —

McKenzie
Roi. —

Rule on Experts absolute for filing Report

see 1. Pigeau. Proc. Civ. p. 305. refers to art. 25. du Tit. 22 of ordce of 1667. —

Rodiers observations on sd. article. —
Sallé — on do.
Serpillon & Bornier on do. —
Code de Proc. Civile. art. 319. & 320. —

# Wednesday 14th April 1824.

## Present

## Justices Reid Foucher & Pyke.

The King
v.
Wallace

action to recover treble value of tea Defdt had in his possession to smuggle into Provinc 4 Geo. 3d ch. 15. Sec. 37 — The evidence is sufficient to support the demand. —

No 2110.
Hunter
v.
Donegany

Hearing on Exceptions. —

Mr Rolland for Defendt — there is no suffct Cause of action stated in the declaration, The action is for a malicious arrest of Pliff, without any Cause or pretence — The Pliff alledges that before Judgt. Pliff cannot be arrested without affidavit & then goes on to state that Defdt did arrest Pliff but does not say, it was before Judgt — which is not sufficient. —

That conclusions do not flow from premises. It was necessary that Pliff should have shewn that the writ of Capias wh Defdt was sued out was declared null & void, & therefore Pliff's arrest illegal. but the fact even is otherwise — and Pliff does not shew that the prosecution commenced by Defendt is at an end — 2 Esp. N. P. p. 31 — 34 —

That there can be no action agt a person for using the right gt the law gives him —

That the law as cited by Pliff in his declr is not correct, the case is very different, and Defendt is

is within the law, and according to Puff's own statement that Puff was arrested according to what the law requires. –

The Defend^t. pleads also the chose jugée, as by the Judg^t. of the Court the arrest of the Puff was held to be legal –

Sewell for Puff. The action is for maliciously holding Puff to bail, without cause or reason – The Defend^t. has under the colour of law used a course which was unwarrantable, namely that Puff was about to leave the province – By laws of the land this action is maintainable, Darcan Tr. Inj. p. 1. & 2. & 194 –

As to the chose jugée, it cannot apply, there was no question of compensation for damages before the Court in that case, and cannot be used as a defence here – the point formerly decided, is not therefore the same question now before the Court, –

Lilly's Mod. Ent. tit. action on Case. –

Cites case of Cuvillier v Aylwin at Quebec, where on an arrest illegally made an action for damages was maintained –

3. T. Rep. 185. L^d. Kenyon – Belk. v Broadbent Lex.

Rolland for Def^t. There can be no malice where the party uses a right the law gives –

No. 262

The King v Wallace

Gale for Def^t. action rigourous –

1 whether treble value can be exacted, when goods were not taken from ship-board, as referred to in Statute

2 whether after action to obtain forfeiture, this action can be maintained – both demands ought to be made at same time the forfeiture is demanded. by the Statute

then

there ought to be no second action - & the English forms are so - The proof in this case is not sufficient - Copy of writ not certified - The Indgt also is different from the allegations in the declaration - no cherts of hyson skin tea - are mentioned in the information as stated in Indgt altho'. in the declaration of forfeiture 3 cherts of hyson skin tea - the Indgt therefore is insufft as well as the writ -

Ross for Pluff - It was not necessary to allege that the goods were shipped, as the horses & carriages are liable to forfeiture wh conveys them as well as ships - The allegation on the information to obtain forfeiture of the articles generally states they were imported by persons unknown, and therefore action here cannot thereby be prejudiced - The papers are certified sufficiently - that without these papers the evidence is sufficient. -

Gagnon & Metras & Metras oppt

On Rule obtained by Defendt - on the gardien to shew cause why he should not be held to restore the goods & effects seized wh he had wrongfully taken from the possn of the Defendt -

Mondelet for Defendt - It was unlawful for the Gardien to remove the Defendts effects without cause cite Repn vo Gardien. p. 127. N. Denizt vo Gardien. 1. Pigeau. Proc. Civ. p. 623. note (6). old Denizt vo Gardien. Tit. 33. art. 9. Jousse.

Greece - for Gardien - Gardien here was volontaire and had a right to obtain possession of the effects seized to justify himself, particularly where he sees the effects appear to be in danger from the dissipation

Fer. v^o. Gardien

dissipation of the defend^t — That a part of the effects seized have been sold by the Defend^t — and for q^t the Gardien cannot be responsible. —

No 1577
Clarke & al
v
Torrance & al

On award. —
Only question as to Costs —

No 1170
Bransdon
v
Dickie & al

Action on a contract of Exchange —

Bender for Defd^r action ought not to have been brought before this Court, as the price of 6^d ⅌ foot is extravagant, it being of a bad quality — The Pl^ffs have made no proof of the quality of the wood and the Defend^r have shewn that it was wood taken soon before out of the water — and that value of it was not more than 4 or 5 sols the foot — That one of Pl^ffs ordered a matrass, q^t Def^r have charged to Pl^ffs & the balance due is below Jurisdiction of this Court —

Driscoll for Pl^ffs — The wit^s for Def^r who estimate the boards do not say they were the boards sold by Pl^ffs whereas the boards were delivered to D. Dickie one of the Def^r who must be presumed to have known the quality & to be satisfied with the boards. —

No 2041

# Thursday 15th April

## Present

Justices Reid Foucher & Pyke. —

No. 1239
Piccard
v.
Hitterdal

On Defendt. mo to quash writ from Short Service —
Mr Bender for Pltff — proof is necessary —

No. 1948
Stayner
v.
Smitte

On Defendts. mo. to reject the Interrogatories proposed by Pltff, with Defendts. answers and papers produced by Pltff —

Henshaw for Defdt. Pltff closed his enquete unconditionally & reserved no right to ex. Defdt. — the mo. for his examination was granted without notice to Defdts. counsel, and Defdt. was examined.

Gregg for Pltff, the enquete was closed by the Pltff, but not on the part of the Defendt and therefore Pltff was in time for his facts & art. but even if closed, the facts on wt. party was examined was upon facts which arose subsequent to the filing the original exhibits in the Cause.

Tierney
v.
Phœnix
&
Claimants

Mr. Osullivan for Informt. — Heard on Law — Seizure founded on St. 7. Geo. 1st ch. 21. 52 Geo. 3. ch. 55. —

Gregg for claimants — a declinatory ~~plea~~ has

has been filed, the thing seized was not within the Jurisdiction of the Court — The Court here cannot decree a forfeiture of a thing not within its power, nor order the sale thereof, as prayed by the Information here — 2 Bac. Civil Law. p. 397 — 404 — 2 Bac. abr. title Court of Exchequer. (B) 3. Bl. Com. p. 262. 263. — It may be argued that by the St. 9 Geo. 1. ch. 21 sec. 9, Jurisdiction is given to this Court. as a Concurrent Jurisdiction is given to it with the Kings Courts of Exchequer & Admiralty, & therefore this Court can take cognizance of this matter —

That the Court cannot proceed on this Inform^n as the P^r was not at time of seizure a Custom House Officer — 13 & 14 Chas. 2^d. ch. 11 — sec 15. St. 7 & 8 Wm. 3. ch. 22. sec. 6. g^t explains Stat. to Colonies all authority to any Officer of this description must emanate from the Crown — 7 Geo. 1. ch 21. sec 9 — shews this principle that seizure must be made a proper Officer — The Stat. gives the kind of powers to him who shall sue for it, but this refers to the person who is by law authorised to seize & prosecute under the above Stat. of Chas. 2^d

The Information here must have been filed by the Kings Att^y Gen^l and not by the Inform^t here or any other private Individual — The statute here referred to may be argued as not in force in this Province, but it is a general law regarding the fiscal rights of the Crown and regards all the dominions thereof — 5 & Geo. 3. ch 104. sec 15.

The Inform^n informal. Offence committed on 25 Sept. 1822, and Inform^n filed on 18^th Febr^y last. 1824 — vide 31 Eliz. ch. 5. sec 1. & 5^th limits

all

all proceedings by Information &c are limited to one year after the offence committed. — this is laid in the Colonies by St. 7 & 8. Wm 3. ch. 22. sec. 6 —

ch. 22. Sec. 6

Sewell of Counsel for claimants — It is proper to consider how far the Stat. on qt this Information is founded have effect in this Country — It never was the intention of the mother Country to lay the same restrictions on the Inland commerce of her Colonies, as the trade carried by Sea — refers to the opinions of the Crown officers in Reeves — The Stat. 7. Geo. 1 — quoad the Phoenix has no bearing on the case, as it regards only importations from the East Indies immediately into the Colonies — but this does not affect the conveyance of the articles from one Colony to another nor the vessel or Carriage conveying the article in such case — it is usual to declare the article forfeited but not the vessel or Carriage in which they are found. At time of peace of 1783, it was considered that the most extensive commerce by Inland navigation or otherwise might be carried on between the United States & the remaining Colonies of His Majesty in America the same as if no separation had taken place of the Old Colonies — refers to Reeves — The Stat. 7 Geo. 1 refers only to trade by Sea & nothing is sd in regard of Inland navigation or carriages used in it — the Stat. was made for the protection of trade of East India Co —

Reeve Ships & Nav 81.1 184. 192. 344. 359. —

The Stat. 52. Geo. 3. ch. 55 — was made while we were at War with the United States — but it has been abrogated the various treaties & transactions between the 2 Countries since the Peace — By the treaty made in 1799 — by 27th art. of qt the first 10 articles are declared permanent — and as soon as peace was re-established, these articles revived, altho' during the war, they could not be acted upon —

Ld Grenville's Treaty —

The other articles of that treaty were declared to be only temporary — qt shews that the other ten were to be considered as in force in all cases between their Govts while they existed — That since the Peace wt the States other Statuts of Gr. Br. have been made respecting the trade between Gr. B: & her Colonies with the United States, which shews they were proceeding on those very laws which they considered as in force prior to the war Concludes that Stat. 52. Geo. 3 can be considered as in force in this Country in regard of the Internal trade of the Country —

59. Geo. 3 ch. 4 The only stat. upon qh this Informn could be supported is Prov. Stat. 59. Geo. 3. ch. 4 — and this is particular that no forfeiture is declared of any Ship, or Carriage bringing the forfeited article into the Country — & how could the Prov. Legislature make laws in direct opposition to the Stat. of B. Parliamt if the Stat. 52. Geo. 3 had been considered as in force between the U. States & this Province — the Prov. Legislature has from time to time made such regulations in regard of this trade —

A Prominent feature in this Case is the want of Capacity in the Informer to file this Information the 13 & 14. Chas. 2d. referred to enacts positively that no ship or vessel shall not be seized by any one but an officer of the Customs — this Stat. is extended to the Col. by 7 & 8 Wm 3d — now it is required by the English Stat. that the Information must be filed by His Majesty's Attr Genl or an officer of the Customs — the Stat. 14 Geo. 3. ch. 88. made for the Province of Quebec where the same mode is laid down for the recovery of penalties incurred in regard of the trade & navign laws — and it is provided, that all the laws

regarding

regarding the trade & Commerce shall have force and effect in the Province — But the Informant here does not appear to be a Custom House officer — the division of the proceeds, seems by the Revenue laws to allude to the informing officer, as a person warranted to prosecute —

The right of Informant is limited by law to one year after the Offence committed — this holds in all cases for the recovery of any forfeiture or penalty. — Jicklyn on Customs — referring to prosecutions for penalties generally, as well in the Colonies as else where must be brot in one year from the Offence committed —

31 Eliz. ch 5.

7 & 8 Wm 3 —
14 Geo 3 —
Prov. Stat. —

It does not appear on this Informn that the importation of the Contraband articles was made in such manner as to come within the Statutes relied on, because the mere bringing the articles into port without an attempt to land them, there is no room for Forfeiture — 2 Wils. 257. — Smith. v Reynolds — unless goods be landed or offered for sale —

Mr O'Sullivan for Informt.

All the observations of last Counsel touching Stat. 7 Geo. 1. will not apply, as it mentions as well the forfeiture of the article, as the Ship or Vessel, in gt they are imported, and refers as well to Gr. Br as to all her Colonies — But the Stat. 52. Geo. 3. was made expressly for this Country, & must have its full effect —

As to the Jurisdiction of the Court — if the vessel had never been seized, certainly this Court could not proceed, this argument might apply to but when a seizure has been made, the subsequent removal

removal of the article cannot take away the Jurisdiction of the Court —

If the forfeiture existed at the time of the seizure it existed in favor of the Informt who was a Custom House officer at the time — It was not necessary that the prosn should have been made by the Attys Genl 24 Geo. 3. ch. —

over to Saturday morns

No 1056.
Gibb
Kollmyer

Action on Promy note —
heard on law

Walker for Pltff — Partnership between Pltffs contd till 1 Nov 1821 — when it ceased — and on 23 day of same month an act was passed between before a Notary regulating their respective rights in the partnership — The Defendt second plea is founded upon the principle that there was fraud & covin in the said act or deed, as no statement had been made of the debts property & effects of the partnership, under which the Defendt was induced to give his note for a part of the Stock in trade — This plea tends to impeach the validity of the notarial deed, which Defendt cannot be allowed to impeach in this way — ~~distinction~~ There must be a demande en rescision to affect this contract — Poth. Proc. Civ. p. 311 — an action instituted for this purpose. p. 319 — stating the specific grounds of nullity — Obl. No 28. 29 — the conclusions taken by the Defendt here by his plea, are framed as if the contract were ipso facto nul de plein droit, instead of demands the rescision

of

of it – Rep^r v^e Nullité. p. 263 –

It is necessary that Defend^t should have specified the particular kind of dol practised – in order to shew whether it was sufficient to obtain the rescision – and how and in what manner this fraud has come to his knowledge – Now the Defend^t contents himself merely with denying the facts stated in the Contract, without shewing any ground to warrant such denegation, either from the state of the books or the value of the stock in trade on hand – Desp. Tit. Restitution pour dol – tit. 2. Sec. 4 – Lacombe v^e Restitution – Dantz. p. 238 – ch. 7. add^s – p. 244 – p. 247 – Rep 327. 9. v^e Rescision – 2 Pigeau 95. – 1 Pigeau 337 – there should have been incidental demand to effect the rescision of the Contract. – 1 Pigeau 311 – no difference where act be sous sing privé or before a notary. – Poth. Proc. Civ. & Dantz. 246 –

1 Desp^s. tit 2. Sec 4

The third plea is more general in terms, & more defective in matter in regard of the particular circumstances on which Defend^t can be admitted to make proof –

There is an Incidental demand, which however is not founded on the above Contract, but on the act of partnership between the parties – To this the Pl^ff has demurred, as Defend^t by his own shewing that this demand was done away by the above contract of dissolution of the partnership

Grant for Defend^t – The plea of fraud is a good plea to the transaction in question of which the rescision is demanded, and sufficient grounds are stated for obtaining it – fraud is of different kinds, & it is enough to alledge it without demanding the rescision of the act, as such fraud

fraud shews the nullity of the act, even if the action had been instituted on the contract of dissolution — Repre vo dol. — Here the grounds of fraud are specifically set out — and in a sufficient manner to entitle the party to proof of them. — The Incidental demand is correctly stated for a right qt accrues to Defendt in consequence of the act of partnership. —

No. 1974
Archambault
Fullum
&
Doyon opt

On opposition a fin d'annuller —

Buchanan for Oppost — on the death of the Defendt — the oppost became universal legatee under his will & not bound to come into the Cause till called on — 2 Loisel p. 357 — Proc. Civ. 4e part. ch 2. app. 2e art 1. §. 2. Denizt — vo Execution des Jugemens — Poth. 20 tit. Cont. d'Orl. 95. Louage. No. 207 —

Rolland for Pliff — There was no necessity to declare the Indgt. executory agt the oppt — as the Execution had been sued out, and the property about to be sold when the oppost stept in with her claim — and pretends that the seizure should be set aside, which was made during the lifetime of the Defendant

see Comre Gr — Fer. art. 168. Glose unique No. 20. p. 1152.

Buchanan — The property was diverted out of Defendt — by death of Defendt — & became property of Opposant —

No. 146
Cuyler
Holt —

Action of Revendication for certain moveables belonging to her. detained from her by Defdt —

Gale for Defendt — There are 3 actions by Pliff to qt. same defence — that Pliff has no right to her action

or

or to ester en Jugement, as the Judt. of Separation had been set aside by a reconciliation and the parties having lived together for several months — of this there is ample proof. and consequently the Communauté between the parties was re-established and the Pltff could bring no action without authority of the Judge —

2 Poth Comté. p. 62. 67. in 12. No 523. 526. No 527. —
2. Conh. Mar. p 174. 5
4 Nouv. Denys. No Comté p 724. 725
2 Pizcan. p. 234. —

No 132
Siccard & ux
Whiteford }

Action on deed of Exchange —

Lacroix for Defendt. has proved that Pltffs. in in possn. of the land given in exchange to them the declaration is incorrect as it demands that Pltffs be put in possessn. of the lot of land qt. they gave in exchange to the Defendt. according to the terms used by the declaration — but if the Court could get over this, there is evidence that Pltffs are in possession — there is a small part of the land of wh. it would appear the Pltffs ~~have~~ not obtd. the possession, namely an emplacemt which had always been in the possession of another person and never belonged to the Defendt. ~~That in the~~ the north west side there are several emplacements which belonged to other persons & one of them Jos. Morin ~~is the person~~ who is the person described as the neighbour by whom the lot given by Defendt. in exchange, but Pltff can have no right to these emplacements, as the Pltffs had a perfect knowledge of all these facts before the deed of exch. was passed. —

Mondelet for Pltff — There is a small error in the declaration in mentioning the land secondly described instead of firstly, which is the fact — The facts on the merits are very clear and shew that Pltffs are entitled

to

to their action. —

# Saturday 17th April 1824

## Present

## Justices Reid Foucher & Pyke.

No. Tierney or Steamboat Phœnix — & Claimants

Mr Sewell in continuance of his argument If the St. 7 Geo. 1. & other Stat. 52 Geo. 3d be not in force here the claim of Informt. must fail — as to the Stat. 7 Geo 1. applies only to Ships at Sea and not to internal conveyance — as to Stat 52 Geo. 3d. it must be considered only as temporary from the State of warfare between Gt. B & States, but by the subsequent communications between these Countries this Stat. must be considered as having been done away, and the Treaty called Jay's Treaty or Grenville's Treaty must be considered as regulating the intercourse between the two Countries — By 55 Geo. 3. ch 193 — reference is had to Jay's Treaty as still in force — and this must be so understood by the 10 first articles of this treaty being declared to be permanent, and from their nature they must be considered as permanent — The 3d. article of this Treaty must apply to all goods brot. from States, which could be imported into the Province from Gt. Britain The Stat. of 37 Geo. 3 referred to in St. 55 Geo. 3 is

made

made for the purpose of carrying into effect Mr Jay's Treaty — and as this Stat. 37. Geo. is still in force, it is not probable it could have been allowed to subsist had it been understood that the Treaty which this State was meant to carry into effect, did not exist and was in force — Again in 1818. by a treaty & Convention made between Gr. B & the States, this treaty of Jays is further confirmed — Quebec Gaz. 15 Febr. 1819. on the 4th article refers to Stat. 55 Geo. 3. extending its operation to a longer period —

Mr O'Sullivan for Informt — The permanency of the Treaty of 1794 depended upon a State of peace between the parties, nor can it be meant or extended to contravene the Provisions of the Stat. of 52 Geo. 3d — but by the 3d articles of the treaty the articles are allowed to be imported from States qt are not entirely prohibited — which shews the power Gr. B. retained to determine what should be prohibited — The Stat. 37. Geo. 3d gives power to His Majesty merely to regulate the duties upon articles allowed to be imported —

1st as to want of Jurisdiction of the Court to proceed as the vessel in question is not before the Court — It is necessary to distinguish between pecuniary forfeitures, & of certain particular objects — as to former the right vests only from the time of the forfeiture declared, but as to the latter from the moment of the seizure, & even from the instant the article comes into the territories of the King, the forfeiture is due & the right of the Informt attaches — 2. Bl. Rep. Scott v Sheerman — p. 977 — qt shews right attaches at time of the seizure — and the Lead^g given has a retrospective view as to the forfeiture up to the time of seizure — The limitation therefore cannot operate here, after the seizure — Packer's Rep

in

Rep. in Exch. Mitchel q.t. Seventeenth 227. —
Coffinger's Laws of Excise, Coleman v. M^c Gee —
1 ap. 299 — when jurisdiction declared to attach from
moment the offence committed — Chitty on Commerce
Manufactures & Contracts — 1^st Vol — 771 — same doctrine.
1 East. 261 — & 255 — Therefore from the moment
the offence here was committed & the vessel seized
this attached for the benefit of all persons concerned
Chitty. 772. and altho' the vessel is not now in the district yet
it has been carried away in contempt of a seizure &
of His Majesty's Government — & the claimants here
cannot be allowed to benefit by their own wrong —
And although the seizing officer has been deprived of
his office, yet his right must remain — & the law only
can deprive him of this —

It is argued that His Majesty's Attn Genl should
have filed this Information, — by Stat. 24 Geo. 3.
ch. 47. certain requisites necessary to be observed before
the claim could be admitted — if all the English laws
are to be taken to be in force in the Colonies — the Attn
Genl — cannot be in every place where such proceedings
are required as this Information — these Statutes require
the Information by the Attn Genl relate only to England
Esp. on Penal. Law. p. 61. 62. The Informations
by Attn Genl are made only in the Kings Courts
at Westminster — Chitty above cited. 638 — 640 —
Slosh on Colonies. p. 12 — 2 East. 362. King v. Stevens

M^r Gregg in reply —
There is no limitation can apply here — either as person
or thing, unless regularly brot before the Court — as
to this principle may have accrued to the Informt but
this will not authorize the Court to proceed to exercise

a

right over a thing which may not be in esse — or in a foreign Country —

The Informt — not being a seizing officer when the Information was filed is not entitled to maintain it — cites St. 13 & 14. Chas 2. ch. 11. Sec. 15 — & 7 & 8r Wm 3d — introduces this Stat. into the Colonies — and therefore official authority requisite here in the Informant —

The forfeiture here was a forfeiture to the King alone. altho' the fruits of it go to different persons where forfeiture generally is declared it is by Com. law to the King as the head of the State, and the forfeiture is not declared in favor of a Seizing officer — and its right the Sovereign should be able to remit a forfeiture — qt he could not do if it vested in another of his Subjects wt him — the King cannot be a Co-proctor with a Subject — the property is confiscated, it goes to the Commonwealth — If this Informt can support his claim — any other individual might do the same thing —

The Attys Genl in England, refers to same officer in any other part of his Majesty's dominions as represents the King — the Stat. 56. Geo. 3. ch. is positive —

As to the limitation of the right to prosecute are answered by what has been sd in regard of the forfeiture — but the Stat. of — Eliz. is positive in regard of all forfeitures on Information —

The St. 7 & 8 Wm 3d has imposed but one restriction

in regard of laws passed in the Colonies, that they do not militate agt the Laws of the Mother Country

59. Geo. 3. now the Prov. Stat. prohibiting the importation of tea, into the Province from the States declares its forfeiture, but says nothing in regard of the vessel or carriage conveying it — and in so far the Prov. Stat. cannot be construed differently from the laws of the Mother Country — as to Stat. 7 Geo. 1. it could never be pretended that the vessel could be forfeited under it —

1 Chitty. 772. the prescription referred to is under particular Statutes —

Mr. Ross of counsel for the Crown moved to be permitted to intervene in the Cause —

No 465
Rolland
Pothier

On Pleff. mo. objecting to testimony of Mr Chevallier, & as to the nature of the proof adduced & to be adduced by Defendt —

Mr Rolland — says. he has admitted certain facts in consequence he contends the Enquete ought to be closed on the part of the Defendt — as to those facts —

Mr Bedard for Defendant — The Pleffs admit the facts partially and not as stated in the Defendrs plea of exception, & the Defendt ought not to be bound thereby, unless admitted as pleaded by Defendant — The possession

of

of the Defendt was under a particular title which he wishes to establish, namely in roture which he is intented to shew as he has pleaded

No 424
Labelle
&
Dazen
&
Lacroix opt
&
Vandandague
mis en Cause

Mr Bleury for the mise en Cause,
The law gives the party a right to give caution for payt. of money. & therefore rule ought to be so
Repn vo Contrainte par Corps. p. 252.

The mis en Cause having desisted from the sale by consent with her husband the Pleff he alone is interested in the question —

1 Pigeau. p 409. 10

That the mis en Cause — is grosse & not liable to the Contrainte. —

see Repn vo adjudicataire

Dubord
&
Mayrand
&
Cuthbert
&
Raymond
mis en Cause

On rule on mis en Cause —

Mr Peltier for Mayrand, as Tutor, states that the interest of his pupil would be materially affected here if this rule were granted — The opposition made by Mr Mayrand was for the dower due to the minor, it was founded in law & therefore Pleff — could not be contested, and the Court has ordered the lands to be sold subject to this dower & certain other charges this Judgt cannot now be altered — & the Seigneur cannot be allowed to alter what has been so ordered inasmuchers this Judgt has not been attacked, at least in a way to be noticed by the Court. — But had Mr Cuthbert even attacked this Judgt he would now be too late, as the advertisements given required him

to

to take notice of this charge — and further that Mr Cuthbert was apprised of the fact & knew it & that he must then have exercised his rights, if he had any prior in right to those of the other Opposts — The Court by its Indgt. of 20 Oct last discharged Mr Langevin, who was an adjudicataire subject to pay on the same condition when Dower came due — That by granting the claim of Mr Cuthbert, it wd be setting aside the Decret gt was made — and would be destroying the rights of the minor, when there is a person posterior in right to the minor, namely Madame St Louis, who is not before the Court, and whose claim on the land has been preserved to her —

Rolland for Mr Cuthbert — The Curator has submitted his right to the Court — and afterwards submits certain observations to the Court —

—

No 1181
Duplessis & Cardinal

On Pltff motion to reject two first items in the account rendered by Defendant, as not belonging to the administration of the Defendt as Executor. —

L. M. Vezé for Defendt — The Defendt is sued not as Executor, but in his own private right and capacity, and has a right to set up any claim he may have agt the Pltff, as legataire universel of the late Pre Cardinal — The Pltff here represents the late Pre Cardinal, who was the debtor of Defdt —

Rolland for Pltff — The Defendt cannot compensate his own private debt agt the claim of Pltff

# Monday 19th April 1824.

## Present.

Justices Reid, Foucher & Pyke

No 1276
Fabrique de Montreal v. Cuvillier — Judgt confirming the sale made by Defdr

No 360
Paquin v. Proulx — action agt principal Debtor & a Caution simple joined in the same action — Held by Court irregular but being a default case, Court allowed Pltff to discontinue as to the Caution and gave Judgt. of the principal Debtor. —

No 2110
Hunter v. Donegany — Exceptions pleaded by Defendr over ruled
1 Ted. 165.

Cartier & Degen. & Guertin opt — Opposition dismissed with Costs. —

No 1274.
Vigé & ux v. Pasteur — Defendrs plea of exception over-ruled as to his liability to account, but admitted as to his obligation to pay — Order that Defendr render account

No 449
Woolrich v. Malhiot — Judgt for Pltff — The Court held notice of protest & non payt. to Defendr of Parties note sufficient, as by the rule & practice in England verbal notice, or even sent by post is admitted —
see Mr Pyke's notes —

| | |
|---|---|
| No 674. Piché & ux v. Maninger & al — | P. Verbal of Experts homologated. — |
| Seaver. v. Kendall & Corporation of Clergy Reserves Oppts. — | Opposition admitted. — |
| No 1793. Demers v. Patenaude | Action dismissed. — The Court considered the evidence of the death of the notary & of the Wit. who signed the act, as not sufficiently established and that verbal testimony in this respect could not be received |
| No 1877. Gagnon. v. Metras. & Metras opt. | Opposition dismissed. — Rule agt Gardien absolute. — 1 Pigeau. 623. note (b) |
| Petition of Anne Lewis | for alimentary allowance as a Pris. in Gaol under a writ of Execution from the Court of K. B. at Quebec. — Petition rejected. — |
| No 528. Dubord v. Mayrand & Cuthbert & al oppts — | Interlocutor admitting the Tutor to put certain parties into the Suit. — |
| No 1170 Bronsdon v. Dickie & al | Judgt |
| No 1212. Robertson & Co v. Gamelin. vice woolrich — | Judgt for Pltffs. — |

No 1646.
Papineau v Papineau & Harbec — Judgt subrogating Intervening party in rights of Pltff

No 1974.
Archambault & al. vs Fullum & al. & Doyons & al opts — Opposition dismissed.

No 257
Mathieu v Plucknett & Sewell Ints — Plaintiffs motion to be allowed to change her answers to the faits & articles rejected.

No 1948.
Stayner v Smith — On motions of Pltff & Defendt for rejecting certain papers & proceedings had in the Cause — both motions were granted.

No 938.
De Rouville & Soret — Pltffs motion granted.

# Tuesday 20th April 1824.

Present

Justices Reid, Foucher, & Pyke.

| | |
|---|---|
| No 253 Dorions & al vs Dorions. | Judgt |
| No 1646 Patenaude & ux vs Marcille | Action dismissed. |
| No 1992 Whiteford vs Crevier & Garant | Judgt for Pltff |
| No 424 Labelle & Dagen, Cur' & Lacroix oppt & Vandandaigue mis en Cause | Motion by Lacroix for contrainte agt the wife of Pltff. for difference of price on the folle enchere dismissed. |

# June Term 1824

## Tuesday 1st June.

Present

Justices Reid, Foucher & Pyke.

Wednesday 2d June 1824
Present
Justices Reid Foucher & Pyke.—

No 152
Holt
Holt — } on action of account
Mr Sewell for Pliff demands Judt — Defd appeared in person, but has not filed any account altho' ordered — Pliff thereupon made proof by the Commune renommée. —

No 628.
Manchester
Labille — } action on deed of Sale —
Bender for Defendt — admits he has done no diligence on the rule of the Court, but considered that Pliff was bound to proceed thereon. —
Grant for Pliff — Pliff not bound to proceed on a rule made in favor of Defendt. —

No 36
Haykes & al
Keep
& Contra } on application for new Experts in both causes — agreed to by Mr Hewhaw for Defdt —

No 1804
Toupin
Carmel
& Contra } action for house rent —
Bender for Defdt has filed an Incidental demand for damages from the insufficient state

state of the vault and buildings leased, and that no rent is due to the Pliff - refers to the evidence adduced. —

Bedard for Pliff - The Pliff leased the property in the state the buildings were at the time and charged the Defendant with all repairs - and even according to the evidence adduced there is no room for any demand for damages - That Defendt - never made any complaint or gave any notice to Pliff of the defects in the roof of the vault

No 1139
Gardner
v
Johnson

Action on deed of sale - hearing on demurrer

Driscoll for Defendt - the deed of sale was made on condition of ratification by Pliffs - wife which ought to have been notified to Defendt - before the action brought, this is not alledged in declr that any such notice was ever made -

Guzy for Pliff, had it been a condition that notification of the ~~ratification~~ Deed was ~~necessary~~, to be made, the not doing it would have formed a good plea of exception, but this is a case of demurrer, and in the declaration nothing is stated that Pliff became bound to give such notice, & therefore demurrer is irregular

Hearing on Exception to Plea -

~~Hart~~
Achéa de St. André
v
Patenaude

Guzy for Pliff. states that Defendt - cannot maintain the Plea of any incumbrance on Estate sold, without shewing disturbance or trouble, and the discovery of the existence of any mortgage on the Estate sold, without trouble is insuffte - the Pliff bound only to maintain Defdt in possession - Poth. Vente. No 48 - 81. 82. 83. 86. 101 - 193.

Driscoll for Defendt. The Defendt. is entitled to set up the defence of existing incumbrances in a case of this kind so as to secure himself at injury —

—

№ 2007
Senecal
vs
Raymond

action at Defendt. for an illegal seizure —
Quesnel for Plff, Defendt seized Plff property under a warrant of one Jobson a Commissr at the Lieschal of Boucherville, whereas Plff lives at Varennes —
Bender for Defendt — parties must go to evidence as the facts stated are a sufficient justification of Defendt —

№ 528
Bouvron
vs
Lindsay

action en bornage — Report of Surveyors —
Driscoll for Plff — Defendt has pleaded that there existed actual boundaries between the lands of the parties — concludes to home of Mr Futvoie upon setting aside the facts of expediency stated by Mr Manuel —
Gale for Defdt. The title he emanates from the Plff and he is bound to warrant the quantity of land sold Davis & Futvoie differ in opinion — and if line between the parties be changed it will alter the lines of all the adjoining farms — The Defdt purchased from Plff according to a certain procès verbal & the posts marked by this P. Verbal are defined by the Surveyors named by the Court in this Cause — Futvoie & Manuel — Manuel very properly — maintains the front and rear posts — the guiding & center post he leaves out of the question —

No 610
Reynolds
v
Dickie & al } action on note and on a debt transferred to Pleff

Bender for Defend^t — Pleff cannot maintain his action for the debt transferred to him by Wingfield as he gave no value for it —

No 497
Hall
v
Camyré } action to recover damages occasioned by suit instituted ag^t him on a note Pleff p^d to Def^d & q^t he promised to deliver up to Pleff, but which he indorsed to one Hart, at whose instance Pleff was sued and condemned to pay the amount a second time to Hart —

Bleury for Defend^t — all Pleff could be entitled would be his expenses as a witness for the days he attended the Court —

1110
M^c Tavish
v
Sweeny — } action for goods sold & deliv^d & on Prom^y notes hearing on law

Grant for Defend^t — The Pleff has joined rights of action belonging to other parties not in Cause, as a contract of a firm not named, nor sued. —

Gale for Pleff — The Defend^t signed notes by name of Sweeneys & C^o — and the counts in declaration are meant to meet this transaction — Tidds 556. Chitty 199. 200 — the particular deffective Count ought to have been demurred to — Chitty 209 — irregular counts may be struck out —

Pigeau 36.37 & 198.

No. 1117

Taylor v. Doucet & Delorme oppt and Gerrard v. Doucet & Chevallier sal oppts

On proposed rule of Reference to ascertain the respective rights of the claimants on the property before the Court —

Ross for Pltff — refers to rule drawn up to this effect —

No. 1621

Chaurette & Cholette

action de partage — on Exceptions — & on proof thereof

Peltier for Defendt — The answers made by the Pltff on the faits & articles are sufficient to shew that he knew the nature of the donation made by the Defendt — by the late Meloche — but Pltffs wife denies all knowledge of the facts. —

Rolland for Pltff — the plea cannot be maintained by any kind of proof, as there can be no ratification of an act by a person who is no party to it — this would have been a renunciation to a future Succession qt in law is inadmissible — The evidence adduced is besides insufft —

Gagnon v. Bourassa & Leclerc oppt

On opposition afin de conserver —

Hearz on law —

Rolland for Pltff admits oppn of 1/4 of land but the demand is not regularly made, as it is for one fourth of the value of the land, instead of 1/4 of the money for qt it was sold — has a mortgage on part — as to the

Rep. v. privilege 691.

the other part or half the oppost. has only the jouissance by substitution, the substitution not being yet open. Poth. Subtit. Sec. 5 —

Buchanan for Oppt. — There is no substitution in this case, the Defendr. has merely the usufruct but the property is vested in the Oppost. — usufruct is merely a kind of servitude — definition of substitution different here — the usufruct is only separated from the property —

No. 1974
Poissan & al.
Bertrand

action petitoire —

Bleury for Pliff — Pliffs title made out by deeds filed & by evidence adduced — Defdr. has pleaded prescription

Bender for Defdr. — Defendr. obtd. a deed of Concession in 1793 — since qt. time he has been in the constant possn. of land & therefore invokes the prescription of 30 years

Bleury for Pliff — the deed of Concession produced by Defendr. does not relate to the lot of land in question, and as to the prescription it has not been made out.

# Thursday 3d June 1824

## Present

## Justices Reid, Foucher & Pyke

No. 16
Desrivieres
Ayers —
J. Johnson Gast —

On Defdr. mo. for delay till 16th inst. to plead
Mondelet for ~~Defd.~~ Gast. question whether a part of the Seigniory of Manoir is within the Township of Stanbridge —
Morrough for Pliff. agrees to give delay to 12th —

No. 1666
Warwick & Co.
Raymond

on Pliff's mo. that Defdr. name another Expert in place of Leclerc —

No. 777
Jordan sal
Spragg sal

on Defdr. mo. for security for Costs

No. 1158
Hebert
Toupin sal

On Report of Experts & mo. of Pliff that same be set aside for reasons stated in affidavit —

No. 523
Wright sal
McMillan

On defendr. mo. for delay to 1 Octr. to fyle a pla

Watson
Yule —

on Defendr. mo. to quash writ as granted on insuffct. ground —
Boston for Pliff. The Judge was satisfied wt. the affidavit qt. was sufficient — That after having given bail the Defendr. cannot be admitted to contest the

the arrest, cites Tidd's Prac. —
Grant for Defend^t. The Pliff swears to having received information that Defend^t was about to leave the Province this not sufficient. —

No 1247.
Hunter
v
Donegany } On action for false Imprist^t. —
hearing on exception —
Rolland for Defend^t — has pleaded lis pendens to this plea, Pliff has not demurred, and as this is matter of fact, the parties must go to evidence. —

No. 1027
Sutherland
Stern. &
Jones — } action on Promy Note —
Greece for Defend^t — the Defd^t Jones says that his ~~Indorsement~~ signature is not an Indorsement, nor is he bound thereby — Nor is this an aval — cites N. Deniz. v^o — aval — Rep^n — co. rub. — The action is besides irregular & ought to have been brought ag^t Jones in garantie. —
2 vol Boston for Pliff. The simple signature of the party binds him — 2. Bornier —

No. 1670
Chapman
v
Bridgeal } On defend^s mo. to discharge the inscription of the Cause for final hearing. —
granted —

No 352
Perrault
v
Bistodeau } On action for breach of Contract. & oblige him to pass contract according to agreement
on Law
Le Vigé for Defd^t — action cannot be maintained

by

by act of 2 Oct. 1822, the Pleff agreed to make an exchange wt Defendt there are no terms or consideration for making this exchange, — only Defdt was to give a sum of £400 in return according to certain agreement between the parties, but declaration does not shew what this agreement was, nor when the money was to be paid nor are the terms of payment shewn — altho', it was necessary that the terms of payt. should have been set out, as it may be a disagreement between the parties as to these terms of payt — which has occasioned the present action — which therefore is irregular —

The Pleff demands the penalty in the Contract also damages — and that Defendt be held to pass the contract of exchange — but Defendt here is bound only to pay the penalty — & even that may be moderated by the Court — & which Defendt would here demand — the penalty here is merely comminatory. Domat. liv. 3. tit 5. Sec. 2. § 15 — Poth. Ob. ch. 5. No 342. 3. 4 — Here the Pleff has alledged nothing to shew that he has suffered more damages than the penalty stipulated, & therefore the Pleff cannot be admitted to make proof beyond the extent of this penalty — Repr. vo Peine Contractuelle — p. 68. Denost. Vo Dom. & Interets. —

Lacroix for Pleff, contends that the declaration is sufficient — that he has adhered to contract between the parties and alledged enough to maintain the action. —

No 254
Lacroix
v
Brunet } action for fees & disbursements as Counsel & Attty
Vigé for Defendt This action is irregular.
Pleff not ~~having~~ being founded on a Registre, nor
1 Pigeau 880. Repr. vo Procureur p. 714 — Pasqu. liv. 6.
tit. 12. No 8 — Lacombe. vo Procur. ad lites —

Obl. No. 691 - end - Denegt. vs Faits - No. 9. £10 -
Lacroix - contends that the action is a paper filed in regular, & working is demanded but what appears by sufficient documents produced in the Cause. -

No. 1109
Ware & al
v.
Adams } action for goods sold &c
on Law

Buchanan for Pleff - Defendt. has pleaded irregularly, first general denegation, 2d. non asst. & 3d. special plea, which is more to evidence than to the action - 1 Chitty 541 - non-asst. non est factum & tender cannot be pleaded together 4 T. Rep 194. - 5 T. Rep 97. 4 Taunt - 459. - the Court must therefore order a repleader -

Grace for Defdt. - the pleas are to the merits and there is no order of pleas to the merits. -

~~Wyrtele~~
~~Poitras~~
~~Plessis~~
No. 1948
Stayner
v.
Smith } action petitoire. -

Mondelet for Defendt. - The Defendt. has pleaded title by possession of 30 years, and this cannot be divided, as Pleff has made no proof, nor the Defendt. -

Guzy for Pleff. cites 1 Pig. 263. 269. - the
1 Pig. 263 modes by which proof is to be ascertained. -

№ 170
Collins
v
Moore.
& contra

action on Promy Note.—

Morrogh for Defendt— The note was not made and signed by Defendt— but was made by Wm Cunningham the defendants clerk— the proof is therefore variant from the declaration.— There are contradictions in the testimony of the Wits Collins for Pltff— The person Wm Cunningham as being the best testimony ought to have been produced to prove the note— The Indorsed demand is made out to extent of £50

—

№ 529
Seguin
v
Fleurimont

Default case—

№ 1258
Whitford
v
Filiatreau

action on note & for ant—

Rollin for Defdt— Pltff not entitled to demand for note—

# Friday 4th June 1824.

## Present

## Justices Reid Foucher & Pyke.

No 66
Durand & Rolland

On question touching the admissibility of the testimony of Chas. Morrison –

Bruneau for Pleff. contends that Wr is competent –

Grant for Defendt – The Wr is interested, as he has acquired ~~the~~ rights ~~of one of~~ for the parties who have a suit agt. the Defendt – for the same object as present – as having been appointed their agent –

No 538.
Turgeon & Achim & ux & Achim & ux oppts

On opposition afin d'annuller –

Roi for Pleff – has raised an exception to the moyens d'opposition, inasmuch as the delaissement was not made within the time limited by the Judgment – not stated in the moyens that this was done –

Bleury for Opposts. The Defendts were entitled to make the delaissement at any time, before or even after the sunzout of the execution – That the Judgt here was never legally given to the Defendt – being made by a notary & not by an Officer of this Court –

The Defendts had a right to dezerpir at any time cites case Jac. Denaud & ux. v Pr Beffre. Octr 1811 Jugt. on 13 Febr 1812 –

Roi for Pleff – The moyens d'oppn here are insuffts as it is not alledged at what time the delaissement was made, this alone renders the opposn null –

No 526
Gibb & al
Arthur —

on Pleff's mo. to reject Defendr plea of misnomer as 2 guineas were not deposited therewith when filed —

Gregy for Defendr — this is not a plea à la forme Tit. 2d. art. 1 Ordre 1667, does not touch upon any matter of misnomer, but regards merely matters which respect the form — cites Poth. Proc. Civ. Ch. 2 Sec 2. art. 1 — the matters of excepn à la forme must be some infraction of the ordre of '67 — see also 1 Pig. 148. 158. — The Plea of misnomer is a temporary bar to the action, and is different from an excepn à la forme. 1 Chitty 435.

1 Pig. 148

Walker for Pleff — This plea comes within the scope of the rules of practice, gt require deposit of 2 guineas — 1 Pig. 132 — and p. 128 — refers to irregularities as to the person of the Defendr as well as that of Pleff, as forming a part of the nullities gt come within the excepn à la forme Repn vs Exception

Poth. Proc Civ. p. 15. —

On rule obtd by Pleff to shew Cause why he should not be allowed to substitute name of James instead of John, in the Decbr & writ, as being the name of the Defendr

Walker for Pleff the circumstances of this case as stated in the affidavits will bring the application within the discretion of the Court — In England the Courts do not amend the original writ, but well amend Judicial writs even in case of misnomer — see 7 T. Rep. 699. to shew power of Courts over their writs — 1 Tidd's Proc. 90 — 125 — 7 Term Rep. 299 — 1 Bos. & Pull 342 — 2 T. Rep. 737 — 2 Bos. & Pull. 275 — Bishop v Stoney

7 T. Rep. 699

1 Bor. Pull 481 — Ld Raymond 1472 — 2 Sh. 739 — 1 Bur. 1098 — 1 Tidds pr 652 — refers to a case of misnomer — p. 402. 3 T. Rep. 611 — 1 Chitty. 440. — 453. — Repre vo Demande. Jousse Cons. Tit. 2. art. 2. note (5)

Guzy for Defendt — The Jurisdiction of Court here is by the Kings writ — and they can have no jurisdiction over any person but him cited — Poth. art. 1. ch 2. sa 2 art. p. 25 — no nullity can be amended, where it is of consequence In England the amendment of writs is allowed by authority of Statute law & particularly the Statute of Jeofails The writ here, is the mandate of the Sovereign over which the Courts have no power — & without this writ the Court cannot proceed — Before the Stat. of Jeofails, the Judges could not amend a writ —

No 2084
Gray
Black Tea
&
Chamberlin
& al — claimts

On claim of ~~Potash~~ Pearl seized as illegally imported into the Province —

Ross for Lybellt — Certain route pointed out for importation of articles into this Country. St. 1819 ch. 4. the 8th sec. points out the routes — The claimts alledge here that they were prevented from making the entry of the ashes at the Port of St Johns by the act of the prosecutor — the evidence shews that the intention of the party here was never to make the entry, as they had passed the port of St Johns and were 6 miles below it and after being warned of their danger by Prosr — & that they must go to St Johns & make the entry, they still proceeded & went on the Laprairie road to Montreal, when they were seized —

Guzy for claimts — Case depends upon the construction to be put on the intentions of the Claimts — They were misled in their route by the directions given to them by the Prosecr —

№1101
Ward
vs
Carmel

action on a promissory note
Boston for Pltff – Pltff entitled only to £14.
instead of £25 demanded –

Bender for Defendt the Defendt transferred three notes to Pltff to the full amount of the note demanded and gave a receipt therefor to Defdt Pltff afterwards brot back one of them the amount of wch Defdt paid in money. the other two Pltff kept from 1821 till now, when action was brot for balce of Defdts note and as Defdt pleads payt Pltff produces the two notes wt his replication – but the Circumstance of Pltffs keeping them notes so long without shewing what diligence he has done to recover the amount – & his keeping them & delivering back the 3d note shews Pltff meant to keep them two notes in paymt

Boston for Pltff – The notes given by Defendt were good for nothing – and therefor right of Pltff agt Defendt remained

—

№1100
Cartier
vs
Carron
&
Lasserre
Oppt

Ds

Ds

Ds

therefore this land cannot be considered as affected in the same manner as the land originally given — It is only the proprietor of the fond, or a person having a charge foncier on the fond, can claim the principals or object for q^t the land was affected but not a person claiming a rente viagere, the Capital whereof is uncertain, and q^t does not attach on the fond as a charge foncier, & for which opposts could not have had an opposition a fin de charge.

Bourri for Pltff — If oppt was entitled to the arrears of the rent, it is because the land was bound for the rent and if bound, the prix of the land must be equally bound —

Saturday 5th June 1824

Present

Justices Reid, Foucher, & Pyke. &c

Ogden
v.
Richd. Hart
&
J. Marston
mis en cause

~~On mo. of~~ over —

No. 2146.

De Martigny
v.
Choquet —

On Defendt. objections to the Interrogatories proposed to him by the Pliff

Vigé for Defendt. — The facts enquired, do not relate to any fact in the cause, nor relate to any fraud between the parties, the evidence therefore is irrelevant. The Pliff has shewn no traces of fraud, &

No. 1117

Taylor
v.
Doucet, Cur
&
Delorme & al
and
Gerrard
v.
Doucet, Cur
&
Chevallier opt

McRoss for Pliff. proposes that a rule of reference should be made to practicians to ascertain the respective rights of parties on the monies levied by the Sheriff

Beaubien cites 1 Pigeau 810. & 812, Repre vo Privilege — to shew the respective right of Bailleur du fond & him who has put improvements

thereon

No 1022
Lepailleur
&
Turgeon
&
Lepailleur
opt

On hearing on Oppn afin d'annuller —
Rolland for Oppt the Defd has wrongfully
sued out exon when he had monies in his
hands belonging to the Oppt sufficient
to satisfy his claim, & on qt acct the Oppt
has set up a plea of Compensation — refers to the
different exhibits by qt it appears that Defendt had
such monies in his hands, to the amount of £102. —

Roi for Defendt There is no room for the
compensation set up by Opport the debts not being
of a nature to be compensated — The Defendt debt
is ascertained by Judgt from qt there is no appeal
the claim of Oppt is not ascertained, namely her
dower, for qt there is no proof, nor Judgt qt
condemns the Defendt to pay it — The Defendt
opposes also Chose jugée to the Opports claim, as the
same claim was before the Court in the Cause which
has been judged in appeal rejecting the same —
But if these 2 objections are put aside, yet Defdt
has just reasons of objections to the Oppts claim besides
as Late Mr Fromentau & the Opport were indebted to Defdt
in a larger sum than that now in his hands
as Curator to the Estate of the late Mr Fromentau

No 594.
Cates
&
Kitson

Action Petitoire.
Guzy for Pliff — action founded on deed of
donation from one Margt McPherson to the
Pliff — this deed has been impeached on
defft

over

different act — namely by Marriage Contract between Saml. Cates & Mary Tucker, to q^t the Donor was a party — under q^t the Defend^t and his wife set up a claim for their proportion & share of the property & share in the property of Mr & Mrs Sawyers — but there was no promisse here made by the donors q^t would bind them, in regard of persons not parties to the act, and the division of the property to be made by the donors in that act, was a matter merely in contemplation of the donors in case they should see fit — By the marriage Contract of Defend^t & his wife in Feby 1801 the donors intervene & make same stipulations in regard of the division of their property, as in the preceding Contract with Mr Cates — there was no absolute obligation contracted by the donors Mr & Mrs Sawyers in this respect q^t could give the parties a right or claim by the donees — as it did not shakle the property of Donors — 2 Bourj. p. 62 is binding only in favor of the party to the Contract but not in favor others not parties. — 2 Argou 173. 174. — La Darmes 2 vol. p. 188 — Lacombe. v^o Donation p. 219. 2 Institution Contractuelle. 325 — But it does not appear that this egalité has been affected by any act of Mrs Sawyer —

Coke Littleton. § 405. in fo.

The 2^d Exception goes to shew that Marg^t Mcpherson was not in a state of mind not capable of disposing of her property — the facts brot forward are 3 — that she was addicted to inebriety — 2 that she had been attacked with a paralitic stroke — 3^d — because she had no Silver urn or Mahogany Library —

No facts sufficient are made out to prove the derangement of mind of Mrs Sawyer —

Sewell for Defend^t — The pleff has shewn no title to the land he demands, nor had the person any title from whom the Pleff alledges to claim — Mrs Sawyers — nor had she any power to transfer the property to Pleff — The Pleff was no party to the marriage Contracts referred to — he is a Stranger & can take noth^s by them — The two Contracts taken together form a family compact, by wh^ch it is agreed that all the property of the donors should be equally divided among their children — the donors were effectually bound to make this division, it was only the time when this was to be done that was left in suspense — The deed of donation to the Pleff was an attempt to infringe this marriage Contract, but q^t cannot be valid in law, as this property could not be alienated by her to a Stranger — Marriage Contracts have the effect of public laws & must be respected accordingly. Lepine de Granville. 410. & seq. 2^d Argou 18. 19 & 60 —

That by the evidence adduced enough is shewn to prove the debility of mind of Marg^t. McPherson the donor —

That in the donation to the Pleff Mrs Sawyers gives a Silver Urn & a Mahogany library to him, things which she never possessed, which shews the state of her mind at the time. —

No. 599
Duzas
Alzie — } To draw Sup^t —

No 1025
Metzler
v
Bleury
&
E Contra

On Exceptions to Incidental demand
Mr Farribault for Pliff. The demand
for salaire for work done as avocat & Sollicitem
is not allowed in law

2 Defendt has no right to claim the amount
of an execution entrusted to Pliff —

3. Contains a general demand of different objects
without distinguishing them. —

No 473.
Rollard
v
Pothier

On objection by Mr Bedard to his being
examined as a witness for the Pliff, as
being the counsel and attorney of the Defdr.

Beaubien for Defdr. It is contrary to the policy
of the law to compel a discovery of official
communications between attorney & Client

Lio 3 tit 10. sec 3.

Poth. Obl. No 791 — Repre vo deposition — §. 2.
Lacombe vo Temoin — 1. Jour: Palais — arret
12 Fev. 1672. p. 161. 162.

Monday 7th June 1824.

Present.

Justices Reid Foucher & Pyke.

Enquête-day

Tuesday 8th June 1824

Present.

Justices Reid, Foucher & Pyke

Enquête day

Wednesday 9th June 1824

Present

Justices Reid Foucher & Pyke.

McIntosh
v.
McDonald
& al!

Action on promy note.
Hemshaw. 4 Clutts on bills. p. 45. Henderson v. Wyn 2 Camp. and p. 40. Pinckney. v Hall 1 Salk. Raym 175.

Grant for Defdr. Cameron the note was signed by McDonald in name of the firm of Cameron & McDonald, for a debt which did not concern the interests of the partnership, but was made in fraud & by collusion between Pleff & McDonald the Defdr. Bailey p. 47. such note is a fraud on the partnership & no party to the note can be entitled to prosecute the recovery of it although an Indorsee might. — There is sufficient

evidence

evidence here of the collusion, direct proof cannot be made out, as there were no witn but the parties — refers to answers of Pltff to facts & articles, as establishes enough —

There is an intervention by two persons claiming the wood seized in this case, at the suit of Pltff, which is proved to belong them —

Gale of Counsel for Pltff — The general rule is that the name signed to the contract bends the firm, the exception is fraud — here no fraud is proved — Sheriff v Wilkes & East Rep. 48 — this case is totally different from that before us — here the debt was contracted during the firm — in the case cited, the debt was contracted prior to the establishment of the firm. — That each of Deptrs had been in the habit of applying to Pltff to sign notes for the firm gt. did at request of them separately — The security of the firm was here given to Pltff as an inducement to him to give his note to Mr Garden, & Pltff sd. the note to Mr Garden under this security —

The timber seized belonged to Deptr. Cameron who is partner with others, of this there is only report, but this is not sufficient to prove partnership — The property of the partnership is liable to the debt of the partner — Davenport v. Thayer & ~~Smith~~ Kay oppt — the seizure here cannot therefore be set aside & should it even be considered as proved that there was a partnership. —

No 2053.
Ellice
v
Dupuis

over

Petitory action for lots No 48 & 49 in the first range of Godmanchester —

Guzy for Pleff — The general demurrer has been disposed of — The plea of except. is a title set up by Defendt by prescription — in face of a grant by the King made to Pleff The plea in this respect is informal & insuffl as it does not state, the kind of title, whether sale gift or otherwise, or in what manner made, Poth. Prescp. 192. a vicious title, makes the possession vicious — no title has been proved, and if it had, it would not avail against the King here — no prescrip. agt King. Chitty Prescp —

Boston for Defendt — The only evidence produced by Pleff is the Letters Patent granted by His Majesty — The Defendt here has had a possession of upwards of 30 years — one Jn Bt Destimauville obtained a grant from the King in 1789, of the land & from him Defendt acquired his title —

The Pleff obtained his grant under certain conditions qt have not been performed, & therefore Pleff cannot avail himself of the grant — there ought to have been an acceptance of the grant — by taking possn or some similar act — Dunod Tr. Prescp. p. 13. 6 vol. Poth. 157 & 459

2 Bl. Com. 347. where has Majesty has been deceived or led to do an injury by false representation, the act or grant given will be null and void. —

That by the length of time in qt Defendt has been in possn. must presume there was a grant from the King — Cowp. 108.

This

Des. Droit v^e Domaine du Roi — This cannot be considered as the public domain of the Crown, at it is inalienable, and King could make no grant of it, nor does prescription operate ag^t. it, but what the King can alienate, can be prescribed, and here the lands acquired by the King were alienable by him, as being part of his Casual

1 Bourj: p~~1084~~ 1093. Duplessis 522.

St. 31 Geo. ch. 31 Sec. 45. — The Stat. in Rep. Can. warrants issuing grants by the Crown of lands in free & Com. Socage, is made with the exception, that such grants shall not — prejudice the right of third persons —

Com. Dig. v^o Prescrip. — The King here could not have entered on the lands ag^t the Defend^r without an action, on aut. of his possession —

9. Geo 3 ch. 16 — The subject entitled to enjoy ag^t the King where there is a long possession —

Com. Dig. Prescrip^n — Here was a legal commencement for the prescription

At all events the Defend^r improvements must be allowed him

Gregory for the Pleff — The grant to the Pleff by the Crown was absolute, and if the conditions have not been fulfilled is not for the Defend^r. to enquire —

Grant from King is wholly different from a Donation The King never appears before a Notary to make deeds — The King never sees the person to whom he makes the grant. No acceptance by the subject is necessary — his suing out a copy of the patent is sufficient acceptance —

A location ticket is no grant, nor transfers property — and here the location ticket was not to Defend^r but to Mr Destimauville —

Fr. Des Droits du Louv. p. 27. If this authority held the King has no domaine in this Country, as he has no property here but ye can be alienated

No 1891
Pagé
v.
Nicholson

Action of damages for Slander
Rossiter for Pleff – Pleff is a public character a pilot, and has been slandered by Defendt as well in his private character as a Pilot, and large damages ought to be granted to him –
Geogy for Defendt – The words laid in the decln are not proved, nor does it appear that any damages have been suffered. – Witnesses do not know the Defendt – unless as they were informed by Pleff

No 1760
Nolan
v.
Gilbert
&
Econtra

On Defendts mo. to be permitted to discontinue his Incidental demand without Costs –
Mr Grant for Pleff opposed the motion.

No 2149.
St Blin.
v.
Forrest

On rule on Prothp to shew Cause why Indgt should not be entered on Defdts confession
Mr Levesque, stated that after Indgt was pronounced the papers were returned to the Bench to be inspected before the Indgt being entered; & since gt time he has not seen the record. –

No 314.
Barnard
v.
Wallace.

On Rule on Prothp to shew Cause why they should not produce the proces Verbal of the effects seized. –

| | |
|---|---|
| No 1663. Hart — Warwick & al. | Judgt the Defendts Nicols & Sanford discharged from the action. — |
| No 210 Perrault & Fraser & Contra | Award of arbitrators confirmed |
| No 154 Pothier v Foucher & al | Interloc |
| No 132 Piccard & Mulford | action dismissed |
| No 1056 Gibb v Hollmeyer & Contra | Demurrer to plea over-ruled and Incidental demand dismissed — |
| No 164 Cuyler v Holt — | Action dismissed |
| No 1948 Stayner v Smith. — | Judgt |
| No 352 Perrault v Bisbodeau | Plff admitted to proof of his damages — |

Thursday 10th June 1824.

Present.

Justices Reid Foucher & Pyke.

No. 424
Barsalone
vs
Gray —

action for house —
Ingt. to be entd. deducts £18.15 —

No. 1775
Barsalone
vs
Orkney
&
Gray & opt

On opposition for repairs & improvements on house.
Rolland for Pliff. The arbitrators have not sufficiently explained the nature & kind of improvements made by the opposant, whether of a nature to render the property more valuable, or only for the particular use of the opposant — distinction laid down in Repre verbo Privilege, and Pigeau 510 — as to what kind of improvements the party is entitled to have his privilege —

P. 510

No. 230
Cassidy
vs
Guillerie
&
Vienne oppt

Opposition claiming distraction of certain effects seized by Pliff
L. M. Vigé for Oppost — claims under a certain agreement between the parties — Pliff has alledged fraud between the parties, but nothing has been proved

Rossiter for Pliff — While the suit was pending the Pliff made a donation of his farm & the effects claimed to the opposant — there was collusion and fraud in this transaction between the parties to injure Pliff — cites Domat liv. 2 tit. 10. sec. 3. 4. 5. p. 160 —

L. M. Vigé in reply — there is no fraud in this cause —

No 411
Mc Leish
v
Bethune.
&
Divers claimts

On motion on part of divers creditors to be admitted to fyle their claims

Mr Gale for Mr Hansell opposes the motion inasmuch as he has done diligence, & the claimants have not and are now too late —

No 674
Piché & ux
v
Maninger
& al —

On Judgt. rescinding certain deeds & report of Experts —

Mr Ross for Pleffo. contends that Pleff ought not to be held to reimburse the Defendr. the amount of the improvements made on the land by him, as being extravagant and unreasonable —

Rolland for Defendr. the Defendr. is possesseur de bonne foi — and his improvements must be adjudged to him — Poth. Prop. No. 343. to 350. —

No 681
Piché & ux
v
Bourré —

Same case —

No 2053
Lesperance
&
Lesperance

On Pleffs mo. that act be granted to him of Defendrs neglect to comply with Interlocutory Judgt. of this Court —

Bleury for Defdr. no diligence done by Pleff, no copy of Judgt served —

№1048
Bronsdon
Wilson —

action for work done —
Rolland for Pltff action for work done, in the contract of Cession to Creditors Pltff agreed to give Delay — but this conditional —

№156
Chauvin
Lanzavin

action for seduction —
Rollin for Pltff — refers to evidence adduced
Bender for Defdt — contends that there is no evidence. —
Cause continued — depositions not signed. —

№1219
Campbell
Hass —

Action for goods sold
Grant for Pltff — the proof of delivery of the tea not so satisfactorily made out, but considers it sufficient from the Circumstances & the acknowledgment of the Defendt — It would appear that the tea had been taken away by a Custom House Officer — But it was the Defendts duty to have made this a plea to the action, and shewn that he had given notice of this seizure to the Pltff

Rolland for Defdt — There never was any sale of the tea to the Defendt — it was sent to the house of the Defendt — without any order — and was — immediately after seized & carried off by a Custom house officer —

№2168
Mc Callum
Essenhartoal

action on Note —
Boston for Defdt — plea. payt — in proof of which produces an act carrying discharge of all demands between parties which necessarily includes present demand

Grant

Grant for Pltff — The discharge here will not apply, it has not been pleaded & Defendt cannot avail himself of it — but from the nature of the discharge itself, its intention is evident was to exonerate Defdt from a suit qt was then pending in the Court agt him — but Defdt answers on facts & articles shew that note is not paid —

No 521
Langlois
vs
Gunlock

Action for assault & battery
hearg on Excepn on 1st Count

Grant for Defdt — It does not appear that the assault & battery complained of was ~~not~~ made by the Defendt —

No 353
Aubertin
vs
Gagnon

On Report of Arbitrators —
L. M. Vigé for Defdt does not object to the hom. of it — the sum allowed to Pltff is only for 180#. for which he had no right to obtain a saisie-arrêt, & Pltff ought therefore to pay the whole Costs —

No 761.
Ellice
vs
Dupuis

Action of Revendication —
On demurrer —

Bosson for Defdt — The action is brought for revendication for timber in capacity of Trustee qt is not sufficient, as he ought to have stated the names of the persons for whom he is Trustee

Guzy for Pliff — It is ~~stated in~~ a question here whether the Pliff holds the timber in that capacity — this is a matter of proof. The order of pleading is here inverted — & Defendt cannot avail himself of it —

No 57
Mathieu
v
Plucknett
&
Sewell Intervs
parties

Action on deed of Sale — on a transfer of the price made to her by her son —

Borton for Intervg party, says that the deed of transfer is an act of Collusion between the parties to deprive Intervg party of his rights — as having been made without consideration — the Pliff has been exd. on facts & art and cannot say that she paid the amount of the consideration, but only to the amount of £100. Every third person whose rights are affected by a deed, is entitled to demand the rescision of it altho' he was no party to it — Dec. Fer. Vo Acte autentique

Bleury for Pliff — there is no proof of simulation here to enable the Court to rescind the deed — That the Intervening party has no interest in this contract to intitle him to intervene & demand the rescision of it — he has ~~the~~ his remedy agt Mr Bn Berthelot for the pay of his debt — & if he had, yet there is no proof of simulation in the Cause —

No 1097
Rouville
v
Dame —

Action en exhibn de contract & to make his acknowledgment before Mr Lassé

Rolland for Pliff — The Defendt by his plea acknowledges the existence of letters patent —

L. M. Vigé for Defendt — The Pliff has declared that he does not mean to make use

of

of the certificate of publication of the letters patent and Inst. of homologation thereof — then being therefore removed, the question now is — whether Pliff can maintain his action — Defd. contends he cannot, as the action now appears founded on a title which has not made known as by law required — The Pliff is entitled to two kinds of action — one for simple exhibition of title — the other under the Lettres de terrier — the Pliff has adopted the latter course, but does not shew the publication & ratification thereof have been made known as by law required —

No 2012
Guay de Castonguai
Guay St. Castonguai } Action to rescind a deed of Donation on a clause resolutoire in the deed

St Geo. for Pliff. Rep. 306. vo alienation — Disposses de l'obligation du Vendeur —

L. M. Vigé for Defend. — The Defend. states that since the institution of the action, he has rescinded the deed of exchange complained of & offered to pay the costs up to the time of filing his plea — This being the case the plaintiff cannot further maintain his action to demand resiliation of the deed of donation made by the plaintiff to the Defend. refers to Domat. lev 1. tit. 1. Sec. 4. des Conventions en generales — des clauses resolutoires & penales — Rep. vo Clauses resolutoires. p. 554 — Id. vo Comminatoire. —

Rolland in reply — This is not a clause Comminatoire but de rigueur — Rep. vo Comminatoire, as it does not apply to a neglect in performing a duty imposed — in qt case the Court would have given a delay for Defd. to purge his neglect — but this is doing an act contrary to intention &

& stipulation of the parties, which Pleff a right to demand the resiliation of the donation —

~~Monica~~

# Monday 14th June 1824.—

## Present.—

## Justices Reid, Foucher & Pyke.—

No. 610.
Blackwood v Guy & al.

action by Pliff as creditor of Jos. Guy agt Defendts as having in their possession of certain revenues of the property of Jos. Guy

Rolland for Pliff. The Pliff complains as subrogated in the rights of Jos. Guy his Debtor. to have the revenues in question — The pliffs claims the rights of Jos. Guy in the Comts. between his mother & father demand — That Lo Guy Defd is in poss. of a part of that property, in qt Jos. Guy had an undivided share — Defdt. claims as proprietor under a sale under a licitation made of the property in qt Jos. Guy had a share — Defendt states a sale under an order of the Judge authorising the Curator to sell the share of Jos. Guy — the validity of this sale is the question now before the Court, and which the Pliff contests. — Jos. Guy was an absentee — & his rights sold by the Curator appointed to him — there can be no Curator but in two cases — 1st for regularity of process sued agt him — & 2d for the administration of the property of the absentee — and Curator to a bien vacant

Mr Papineau for Defendts question to be decided whether sale suffs — and sale here is sufficient under the usages and customs of the Country and the constant usage of the Court — In cases of licitation, each tribunal in France & in this Country had its particular usages — those of the Chatelet of Paris are not necessarily observed in this Country — There is no law or text of Custom in regard of licitations, but it rises out of the general laws and the mode of administering them — ~~Denizt~~

2. Pigeau. p. 421. ed 1787. The usage at Chatelet of Paris was

was introduced by a Reglement particulier — Actes de notorité. p. 321 — where the reasoning applies to this case refers also to the uniform practice in the Jurisdiction of Montreal since 1745. as stated in extracts from the Registers of the Court — The reasons for establishing the sale by licitation before the Court at the Chatelet, was from the great number of parishes & Churches within its Jurisdiction & therefore was found necessary to fix one place for these sales, namely before the Court — The state of this Country and of this district do not admit of this rule, and different usages have been observed from the earliest establishment of the Country, and the sales made at the Church door of the parish where the property is situated — this usage so long continued must form the law, until changed by the Legislature — Fer. v° Coutume — Rep^re v° autorité — cites case of Pothier in this Court of an action ag^t a person to erect a mur de cloture between them — the usage of wooden fences was maintained. — The case of licitation is more favorable, than sale of property held by indivis by the Curator as belonging to the absent^t, because parties cannot be bound to remain in community with their Cohiers — The licitation here more favorable than if Jos. Guy had been present. as in that case a private licitation might have been bid among the Cohiers without admitting strangers or Creditors to be parties, whereas a sale at the Church door was public and all the world admitted to bid on the property — ~~Denizart v°~~ 2 Pigeau p. 412. Partage à l'amiable — where cases are referred to where minors were concerned —

The licitation here was Judiciaire, and such as was constantly followed, and therefore valid in law — the effect of this licitation is, that Jos. Guy is considered as never having had any part in the property licited, as the adjudicataire is alone considered the proprietor & the person who takes his title from the person in whose succession the property was found Rep^re v° Licitation. p. 540 — 544. 545. — Poth. Vente. 630. 637. 8. 9. 40 — &c

Bedard for Dep^t — There was another suit instituted by Pliff in this cause ag^t the Curator of Jos. Guy, in which case the

the Pleff demanded an acct. of the property of the d. Jos. Guy in his hands — in which an Interlocutory Judgt. was rendered calling on all the Creditors of Jos. Guy to intervene and support their claims agt. Jos. Guy — as Curator had rendered an acct. of the monies he had in his hands belonging to said Jos. Guy. — The sale here made must be considered as sale, made under formalities usited in the Court, by publication at the Church door — refers to the decisions of this Court under the French Govt. — when all sales were made by B. simples vivées — The usages of Canada were confirmed by the Stat. of 1774. —

By constant usage, a Curator is appointed to absentees & is authorised to proceed to sale real Estate with the Heirs who are present — there is therefore no necessity in such a case when the parties are so represented & consenting that there should be a proceeding had before the Court. — were there any substitution on the property this might be requisite. — the parties may proceed à l'amiable before a notary —

2 Bourg. p. 525 No. 13. —

Mr Rolland for Pleff. A Curator cannot alien at the property of the person he represents, and a voluntary licitation of that property can be of no avail — a Judgt. was necessary for this effect and proceedings had to effect a licitation forcée, and even the Court would not have ordered a licitation force without having a report to establish that the property could not be divided — Repn. vo. Vente The Curator is merely an administrator, and cannot sell the realty — There is a great difference between the Curator to an Interdit & to an absent — the latter is merely an administrator & has no further authority — As to the usage set up by Defendts. it is of no avail The cases cited are not Judgts. of a Court, but mere ex parte proceedings at the Judges Chambers — The cases of minors & of the absentees is different — In the case of minors, the sale of their property is allowed under certain formalities, an avis de parens — not so wt. regard to

absens

absens, because there is no such thing as an assemblée de parens to authorise the sale of the property of an absentee — the absent always remains owner of his property and his property cannot be sold by the Curator — An absent may be absent only a month or other time, his return is always uncertain, and if a momentary absence of a person could permit the alienation of his property, the greatest injury would be done — the minor is besides entitled to a restitution in case of lesion, but there is no restitution for the absent, no law to authorise it — the absent may have a procureur, & yet his property be sold by a Curator appointed without the knowledge of the procureur or of the absent himself

The authorities cited in regard of the usage are of no avail, altho' the usages may be different in different Jurisdictions yet the Judgment must be valable — how it would be the effect to destroy the laws of the Country by some ex parte acts decided in a time of ignorance, when the laws were not so well known nor considered as at present — How the property was evidently susceptible of division, and no division was made — and had an action been instituted for the licitation, unless it had appeared that the property was not susceptible of division the Court would not have ~~true~~ allowed the licitation — In the authorities cited although the forms of proceeding were different in different Jurisdictions, yet it is laid down, that there must be no nullité dans la procedure du Jugement — such as in this Case. This Court has no legislative power and cannot by its Judgment, declare that to be law, or settle an usage which is no usage nor law in the Country — besides the usage in the particular district of Montreal, cannot be admitted as the usage of the Country, which alone can be set up as a principle of decision. —

Cites 2d Pigeau 414 — when partage à l'amiable is spoken of, when certain formalities were observed with regard to an absent.

A sale made in this way has the effect of depriving the Creditor of his right of mortgage —

There are but few cases in the extracts which relate to the sale of the property of absentees, and not certainly not sufficient to establish an usage into a law —

1 Bouy. 802 — when there is a procureur, there can be no legal Curator, appointed to an absentee, who never loses his rights although absent — he inherits — he retains his property — & can dispose of it —

Demol. V° Licitation. considered as a Vente forcée here there never was a demande en licitation — nor proof that there was any necessity for it, nor that the property was indivisible —

Papineau in reply — It is not surprising that there are but few cases relating to sale of the property of absentees, as but few occurred — but absentees, like minors & interdicted persons are considered to be under the protection of the law and of the administrators of Justice —

There are 13 cases in this court between 1795 & 1801 — in wh. Curators were authorised and appointed to absentees — to sell real Estate —

The licitation here was Judiciaire, in all legal points of view according to the established decisions of the Judges —

It was not necessary that there should be a physical impossibility of division of the property it is enough that the division would render the whole of less value —

# Tuesday 15th June 1824.

## Present

## Justices Reid Foucher & Pyke.

No
Ross & al
v
Williams
&
oppos^ts

On defend^rs mo. for contrainte ag^t Pliff for costs taxed ag^t them.
~~Take noth^g~~ Rule disch^d

No 197
Lacroix
v
Quevillon
&
Amiot & al
T. Saisie

action on Judg^t

Mr Vigé ~~did not appear~~ Jos. & Paul Lacroix Joint Legatees & Pliff as heir of Jos. alone cannot claim whole. That Jos. Lacroix had several heirs besides Pliff & he alone not entitled to claim the amount of demand

Potts
v
Burton
&
Stuart & al
&
Henry T. S.

On saisie arrêt on Judg^t

Mr Guzy for Pliff. demand for taxed costs to Pliff. attornies, in the taxed bill the amount of the postage was not included, this being refused, the present action brought Pliff. paid postage, had another bill of Costs taxed in q^h this postage was included

Rolland for Defend^t The attornies, pliff^s in this cause obtained distraction de frais, but this will not apply to any expences subsequent to that distraction, Denis^t. v^o Distraction de frais, No 11 which extends to costs incurred only. v^o Procureur. Rep^re 1 Pigeau 419. 2 Despeisses 630 No 30 des Sentences & arrêt. Tit 11 Sec. 2. 2 Jousse. Just. Civ. p. 320 Serpillon. tit 21. p. 566. 7. he cites Dec. Brillon. The Pliff^s were not the attornies of the defd^t in the K. B. Montreal, where these Costs fell due

The plaintiffs had their bill taxed, which concluded their right to the extent of that bill — demand of this money was made & paid — afterwards a new bill was produced & submitted to taxation in which was included the postage in question — but after the taxation of the first bill their functions ceased, & they could not proceed to a new taxation — nor could the Judge legally tax the bill anew —

Gregy for Pleff, the Judge of the Court of appeals directs that the Record be remitted to the Court below, & for qt. the Client had a right to be reimbursed, and the Attorney claims only in the rights of their client — The functions of the Attorney did not cease with the Judgt. Poth. Proc. Cw. p. 162. 1 Pigeon 868. — Ravaut 126. Tit. 27. art. 2 Code Civil — this was a part of the duty of the Attorney to see that the record was transmitted to the Court below. — The taxation of the 2d. bill was perfectly regular. —

Mr Boston for McPotts — the postage was a necessary expense, as the parties were entitled to have the record transmitted to the Court below to have execution of the Judgment in appeal — Tit. 31 Code Civil. art 31 —

Rolland — the distraction de frais is allowed to the Attg only for his own benefit, & not for any benefit to result to the Client —

No 245.
Garrish
Douglass
Smith oppr

Oppt. was exd. on her serment Judiciaire as to the right of property in articles claimed

No. 176
Guertin
v.
Lapointe

On Rule to shew Cause why Ingt should not issue to compel Defdt to pay value of certain articles which he was adjudged to pay to Pltff and also the expenses of the garde of the effects seized.

As to the grain, Defendt alledges he has paid it — That Pltff is bound to pay the Costs of the garde of the effects seized —

No 507
Dessens & ux
v.
Dubois

Action for wages of wife of Pltff
Grant for Pltff limits the demand to the last years salary. —

Ls. Vigé for Defdt — Defendt is Curator to an interdict — has submitted the claim to the Court — That Pltffs wife had left service of Defdt 4 years before bringing the action and besides was brought up in the house of Defdt

No 1644
Loban
v.
Handyside & al

Action for damages for breach of Contract
Gugy for Defendt — Defendt has pleaded only to the Counts in the declaration founded on the Contract, as the demand of quantum meruit & damages has been irregularly joined in the declaration — The Pltff was hired for a special purpose and as possessing sufficient skill & knowledge in the business of distilling — but Pltff was not such a character as he gave himself out to be. One Robinson was the headman in the Distillery and had the direction & management of it, & to him the Pltff & all others were directed to obey — The Pltff was refractory & disobedient to this Robinson — neglected the operation of distilling in material parts —

Grant for Pltff — action well founded — as well for wages due — as for damages —

No 712.
Lamb
Wilson & al

action on Promy Note — agt.
Borton for Defdt. action agt. maker & two
Indorsers — but no protest filed that shews
diligence was done — protest not signed —

Inscription withdrawn

No 74
Cliff
Morgan & al
VI

Possessory action — no plea filed
Walker for Pliff demands Sergt on evidence
adduced —

No 239
Tetu & ux
Masse
Drolet Intervr

On Intervention of Drolet — founded
on a transport made to him by Pliffs
of divers rights —

Rolland for Defendt — By the marriage contract
between the Pliffs it was stipulated that the monies
to be paid Pliffs should be employed in the purchase
of real Estate — The Creditor of Pliffs now claim
this money in the face of the marriage Contract —
The wife cannot under any consent given under
the Controul of her husband to alienate her estate
which was given to her for a certain purpose —
That before Defendt — is bound to pay any monies the
parties must declare whether they admit the actt
or not —

Mondelet for Pliff — The wife is of age, and the
stipulation was made in her favor to which she can
renounce if she sees fit, and dispose of her rights

without

without the interference of the Defendant —

No 1938
Ogden
vs
Hart
&
Ermatinger
T. Saisi —
J. Marston
mis en Cause

On exception filed by Defendrs to the claim of Jacob Marston —

Rossin for Defts the claim is wholly insuffte states no ground upon which it can be supported —

Ross for Marston — The monies in the hands of the Tres Saisi are stated to be due to the Intervening party and to the Defendr the presumption is, that one half of it is due to Marston —

No 1637
Donegany
vs
M'Connel

On action of Trespass. —

Rolland for Plff — action of Defendt for having illegally entred the Plffs house and made a search there for contraband goods without just cause — Plff states that Defendt entred house under pretence of being a Custom house officer — Defendt pleads general issue, but files no papers — but at enquete he produces a paper which he means to use as evidence, the paper appears to have been put into the hands of a Witness in order to be produced by him in the Cause — but this is not the proper course of producing this paper if it is styled a Warrant of assistants — moves to reject this paper as irregularly produced —

The Defendt under his plea here cannot be admitted to prove any matter of justification, Defendt ought to have said that he was a Custom House officer, and then not guilty — as the Plff does not admit by his declaration that Defendt was a Custom House Officer. —

That

The matters of Justification are not made out - the Defendt. seized three chests of tea - this Pltff. forbid the Defendt. to seize as being Pltff's property - and not smuggled goods - the chests of tea were carried away by Defdt. - The warrant here was not suffl. to justify Defd. to enter, there ought to have been a special warrant granted on oath made - and even in that case, the Defdt. must have executed it at his risk, and can justify his search only in case ~~his~~ it has been successful - and that under it the goods have been condemned as contraband

1 Highmore on Excise - p. 227 - proof of non payment of duties in an action of trespass, lies upon the Officer seizing - 2 Black. Reps. 912. Bostwick v Sanders & al. Id. 813. Salomon v. Gordon & Berry - dt. 1174. S. C. - Str. Reps. p. 819. Leglise v. Campont - probable cause is not a justification to the officer - 3 Esp. N. P. Ca. p. 1 Bl. Reps. Rex. St. Luc. Middlesex - a general warrant of no avail - 1. Chitty on Commerce. p. 790 - 791 - Pope on Excise. p. 10. Note (a) - The Defendant here shews no justification, the tea seized is not proved to be American tea and had not paid the duty, nor that the tea has been condemned, without which no justification can be sufficient - this seizure on a general warrant and without any proof of non payt. of duties, or of confiscation of the article -

The Case of Bostwick v. Sanders, controverted by L. Mansfield, see 3 Esp. N. P. Ca. p 138. Cooper & al. v. Booth.

Ross for Defendt. The Pltff admits the Defendt. to be a Custom House Officer by the Deeln. By St. Geo. 3 the Superior Courts are authorised to grant writs of assistance The case of general warrants has been cited, but does not apply, and the case of writs of assistants is an exception to this general rule - 3 Esp. Cooper v Booth - where

3 Burmoney v Leach

the

the officer acts regularly under a warrant he is not liable for a trespass. — The Defendt may plead the general issue and give the special matter in evidence even before condemnation of the article seized su. St. 15. Geo. 3. Ch 15. su. 46 —

The Defendt is entitled to shew all the special matter in evidence, and on this principle he is entitled to keep the writ of assistance as evidence in the record in this Cause — this is not a paper referred to by the rule of practice in this Court gt ought to have been filed with the plea — but even without this writ being in this record, there is evidence enough to shew that the Defendant acted under this writ —

The Defendt here was successful in his search — 3 chests tea were found — one of which Pleff admitted was smuggled. and appeared to have been hid away — The other two chests of tea appear to have been in the Pleff's house for several years and seem to have been used as a kind of cloak or pretence for bringing in smuggled tea into his house — and to meet the occurrence of a search. —

Rolland for Pleff — Defendt has not identified the paper in question to be the writ of assistance under which the Defendt acted —

No 2025
Reid
v
Phœnix Co

action on Policy of Insurance —

Gale for Pleff — it is alledged that there were conveniences for fire heat in the building insured which were not communicated to the Insurance Office — It is not necessary that every minute point should be stated. In regard of houses, much allowance must be made as the property may be viewed by the Insurers which is different in regard of Marine Insurance, as the vessels cannot be always seen — Da Costa v. Scandright when policy was set aside on an action a policy of Insurance, as all material

2 P. Wm 170.

facts

fact had not been disclosed — had the Defendrs not been satisfied they might have taken this Course, but it is now too late after the accident has happened & calls for the Insurers to pay damages —

The property insured was a snuff manufactory, some part of it was insured at Quebec Policy, where the Defdrs. might have had communication of the fact — That fire heat is absolutely necessary in a Tobacco manufactory to use fire heat — even in a horse snuff mill — Pluff did not conceive that such a fact could be unknown to Defdrs — Pluff paid more a higher rate of Insurance to the Defdrs than to Quebec Fire Office — altho' the members of Quebec Insurance Office had viewed the premises — the higher rate of Insurance paid to Defdrs shewed they considered there was a higher degree of risk — One Solomons insured at the same office a similar manufactory with stoves & fire place in it for a smaller sum than Pluff paid 1 Bl. Rep. 593. as to the kind of information the insured ought to give to the Insurers — Bur. Rep. 1905 — 7 East. p. 4. 5. 7 — fraud ought not to be protected, — the Insurers were bound to know the state & mode of using the buildings — Poth. assur. № 199 —

Ross for Defendrs The thing insured here is merely a horse ~~snuff mill manufactory~~, but not a snuff manufactory, no mention is made of it — and this manufactory may have been erected there after the Insurance — there was particularly danger from what is called the drying room — Poth. assurance. № 64. 68. — 87. — 194 — 198 — Repr vo Police d' assurance — 1 Douglass. p. 306 — all material information ought to be given, & the party withholds it, he does it at his own risk —

Rolland for Defendr — This case must depend upon the interpretation to be put upon the contract between the parties, which is always construed strongly agt the

party

party insured, because he gives the description of the property insured — The Insurance here is for a horse snuff mill — nothing is said about the use of fire in this mill — the idea of a horse mill does not necessarily carry the necessity of the use of fire — the explanation that the building was at a distance from other buildings, would seem to imply the diminution of danger from fire, while at the same time the concealing the material circumstance of there being fire places and furnaces in the same building — carries with it the concealment of a material circumstance and seemingly with a view to mislead the Defendant 1 Bl. Rep. 463. 5. — Holthkiss. v. Richardson — 7 T. Rep. Middlewood. v. Blakes p. 162. 7 —

Poth. Ob. No 97. as to the general principle of the interpretation of Contracts, to be most strongly agt him who is benefited — Domat. tit. Conventions — same doctrine — 2 Ev. Poth. p. 35. & seq. No 5. p. 38. — as to the interpretation of Contracts —

Mr Gale in answer — There is a distinction between marine & land Insurances — where the property can be viewed — enough was set out in the policy to put the obligation upon the defendants to make more particular examination — and to satisfy themselves as to any additional risk —

It appears that the fire originated in the drying room and that all care was taken against accidents — the stove pipe was according to the regulations of the Country —

# Wednesday 16th June 1824.

## Present.

## Justices Reid, Foucher & Pyke.

No
Warwick & Co
vs
Wilson
&
Portelance
oppt

On hearing on oppositions afin de conserver Mr Morrough for Pliff objects to claim of Mr Portelance for a privilege for house rent, as not made till after effects sold, refers to

171

171 art. Cont. – Fr. Gr. Com. 2 glos. No 9. – Dic Droit Fr. Privilege de Propre – Poth. Proc. Civ. p. 193 –

Boston for Oppost – contends that oppt. is still priviledged for his rent notwithstanding the sale of the effects –

No 1933
Baron & al
vs
Watson & al

action for a breach of Contract to build certain saw mill –

Rossiter for Pliff, the saw mill built, is wholly insufficient, and arbitrators must be named to ascertain the same & Pliffs damages

Sewell for Defdt – There was a Copartnership between the pliff ~~& defendts~~ in this contract as to this mill. Poth. Soc. No 54 – Dig. pro. Soc. 5th Law – now one of Pliffs has acknowledged that the mill was well and sufficiently made & delivered & this by a notarial act & gave a discharge to Defendants – makes an Incidental demand for £91. 9 – part of qt is made out by a transfer of an obligation from Baron to Brown – the balance was due on contract for building the mill –

Rossiter for Pliff - The Incidental demand is without foundation, as the obligation made by Baron to Brown was discharged before Brown made the transfer of it to the Defendts

Sewell for Defdt - whether Pliff are Partners or not the action cannot be maintained, as Brown has withdrawn from the Cause & it cannot subsist in the name of Baron alone -

Ruiter } Action en faux principal - to set aside a will -
~~cat~~ Mary &al }

Sewell for Pliff - the grounds alledged of the falsity of the will are - 1. That the Witnesses were not present - 2d That the Testator was not of sound & disposing mind - 3d That will was not written in the presence of Testator or Witnesses - 4d Not written in the room where the Testator was. - on 27 Oct 1820 - Ge. Court. art. 289. Will must be dicté, nommé au Testateur & temoins - all must be present at one & same time. 4e Vol. G. Court. p. 131. Sec. 1. - p. 118. No. 30 - p. 106 - No. 7. - p. 131. sec. 7 - Lemaitre p. 423. refers to testimony of Mary Mitchel - James McManus - Laughlin

Gale for Defendt - The minor here who is a Defendant is not sufficiently represented by a Tutor to defend the action - This will is good as an acte autentique - 4 Ge. Court. p 112. 130. 127. - ~~admits~~ The temoins instrumentaires cannot be examined as Wit. by the laws of France, on a testament solemnel, but they are good Witnesses according to the English form of making a will - If the temoins instrumentaires

then

there is nothing to impeach the will — if they are admitted, they will substantiate the will under the English form —

Lacombe. v Testament — is good although not dictated in the presence of the Wits. No 13 —

N. Denizt. tit. Faux Principal p. 456. 7. 8. and p. 471 — case in p. 474 — when will maintained. —

But if will not a good will as being autentique it is sufficient as a ~~room~~ will under the English form —

2 Bourg. p. 304 — p. 309 — when dictée out of the presence of wits. is held sufficient. —

Sewell for Pliff — The will being made in the form of an acte autentique, must be supported as such, or must fail in toto — The wits must be present when the act was passed — This will cannot avail under the law of England — there is no seal to it, nor does it appear to have been executed under this form — Lacombe. p. 735 —

No 551
Wagner
v
Chorette } action of trespass for stripping trees of their bark. —

Peltier for Pliff. contends that evidence is suffte.

Ross for Defendt. contends that evidence is not sufficient — the chief wits Fleurant is not a credible wits —

No 425
Berthelet
v
Plucknett } action for arrears of rent —

Boston for Defendt — This Pliff is exercising the right of a third person, without any right of personal, the monies have been arrested in his hands — of hypothecary, he has abandoned land & is thereby discharged

Gagnon v. Bourassa & Leclerc. — cur.

On opposition of Leclerc

Rolland for Pleff refers to Pothier. Tr. Sub. p. 508. 499. — Title of Deneau not before the Court.

No 828
McKenzie v. Gauthier

Action on promy note —
hearg on excepts —

Guy for Defdt — The Indossement in blank and no right is thereby conveyed to Pleff —

Cherrier for Pleff — the Drawers of note are bakers and as such are traders. — Conf. de Bor. —

Guy — not alledged in declr that Drawers were Merchants — as was necessary to alledge —

No. 1638.
Baird v. McNider et al

On mo. in arrest of Judgt — on Verdict —

Walker for Defendt — The objections now raised are to the sufficiency of the declaration —

The 1st Count is in assumpsit and 2d in Trover The first Count in declaration being ex contractu & the 2d ex delicto, are diffnt causes of action & cannot be joined 1 Chitty. 200 — 1. T. Rep. 274. 1 Salk. 10. 3 Wils 354. 6 East. 335 — 1. Chitty 138 — first Count uncertain 1 Chitty 236. 237. no verdict can be grounded on it — 1 Pegeau 137 — in note — 1. Chitty 364. 365 — goods taken must be stated with certainty — 2 Bos. & Pull. 205 — Ward v Harrow 5. Com. Dig. p. 337. tit. Pleader C. 21. refers to Strange's Rep. — Wier v Dessinger — 1 Tidd Prac. 405. 2 Bos & Pull. 424 Cowp. 825 — Willes p 443 — in point —

Grant for Pleff The first Count is not in assumpsit but in Case — in factum — and there is no difference

between

between the first and second Count, they are for one & the same thing with one Conclusion to both — the verdict of the Jury may apply to either —
2 Chitty 284 — same form of declaration — stated as followed here —

№ 1329
Lanzevin
Cousineault

On action en Garantie —
on Inscription en faux —

Bedard for Defend^r — the act of 9 Sept 1820 — is false, has made an inscription as will against the minute as the expedition, as they are not conform in regard of the price or sum for 9^l — the transport was made — with minute it is stated to be 150^t — but the expedition is 400^t — the name of the Notary who signed in second is surcharge, in place of name of Demers a writ —

In the 29^e line of first page of the minute there is a word surcharged — the number of words in margin stated as 17 — has been changed — word dix-sept surcharge — it was some other word — in 16 line of 3^e page the word mot is changed to word, cinq, — these changes are made to apply to change in the expedition as to sum of 400^t — In 33^e line of 2^d page — the words cent cinquante paralle livres, are struck out — and lower down a new line is added — and by means of falsification & change of some words — the change is made to "cent cinquante livres"

Lavoie for Pltff the only error is in the expedition 9^l may be rejected and party will procure another —

No 144
Phillips & al
v
Beattie

Draw Int^t —

No 1104
Kidd & al
v
Raymond

Rolland for Defend^t — The different demands in this action cannot be joined — There is a demand for a sum adjudged on a sentence arbitrale — and different counts in assumpsit for same subject — 1 Pigeau 37 — 198 — Lacombe v^o Compromis. No 18 — That the Compromis is a transaction, and annuls the original debt

Friday 18th June 1824.

Present

Justices Reid Foucher & Pyke.

No 1219 Campbell vs Hass. — Action dismissed

No 623. Manchester vs Labelle. — The Defendt not having done diligence on the Interlocs ord directing the survey, which the Court considered as his duty to have done as being made in support of his plea gave Judgt for the Plff

No 761 Ellice vs Dupuis — Demurrer dismissed

No 170 Collins vs Moor and e Contra — Judgt for Plff - but allows Defendt £5 - for cost on the Incidental demand

No 1101 Ward vs Carmel — Judgt for Plff

No 2007 Senecal vs Raimond — Plea of Justification insufficient - parties admitted to proof

No 793
M^c Callum
v
Stem. — } Judgt for Pltff

No 781.
Frostet al
v
Spragg } Judgt

No 1748
Ogden
v
Gray. — } W action dismissed

No 1027
Sutherland
v
Stem. & } W Judgt
Jones —

No 14
M^c Intosh
v
M^c Donald } W Action dismissed
& al. — Chitty on bills p. 32

No 230
Cassidy
v
Guillerie } Main-levée on the Opposition —
&
Vienne
oppt —

No 1804
Soupin
&
Carmel } Judgt for Pltff. Incidental demand dismissed
&
E contra

No 1445
Gray
v
13 Bar. P. ash. } Judgt of Condemnation —
&
Strong & al
claim^ts

| | |
|---|---|
| No 1590 Warwick v Wilson & Roi oppt | Privilidge of Oppt. rejected — |
| No 578 Gagnon v Bourassa & Leclerc opt. | Judgt. allowg to Oppt. 1/4 of monies levied |
| No 1640. Loban v Handyside | Judgt |
| No 1933. Baron & al v Watson & al & E contra. | Interlocr fr Experts — |
| No 176 Guertin & Audet | Proof ordered |
| No 507 Desens v Dubois | Action dismissed |
| No 1304 McPherson v McDonald & al & Intervg Partz | Motion to intervene rejected, the Cause being en delibéré. — |

№1349.
Roux v Trottier } Judgt on Inscripn en faux.—

№1891
Pagé v Nicolson } Judgt. — £35 — damages —

№551.
Waggner v Choiette } Judgt. £25. & full Costs.—

Foretier v M'Gillivray } W Judgt

Potts v Burton v Stuart & al } W Judgt. for Plff

Saturday 19th June 1824.
Pres.t
Justices Reid, Foucher & Pyke.—

№262
The King v Wallace } Judgt

№1243.
Page v Nutt. — } Judgt — except as to amt of bill of Costs not taxed —

№1164
Connolly v Bagg & al. & Conlin } Judgt

Barsalou v. Orkney & Gray. Oppt — Judgt

No 866. Holt. v. Holt — Judgt

No 1255 Tierney q. t. v. Phonyx Steam Boat — K — Action dismissed as to Tierney.

No 1104 Kidd et al v. Raymond — Defts exception dismissed

No 1072 Hunter & Co v. Perrault et al and Perrault & H. McKenzie in garantie — K — Judgt on action en garantie

# October Term 1824

## Friday 1st October.

Prest.

Justices Reid Foucher & Pyke.

No. 1851
Gerrish
Wher

action for rent of farm on deed of Sears
Cause submitted by Dept

No. 1136.
Calcoff
Boucher

On rule for Contraints
Defendt says he has delivd up all the articles

## Saturday 2d Octr 1824.

Present.

Justices Reid Foucher & Pyke.

No. 1377
On Certiorari
The King
Conrad Derick

On Defendts mo. to quash Writ of Certiorari on default of having given Security for Costs under the Statute

No. 154.
Pothier. —
Foucher. —
& Henry & al —

On Defendr mo. to prolong the Interlocr of June last —

Mr Rolland & Mr Bedard — say, they do not consent to the Defendr motion. —

Mr Viger for of Defendrs says that this appn ought necessarily to be done by some of the parties.

No. 176.
Guertin
Audet. de
Lapointe

On Pliffs mo. to close enquete & on Defdr mo. to prolong enquete. —

No. 1099
Cadieux
Cadotte

action, founded on a promesse de Vente & for services performed —

Bourret for Pliff, the only question before the Court regards the claim founded on the promesse de Vendre —

Viger for Defendr — The action founded on a Contrat de constitution de Rente, which is in itself imperfect, and cannot be executed until it has received its perfection by the act of both parties — in Dec 1828. Pliff makes a promesse de Vendre to Defendr — and to execute a Contract in bonne forme, & in this acte the constitution de rente is stipulated — but this promesse de Vendre is merely an act on Part of Pliff & not signed by Defdr — & not binding on him. The only action Pliff had was to obtain the execution of this act, by demands that Defendr should be held to accept from Pliff a deed in the terms of this agreement. qt wd have operated a transfer of the property to Defendr — cites. Denyr & Double Emt —

The Defdr has also objected to the nature of the evidence adduced —

Mr Bourret for Pleff — The arguments used by the Defendt — are very different from what he has pleaded in writing —

It is not stated by the plea, that the act on qt — the Pleff's action is founded is null — But it has been adjudged in this Court and in the Inferior Court, that this form of action on this kind of act is good & sufficient — That the agreement has had its execution in so far as regards the Defendt — who has taken possessn — of the land in question & is now in possession of it — Repn — vs — Promesse de Vendre — the act is not null, where execution has been had under it altho' it would have been so held where there was no execution.

The Pleff is entitled to his rente although Defendt — has alienated a part of the lot — cites authorities —

No — 188.
Smith
vs
Porlier

action on promy note —
~~The Pleff~~ over —

No — 1259.
Gravelle
&
Charbonneau

action for recovery of rights of succession

Lacroix for Defendt — The money is due, but payable only on certain conditions, namely on Pleff's giving the necessary papers to enable him to recover the rights transferred to him. —

Morrough for Pleff — The Pleff has never put in demeure to furnish the titles in question — refers to the exhibits filed by Defendt himself —

No — 1996 & 1999
Turgeon
&
Lacroix
&
Econtra

on Defendts — mo. that Pleff's be held to answer over to certain Interrogatories sur faits & articles —
Beaubien for Defendt — The answers of Pleff not

given

given before the proper officer of this Court — also there is an error in the answers to 6th Interrogs ~~instead of the 18th~~ in the 6th line — in inserting 1817. instead of 1816. as it ought to have been —

The answer to the 3d Interrogs is evasive, and argumentative, and does not answer directly to the question —

Observes that all the answers of the ~~Defen~~ Pltff to the Interrogatories proposed to him, are so evasive as to require that he should answer over —

Roi for Pltff, contends that all the answers of the Pltff are sufficient and pertinent — The Defendt should have moved to amend his Interrogatories, as the Pltff's answers necessarily must depend upon the Interrogatories proposed to him —

Monday 4th Oct. 1824

Present

Justices Reid Foucher & Pyke. —

No 259.
Mathieu.
vs
Plicknett.
&
Sewell Interws } on merits over to 7th —

No 97
Duplessis
&
Cardinal } on Report of Practicians
Blenny for Pltff, asks hom. of Report

Mr

Mr. Mondelet for Duchantal — states that he has no obj^n to the report, but that the Costs ought not to be equally divided among the parties, the report goes to establish as well what each of the heirs owes to the other as the whole amount of the Succession — The Pl^ffs. had an overpliss of £24 in their hands after paying the rente & pension of M^lle Dufaut — the costs only of the Practicer ought to be divided between the parties but the other costs ought to be paid by the Pl^ff —

No. 169
Kent
Hoss Sal
~~Burkett~~
&
Burkett
opp^t

On opposition of the Tiers Saisi —
Grant for Pl^ff — the T. S. was condemned, not havg appeared to give in his answer — The Pl^ff has demurred to the sufficiency of the reasons alledged in the opposition. —

Rossiter for Oppos^t — The writ of attachment was served on T. S. not as an attachment in his hands, but as a service on the Defendants. — & as Opp^t was an illiterate man, he was guided by what the bailiff told him.

No 1877
Gagnon
&
Metras
&
Metras
opp^t

Hearing on law on Opp^n —
Bedard for Oppos^t — In Feb. 1822 Pl^ff was app^td Curator to 2 absentees — to administer for them during their absence — In Ap. 1823. the Pl^ff instituted an action ag^t Def^d. on his oblig^n — to the absentees — on 1 Sept. 1823 Ant. Ouimet, one of the absentees returned, & lived in the house of Pl^ff — the Pl^ff still cont^d the prosecution — Ant. Ouimet brot. intelligence that his brother L^o Ouimet had died at Chicago in 1817 — whereby his Succession fell to his brothers & Sisters as his heirs — From the moment Ant. Ouimet returned the capacity of Curator ceased, and he acted merely as the Attorney of Ant. Ouimet — the Sud^t obt^d by Pl^ff as Curator

Curator was irregular and void — cites auth.s heretofore referred to on a former hearing — adds Domat. Rolland for Pltff. This is a second oppos.n for the same object which has already been judged agt the Oppos.t — and cannot be maintained — The Court held that while the Judg.t remained untouched the opposition could not be obtained — and although it is now demanded ~~that~~ by the conclusions that the Judg.t be set aside, yet this is the same demand with a new conclusion — 1. Jousse. p. ~~659~~ 161 1 Pigeau p. 497. 1. Bornier. p. 144. Ord.ce du Roi du Ed. 219 —

The present opp.n is irregular for setting aside the original Judg.t — it ought to have been by requete Civile — but requete Civile does not stop the ex.n of the Judg.t — cites from Bornier — But ~~in~~ this opposition does not contain the moyens of a requete Civile — Pigeau — The Court cannot now revise its Judg.t rendered three years ago upon the allegations — art. 42. tit. 35 Ord.ce 1667 — Denizt. v.o Revision. Dec. Droit. v.o Revision — 1. Pigeau 489. At all events the Defend.t ought to depose the money — 1. Pigeau 616 — Serpillon 621 —

Bedard in answer — The authorities cited do not apply to the Case — Poth. Obl. No. 880 & 881 — the Judg.t in this Case is a nullity & must be so held — There can be no appeal in this case, because the case depends upon new facts of gt Court of appeals takes no notice — This oppos.n not same as first — conclusions are different — This Court is vested with all the authority of the Intendant —

On Defend.s mo. that the monies levied under the last Judg.t on Defd.s oppos.n be paid over to Defend.t on the principle that the proceeding is null —

# Tuesday. 5th October. 1824.

## Present
## Justices Reid Foucher & Pyke.

Connel & al. v. Tunstall & ux.

On Pleff's motion to reject part of Defendts plea, as the objection therein contained regards the regularity of the service of the process & ought to be made by motion.

Mr Rossiter for Defdts contended that the case was similar to that of Manchester v Labelle, & Dewitt v Pierce - where court maintained the objection as regularly made by plea & not by motion

Masson & Co v. Delagrave

On Pleff's mo. for a Vend. exp. all the necessary advertisements having been made but the sale suspended by the act & consent of the parties, and not by any opposition made thereto -

Bourret for Pleffs submitted how far the Court will consider the advertisements to have been regularly made, as in the translation in French there is an error, the day of Sale being on a Tuesday instead of Monday as correctly stated in the English advertisement.

Mr Rolland & Mr Driscoll - contended that the mo. could not be granted, but that Pleffs must begin anew - 1st because the law does not provide for a Vend. exp. where the sale is suspended by consent of parties & 2d because of error in the notice of the day of Sale.

# Wednesday 6th Octr 1824.

Present

Justices Reid Foucher & Pyke.

Connel & al
Tunstall — } The Court granted the Pleff. motion on the ground that the matters pleaded by the Defendr were in the nature of an exceptn à la forme & one of those preliminary pleas qh ought to have been pleaded in 24 hours after appearance —

Masson & Co
Delagrave } Pleff. motion granted —

# Thursday 7th October

Present

Justices Reid Foucher & Pyke

No 1136
Calcoff
Boucher — } Dris coll for Pleff moves that rule be declared absolute —
Bleury for Defendr — there is no proof —

No 1063
White
Metzler } action for house rent. —
hears on ments. —
Farrebault for Defdr — no notice given to Defe

that he should quit the house — a letter only produced and proved only by one witness — no damages proved.

Boston for Pliff — exemplary damages ought to be granted — as conduct of Defdt has been injurious — when there is a lease between parties — this regulates the contract — 1. Bourg. p. 43. —

1 Bourg. p. 43

No 236
Guy
v.
Bunker

action for house rent —

Guy for Pliff — balce due of £22. 6. 2 if four quarters rent are allowed — if only three quarters the balce will be only £8 — ~~H~~ some shillings

Buchanan for Defendt — The Pliff has rested entirely upon the confession in the Plea — but all confessions are indivisible & the whole must be taken together — The Defdt allows the possn but alledges that Pliff took upon himself to let a part of the premises to our Mathews

No 991.
Ermatinger
v.
Jeremy —

Default case —

No 443
Berzeront
&
Perodeau

action petitoire. —

Coffin for Pliff. damages referred to Exp — who have made their report — asks for hom. thereof

Mondelet for Defdt The Defendt was in good faith, being himself led into error by another person & therefore the whole amount qt is allowed by Experts as damages should not be granted — Exp. have not stated the evidence of Martigny as they have done that of other Arts

No 2036

Bender & Durand } Action for a compte & partage —

Beaubien for ~~Defend^t~~ Pl^ff — Pl^ff was subrogated in the room & stead of Durand his debtor & brot this action for an account of the Community between the Defend^t. A. Prefontaine & the father of Durand — Ingt. orders account — & account rendered — ~~Ate~~ The Defend^t. notified Pl^ff of the proceeding to name Experts — But Pl^ff objects to certain arrangements made between Durand & his mother to the prejudice of his, Pl^ff's, rights — Pl^ff is willing to account for the monies p^d. Durand en avancem^t d'hoirie — as well as for his part of the ameliorations on the real property — but as this property cannot be divided it must be sold by licitation that Pl^ff may be paid out of the share of his Debtor — The Pl^ff contests many of the Debts admitted, & which ought to have been proved — The repairs of the fence — must be paid by the Community as it had the enjoyment of the land — Objects to the Chap. de reprise

Mondelet for Defend^t — The Defend^t — was condemned to make an Inventory & render account which she has done — The account rendered is correct and the practicien has done Justice to the parties —

cells Lacombe. v^o Partage — sec. 3. No 1. —

Dec. Droit. v^o ~~Licitation~~ Partage — property ought not to be sacrificed to satisfy the appetite of Pl^ff — Dec. Droit v^o Licitation. — The partage is here correct

2. Lebrun Succ. liv. 4. ch. 1. p. 244 — —

No. 299
Frost & al
McKenzie

action agt Defendt as security —
Gale for Pltffs — security given in shape of a letter to be security for one Roderick McKenzie — Pltffs made the advances to R. McKenzie The Defence set up that Pltffs had received more money from R. McK. than was suffct to extinguish Defendts security — to this it is ansd that the money recd from R. M. was on acct of a contract for Staves — & subsequent to this the garantie of Defdts was made — what was specifically paid on the first contract cannot be by any imputation applied to the latter Contract — the surplus of money recd the Pltffs are willing to impute to the Credit of Defdt altho' in strictness it might be refused — as what they recd. on the Contract for Staves was not suffct to indemnify them for their damages by R. M. not having complied with that contract —

Rolland for Defendt — contends he is discharged by what Pltffs have received from R. McK. — That the Staves delivd should be applied to first contract — The Pltffs advanced £300 to R. M. on contract for White Oak — but Pltffs also advanced goods to R. M — and it is these goods qt absorb the monies he paid — This appears by the copy of the account taken from the books of acct of Pltffs — the amount of Credits in that acct of £446 — & £45 — ought to be applied to discharge of Defdt being produce of Staves — But none of Debits are that acct ought to be charged by Pltffs agt R. M. to prejudice of Defdt — Repr vo Imputation. p. 91 — Id. vo Compensation. p. 272.
1 Poth. by Evans. No. 528. p. 368. & seq. but p. 373. Cor. 5. is positive — there was no imputation made by the

Creditor

creditor here when the money was recd. & Debtor is interested to liberate himself from two Creditors than one — The Pltffs have 3 diffnt. Credits — the first Contract — the 2d wh. Dr bound & the 3d for goods sold — The accounts filed by Pltffs are made out separate — but in their books there is but one acct. opened with R. McK — The Defendts answers on faits & articles shews this — this acct. in the books is not closed — whatever was advanced by the Pltffs for other cause than on the first contract cannot be admitted to be paid in preference. — Objects to several facts stated in the deposition of Pltffs brother which are not true & controverted by better evidence — The exh. No 2 filed wh Replicn the 2d item in this exh. for £66 — amt. of a note of R. M. qt Pltffs had withdrawn from the Bank — this they alledge in their Books to have been on their first Contract — this they had no right to stipulate in this way — but is the only advance charged in this way — But this note was given for goods sold to R. McK. — and there is no proof that these goods were advanced on acct. of the Contract for Staves — there was no stipulation when the goods were advanced that it was on acct. of the Stave Contract that these goods were advanced — nor could they then advance goods or any thing else to derive any benefit therefrom to the prejudice of the Defendt —

Gale for Pltff. That payts here were not made by R. M. he only put staves into the hands of Pltffs the surplus of produce on Staves R. M. had a right to dispose of as he pleased, he had a right to call on Pltffs for the money — & if they gave him goods or other things it could not regard Defendt — The Defendt

can

can avail himself only by fulfilling the Contract or by his paying the money — There are only two credits given by Pltff. to ~~Defend~~ R. M. and not three as contended by Defendt —

No 1109
Ware & al
Adams —

Action for goods sold & delivd
Buch. valu £77. 8. 10 — is sum now claimed by Pltff — wh is established by the evidence adduced — The Defendt has moved to reject a part of Pltff's answers on facts & articles — but this cannot be received, as all must be admitted or all rejected —

No 1560
Watson
Heath

action for Storage agt Defdt as security —
Boston for Defdt. no evidence whatever to support the demand — the wharf in question being on a navigable River, Pltff had no right to claim any benefit or remuneration therefor
Grant for Pltff — has proved that he is proprietor of the wharf & entitled to payt. of wharfage —

No 40.
Crysler
Simons
&
Aykered
Intevs

Action of Revendication & Intervention on part of Aykered who claims the property
Buchanan for Intvs party — The declaration is insuffit — not stated that the Cribs therein stated belonged to the Pltff & was his property — there can be no possessory action for goods unless an irreversible de meubles according to 97e art. Custom — Poth. Possn — No 93. Dec. Drait. vo Complainte — & No. 108. — Repn vo complainte. p. 291 — Poth. Prop. No 286 No 281 — Repn vo Revendication. p. 619. 621 —
Moves that the testimony touching the proof of property be rejected — refers to case in K. B. Zucker

where the want of allegation of property was dismissed.

Grant for Pleff. There is sufficient alledged in the declaration to maintain the action — and the evidence is most ample to support Pleff's right

No 1713
Bouc
&
Bouc

action Petn — Judgt. & Report of Experts —
Roi for Pleff, asks for hom. of Report —

Lacroix for Defde — The Judgt. does not fix from what period the unjust poss. of Defde is reckoned —

No 259.
Mathieu.
&
Plucknett
&
Sewill Intevs

On re-hearg —

Bedard for Intervg party — The party here has a right to intervene, and to shew the acte simulé between the parties — he being interested that Pleff do not recover the money from the Defendt — as he will be deprived of his remedy ag. Luc Berthelet for what is due to him — N. Denizt. Vo Fraude. No 7. & 9. It is enough for the Intervening party to shew that he is a Creditor of the party to set aside the acte simulé made be annulled — Id. Vo Fraude relativement aux Creanciers. — the Intervg party here is the Creditor of Luc Berthelet, & can use the same right his Debtor could do — 1. Domat. liv. 2. sect. 1. No 1 & 2 Digest. par Hureau vol. 6. No 42. tit. 9. p. 414. 415 — Instruc. sur les Conventions. p. 403 —

Mr Bleury for Pleff — The Intervg party cannot be injured here — he is the bailleur du fond & entitled to his priviledge —

No 1974
Poissan & al
v
Bertrand

Action Petitoire — rapport d'arpenteur —
Bleury for Pliff demands Judgt. according to this report.
Mr Bender for Defendt — contends that report is incomplete — & does not establish Pliffs right

No 1117
Wragg
v
Dwight

Action on Promy Notes — hearg on excepn —
Mr Sewell for Defendt — The note was given to two persons — & Pliff sues in right of one only and for whole sum — It is in another part of the Decln stated that Pliff is legatee of the other person, but action is not brought agt Defendt in capacity of legatee of late John Wragg. —

No 25
Gamelin
v
Fullum

Action on note —
Grant for Defdt — pleads prescription of 5 years
Driscoll — this does not affect the right of action but only the nature of the proof —

No 757
Bourassa
v
Brosseau
&
Lefort, Tutr

On Report of Experts —
Sewell for Intervr parties asks homn of report qh has been acceded to by all the parties —

No. 1968 & 2093
McCallum
v
McMarten
& al. —

Action on Promy note —
Gale for Defdt — Action cannot be maintained agt the heirs of Catherine McKerkar — for qm he appears the Decln is insufficient — note by Cath. McKerkar — signed by her mark — but not said to have been read over to her. nor is there proof to that effect — H. Griffin, one Wits says it was, but this is not enough — The other

other witness dead & his signature proved — but this not enough. — The Defend^rs sued as the heirs of Donald McKerkan, whereas it is said that Cath. McKerkan, widow — made the note — nor is there any proof of the death, or of marriage of Donald McKerkan — If any right of action existed for Pl^ff it could be only for their proportionable part — Rep^re v^l preuve. p. 587 — two wits necessary to prove note. Poth. Succ. p. 605. action must be brot ag^t the heirs — widow had only usufructuary enjoyment of the property left by her husband. James Somerville is appointed Tutor to some of Def^ds but their names not given. — three are left out —

Boston for Pl^ff. Had Defend^t objected that any of the heirs were not in the Cause Pl^ff could have brought them in — It is not necessary to state on the note that it was read over to Cath. McMartin — proof of the fact is suff^t — this proof is made — Hy Griffin the living wit^s and proof of signature of the deceased W^s is enough. — To shew that Def^ds are children of the late Cath. McMartin he has ex^d them on faits & articles — they have admitted it — proof of marriage not necessary — the Commune renommée is sufficient —

# Friday 8th October. 1824.

## Present

## Justices Reid Foucher & Pyke.

No 1551
Ross & al
v
Williams

On Defendt mo. why Pleff should not be condemned by contrainte to pay Costs on an action brot. agt Defdt by Pleff

Holt. v Savage.

Rossiter for Pleff It is not stated on the rule that the amount of the Costs exceeds 200th. The action was not originally brot. touching anything in their business as Marchands publiques but for damages and therefore Pleff. not liable to contrainte. Poth. Proc Civ. partie 5. ch. 1. sec. 2 —

Boston for Defendt The motion is sufficiently explicit to obtain the conclusions thereof, as it refers to the Writ of execution qh is a part of the record — The law cited by Pleff refers to debts contracted by the parties but not for costs which are more favorably received. —

No 276.
Prince
v
Ferguson

On Rule why attachment should not issue agt Defendt for opposing the exon of Writ of Exon — Sewell for Defendt there is nothing in the return of the Sheriff to shew any opposition on the part of the Defendt —

No 1625
Lamb & ux
v
Williams
&
Harwood & al
Interv 3

Hearing on merits.
Action of account —
Sewell for Pleffs action to recover value of moveable property and amount of rents of real Estate —

The report now before the Court of the Experts is the second, and is so contrary to the truth & the interests of the Pltffs that Pltffs. must now demand of the Court to set it aside & to adjudge upon the Pltffs rights. Repn vo Expert — not Judges Denizt vo Experts — 184 act, Gr. Cont. p. 1501. No 13.

Mr. Grant for Defendr demands the homologation of the Report as having been made with great care and precaution. —

No 208.
Wright. — Eisenhart } On Defendrs mo. for alimentary allowance in Gaol —

Grant for Pltff — The Defendr has made over his property to certain friends for the benefit of his Creditors, but this has been done without the knowledge a consent of the Pltff or other Creditors and now claims an allowance which had been formerly disallowed. —

No 316
Mix — Jones } action to recover value of a farm, to qt Defr promised to sell and give a good title to Pltff

Boston for Pltff. The Defendr now refusing to give any title to Pltff, this action is lost for value of it. —

Bourré for Defdr In 1806 — the Defdr made an agreement under his hand to give Pltff a title to the land in question — The Pltff took possession remained in poss. for one year — there went off to the United States where he remained several years — The Supr. in the mean time gave a deed of Concession to ~~the~~ other person. The Defendr ought to be held under these circumstances ~~only~~ to pay only the money he received from

from the Defend^t — in this case it appears that the Pleff has cut down more wood on the land than the amount of this money — The absence of the Pleff for 15 or 16 years in a foreign Country prevented Defend^t from executing his Contract, & it was the personal fault of the Pleff by abandoning the land that the Seignior made a grant of it to another person. —

Boston for Pleff. The Defend^t must be held to return the money he rec^d from the Pleff with interest thereon besides all other damages —

N° 519
Brouillet
v
Adam

action en voye de fait —

Rolland for Pleff — contends that his case is made out from the evidence adduced. Denis^t. Voye de fait Rep^re v^o Voye de fait. — p. 600.

M^r L^s. Vezer for Defend^t — The action de voye de fait is an action possessoire & is divided into complaint & reintegrande & here the nature of demand is en complaint. To maintain this action the year & day's possession must be proved. To this action Def^t has pleaded that when the voye de fait was committed there was a public road used by the public, which was under the directions of the Def^t as Surveyor & consequently the Pleff had not the possession required — The Def^t has produced a P. Verbal laying out this road by the late M^r Desrouville the Gr. Voyer in 1773 — which is now in the office of the present Gr. Voyer — under the Stat. of 1796 This P. Verbal has not been homologated, nor was there any course settled for homologating P. Verbal at the time when made — This P. V. has been followed by the execution thereof qt — must be considered as binding on all concerned — the only question whether a part of the

route

route from the Kings highway to the river side can be considered as being a part of this route and considered to be for the public use — Had the Pltff remained in the possession of this route without any interruption by the public he might have maintained this action — but if the Pltff has allowed the public to have the use of this route, as he contends he has done, he cannot maintain the action — The Defendt is Inspector of the parish and has a right to direct the repairs of all the roads in his Jurisdiction —

Has made a motion to reject the testimony of one Nolin a Witness and a paper produced by him. he is made to speak as to an arrangement on a Lawsuit formerly instituted by Pltff vs the Defendt but without producing any of the proceedings had in the Cause or to shew the nature of the action or its bearing on the present action. —

Mr Rollard for Pltff. The Defendt admits in his arguments if the action had been for doing an injury to Pltff in his possession by making or repairing the road ~~in dispute~~ in question the action wd have been well brought — The action is so. — The Defendt ought to have alleged a contrary possn or that the road in question was a public road had he done so & proved this the pltffs action must have failed — but there is no public road where the injury has been done — The P. Verbal is irregular, is not homologated — ~~but~~ it is ~~only~~ 4 or 5 years ago only that it has been attempted to put this P. Verbal into execution — in continuing this route from the public road down to the river it is here the Pltffs house is situated in the direction

of

of the road & possessed by Pliff since 1773 without any road having been attempted to be made until 1819 — It is true there existed a sentier to go down to the water side, but never a road — We see nothing by which this P. V. was ever published or made known in anywise to affect the property of individuals — The Pliff here has proved sufficiently his possession, particularly when Defd^t does not set up a contrary possession. 1 Fer. G. Com. p 1519. No 5 — and 1526. No 37 — It is only where Defend^s alledges a contrary possession that Pliff is bound to prove poss^n of a year and day — Poth. Poss^n p. 551 — & No 96 — No 102. the possession annale is not always necessary to be alledged — Prop. p. 452 — by analogy — in regard of the property, where an action may be instituted ag^t. a third person without title —

No 538
Turgeon & Achim & Achim opp^t

On action en declar d'hyp.

Roi for Pliff. oppos^n of Defd^t. that they had abandoned the land accord^s to Judg^t — The Pliff now demands that Defd^t be condemned to pay the Costs of the execution upon the declaration made by the Pliff that he does not intend to proceed further on the execution, inasmuch as the Defend^t did not notify the delaissement to the Pliff in anyway he could be held to take notice of it —

Bleury for Oppos^t — the Defd^t was under the necessity of making the present opposition, as they had made the delaissement in time as the Judg^t obt^d by Pliff had never been signified to them — The Pliff ought therefore to pay all the Costs as well of the exec^n as of the Contest thereon —

Saturday 9th October 1824.

Present.

Justices Reid Foucher & Pyke.

No 1151
Rouville
vs
Hamel
and
No 815
Same
vs
Deshautels

On objections to faits & articles

Mr L. Vigé for Defendt has made an Inscrpn en faux agt the return of bailiff and an enquete has been had, the Pliff now demands to ex. Defdt on faits & articles to this Defendt objects as in such a case, that the parties cannot ex. each other on faits & articles, it not being allowed by law — the only question before the Court is whether the piece agt the Inscrpn en faux is made is faux or not cannot be ascertained by the oath of either of the parties This proceeding does not regard the merits of the case in qt the oath could be recd of the parties —

Mr Rolland for Pliff, it is a general rule that parties can ex. each other en tout état de Cause — & there is no exception in practice to this case — The faits here are only to prove a fact denied to be as stated in the return of the bailiff

No 938
Rouville
to
Dame

On objn to faits & articles —

Vigé for Defendt — Her Pliff declares he does not intend to make use of the bailiff's certificate by which means there is no proof of the publication & other preliminaries required — Defendt here pleads that the action cannot be maintd as there

was

was no publication of Judgt — and parties were not legally called upon to make their declarations according to the Judgt — gt has not been published — The Defdts cannot be called to make up this proof gt the law requires a Pleff to make by the bailiff's certificate — All the writers require the publication of the Lettres patentes by a sworn huissier & his return thereof before they can be considered as en demeure. The Pleff cannot renounce the course pointed out by law and take a different course to establish the fact of publication —

Mr Rolland for Pleff — considers he does not want the bailiff's certificates to support his action, if he can make proof sufficient without it — the letters Patent exist & can be carried into execution without the certificate of publication, if the Defendt can be made to show that he had a knowledge of such publication and in consequence appeared before the Commissioner and proposed to comply wt the demand of the Pleff upon certain conditions — In this case there has been no inscription in faux, as Pleff has declared that he does not mean to make use of it. —

Vigor in answer — The Pleff's action fails without proof the service & publication according to law, & not by the oath of the party — The knowledge the party may have of the facts is not the question, but whether the proof of this knowledge can come before the Court in any other way than the law requires. —

No 50
Gingras dux
Trudeau

action of acct. — hearts on excepn
Rossiter for Defdt — pleads chose jugée — Judgt
27 June 1822.

Farribault for Pleff — The actions now brought is different from that on gt the Judgt was given —

No 1025.
Metzler
Bleury
& Econtra

action agt Defendt for fees —
Farribault for Pluff — demand admitted by Defendt — demands Jugt —

Defendt — says, that he has set up an Incidental demand for a larger sum than that demanded by Pluff, and which he has proved. —
Exh. No 1. Levegue & Monk — &c

Farribault for Pluff — The Incidental demand is not proved, many of the articles being spoken to by only one Witt — has objected to the testimony of Clarke who proves the admission of the ~~Defendt~~ Pluff which is illegal being above 100t. —

McPherson
Summers
Sup —

action on deed of sale
Beaubien for Pluff — Defendt — alledge defect &c,
Notts P by Dept.

No 1195
McFarlane
Finchley

action by Pluff as Common Carrier. —
Buchanan for Pluff — refers to Defendts letters settling rate of cartage & freight —

Grant for Defendt — This is an action for a quant: mer. for transport of goods & not on the special contract between the parties — Pluff wishes to avail himself of an error — The Pluff is employed in land carried on carrying places — these persons are pd by the barrel — instead of being pd by weight. The Pluff wishes to avail himself of the letters

written

written to him by the Defend^s. clerk q^t promised to pay Pl^ff 3/6 ℔ Cro^t — while the practice was to pay at so much ℔ barrel — this is the Custom — so proved and the letter so written was done by the Clerk in ignorance and without instructions on this subject, as he himself has stated — There is a plea of compensation put in by Defend^t — for transport of goods for Pl^ff by Def^t —

Buchanan for Pl^ff. — The exh. No 2 & 5 shew the terms on which the Pl^ff was to be paid, and if there was error in these letters it appears extraordinary it should have continued so long — It appears by the evidence of the Clerk that he was fully authorised to write these letters and to carry on the Defend^s business There can be no lesion in contracts of this kind. Poth. Ob. No 39. Rep^n V^o Lesion. Poth. Louage. 399.

As to the plea of Compensation — the cartage done for the brother of the Pl^ff cannot be noticed, because not declared upon to pay the Debt of another —

But even if the Contract could be departed from still there is more due than allowed by Def^t refers to evidence on Com. Rog^n — whereby a settlement of act. is proved in 1823 — see evid. of Ph. Myers —

No 1340
Marteau & Mondelet } action on Prom^y note — on excep^o —
Grant for Defend^t — Declaration not sufficient

No. 132
Piedalue & Cartier } action on obligation — Debt — Excep^o —
Bleury for Defend^t —

No 1145
Grattou & Roy — } action for false imprison^t. — on Excep^n —
Grant for Pl^ff — Demurrer to Def^ts plea. —

Monday 11th October 1824.—

Present

Justices Reid Foucher & Pyke.—

Enquete-Day.

Tuesday 12th October 1824

Present

Justices Reid Foucher & Pyke.—

Enquête-Day.—

Wednesday 13th Octr 1824.—

Present.

Justices Reid Foucher & Pyke.—

No 1050
Donegani
Main

On trial by Special Jury, on action of damages for a malicious prosecution.—

Rolland & Grant for Pltff
Sewell for Defendt

On the trial the Defendant objected to the production and reading in evidence the affidavit of the Defendant, charging the Pltff with the felony for which he was arrested, as a copy of it had not

been

been obtained and filed as an exhibit with the declaration being a material paper and document upon which the action is founded and which therefore according to the rules of practice ought to have been filed with the other exhibits at the return of the action — But it was held by the Court that in actions of this nature the Rule did not apply, as the injury complained of lay more in the acts done by the Defendant than on any particular written document — and besides the copy of the document in question could not be considered as evidence, the original must be brought up and proved. The Court held the same principle in regard of the Indictment and proceedings of the Criminal Court given in evidence by the Clerk of the Crown who brought up these papers and proved them before the Court.

Verdict for the Pltff 1/ damages

Thursday 14th. October. —

Present —

Justices Reid Fondur & Pyke. —

No 1136
Calcoff
v
Boucher

On rule to shew Cause why Contempt should not be granted

No 1419.
Lavoegue
&
Bertrand
v
Brabant

On Defendr. mo. to quash process as having been served out of the Jurisdiction of the Court. Bruneau for Pltff, contends that the Sheriffs return is regular — party has also pleaded by exception

No 176.
Guertin
v.
Audet

On rule –

St George for Defd – The value of the grain not being proved the Pliff cannot have Judgt thereon – but by Pliffs answers on faits & articles it appears the Pliff has been paid for these grains as appears by the partage of grain made after the report of Experts – As to the Costs by the report the Pliff ought to pay them –

Mondelet for Pliff – The Defendt has made no

No 623
Mathe
v.
Pensonnault

Question as to Costs –

No 451
Ellice & Co
v.
Dizanard

Action Petitoire –

Rolland for Pliff, question now touching the report of the Experts – The Judgt. does not go far enough to determine the amount of fruits & revenues. Poth. Prop. No 346 to 350. – there should go in diminution of the ameliorations – but as the Interlocutor did not go the length of estimating the fruits & revenues, this must be done before a final Judgt can be given – The Report of Experts not authentic –

No 1145
Gratton
v.
Roi. a

Trial by Jury. –

Verdict for Pliff £500 damages

# Friday 15th October 1824.

## Present

## Justices Reid, Foucher & Pyke.

No 1451
Terrien
~
Perrauet

On Pleff mo. to amend. & on Defdr mo. to quash process from irregular service —

Mondelet for Defdr — The service is here irregular no true copy of the declaration and writ having been served on the Defendt —

No. 2146
Martigny
~
Choquet
sup —

Action by the Pleff as Seigneur for Lods & Ventes Guzy for Pleff — This mutation altho' apparently by a deed of donation, is truly a deed of Sale, and although the parties are father & son, yet this form has been adopted to defraud the pleff of his rights. — The first plea as to chose jugée has been determined — The other plea is a plea of general issue. —

As a general rule, no Lods & Ventes due on transactions between father & son — yet when they deal together as strangers the rule is different — this admitted by Defdt. In regard of the alledged fraud, it is not always possible to obtain clear evidence of fraud — Tiraqueau Gloss. 14. No 28. Repn vo Indices — 3 vol. Guyot des Fiefs. 233. Livoniere p. 262. 1. Duplessis. 87. Prudhom. 257. — 7. Repn vo Fraude. p. 656. — 16 vol. do vo Simulation. p. 324. 10 vol. do 619. vo Lods & Ventes. — The proof of the fraud in this Cause consists 1st in the omission in the deed to state the relationship between the parties. 2d the sum pd by the Donee is greater than value of land. 3rd The Donor appears to have been under restraint when act was passed —

on 1st point — The want here is evidence of concealment

The regard of a father to his son ought to have been marked in a transaction of this kind, as well in regard of the persons connected by tie of relationship as the kind of property given — There is no — consideration of affection here — no benefit conferred to the Donee, qt. is the general intention of a Donation — but on the contrary a perfectly a commutative contract 2d Point — the price given greater than value of land pt by stipulated rent — 2d Debts — & 3d an alledged legitime — The value of rent proved by Monjean — Duchenois & Paul Lussier — as to Debts — one of 1200 by Mr Lussier — by Mr Seguin & by facts & art. on Defendt — 2d a sum of 9225 by Duchenois & facts & art. these debts amount to 10,425# — by evidence of St Francois Defd admits to have pd debts to amount of 19,000# — & also to Savaria — to amount of 16,000# — the medium amount 17,000: is also proved by facts & art. on Defdt — see also evidence of Lamoureux the reason given by the Donor why he gave the land to the Defendant — 3d as to the Legitime of 2000# — to be pd by Defendt to his brother & Sister — This value altogether would amount to £34,000# — which is 11,000 more than the value of the land

3d The Donor was constained to give — The donor here was in the vigor of youth — and even engaging himself to make new land for the Donee — see evidence of Savaria, Lamoureux & Provost — he even hired his labor to his neighbours — This cannot be conceived to be natural had it not been necessary and the donor being under the necessity of doing so from pecuniary embarassement — Refers also to the Defendts marriage Contract of 14 Octr 1804 — by qt. Defendt appears to have received all he had reason to expect from the Donor in avancement D'hoirie — The only evidence on the part of the Defendt goes to establish the improved value of land

and

and the general liberality which takes place between parents and children in their transactions —

Viga for Defendt — It cannot be doubted that a father may dispose of his property to any of his children upon condition of paying his debts, or upon such conditions as he shall see fit, without the interference of the Surgeon. In this transaction there is no fraud, nor is any circumstance or fact of fraud stated in the Declaration, but the mere general allegation of fraud — merely the word, but no facts — There was no concealment, nothing untrue, all is open, fair, and legal —

There is no obligation that by the deed the relationship between the parties should be stated — the general tenor of the act shews it, were it necessary —

By the evidence adduced it would appear the land was given for less than its value — and here the Defendt had three lands given him —

Moves to reject the testimony adduced — There are no facts of fraud alledged in the declaration on gh to establish evidence — Danty. 238. ch 7. No 51. 52. 53. No 65. — 66. —

Simulation

Gugy in reply — a difference to be made between a third person and the parties to the act in case of allegation of fraud against it — the third person cannot know all the facts — Repn vo Simulation which explains the authority cited from Danty. —

No 1648.

Beattie v Phoenix Co } action for recovery of damages from fire on a Policy of Insurance with Defendts —

Gugy for Pliff. The Defendts set up an alledged concealment of a fire place in the house and 3d. That the fire originated in design. —

In cases of alledged concealment — it is necessary
1. Mar. 451. that the fact concealed was material to the work.
1 Marshal. Tit. representation — a warranty
on part of the insured would be different — here
the fact concealed did not vary the risk. —

The Pleff insured a house as a Sale-shop in St Pauls
Street in Montreal — It is unnecessary for a shop
keeper to state that he means to keep fire in it
in Winter in this Country — The fire place here
is much less dangerous than a Stove, which is
used in all houses without it being necessary to state
this in a Policy of Insurance — refers to the evidence
The purposes for which the fire in this fire place
was not for the manufacture of hats, but for
the finishing process for hats, which is attended
with no dangerous consequences from the heat
used. —

As to the second plea — of wilful fire having
been set — there is no proof —

Gale for Defendants — This a second fire
within a short period wherein indemnification
is claimed of Defendts — The plea here set up
is a concealment of a material part of the
description of the premises assured, namely a
certain fire place particularly referred to in the
Rutledge Burrel } cited. articles of Policy — 1. H7 Bl. 254 — The conditions
of policy are considered to be part of the Contract —
Pleff gave an untrue description of the premises
Poth. Assurn No. 94. p. 164 —
Hodgson v Richardson. 1. Bl. Rep. 465. concealment
vitiates all contracts —

In a room where the finishing process is
carried on, as there are always loose materials

used

used in this process which are lying about yt increase the risk — this is a greater risk than that arising from a common fire place, as at it this finishing process cannot be used — this required that a communication should be given to the Defendt — The place insured here, was a Sale Shop — in which no kind of manufacturing is presumed to be used It is a matter of indifference in what place the fire originates in this case. 3. Chitty's Laws of Com. p. 508, Every concealment vitiates the Contract — 509. 510. — 1 Marshall p. 450. — on representations — It p. 465. Id. p. 467. — every fact & circumstance yt can affect the mind or opinion of the Insurer, must be considered as material — Park on Ins. p. 283. — 287. —

Mr Grant in reply — material difference between misrepresentation & a warranty — 1 Marshal p. 337. if the misrepresentation of the fact is not material it does not vitiate the Contract — The fire place here is none of those referred to in the — Conditions of the Policy, and not used in a finishing process in the manufacturing of hats — but to heat an iron — such as most workmen use. 2, Phillips p. 61 — Defendts are not the Judges of what is a material circumstance in description of property but the Court — Defendt presumed to know there was such a fire place here, as such is always used in all sale shops of hats — so Deganard & other Wits declare — Usage of Trade must determine what the parties are presumed to know. —

No 428
Chorette
&
Boyer & ux
&
E Contra

action on deed of Sale — on Excepn
Letourneux — Defdts have pleaded payt — to this plea Pltff has excepted as the Pltff never accepted the articles, —

The

The Defendrs have also set up an Incidental demand, but inasmuchas they do not state that the effects claimed by this demand are different from those stated to have been given in payment of the Principal demand it ought not to be received To this demand Pltff has also pleaded prescription and offered the oath of Pltff — cites art. of the Custom — Poth. ob. No 718 —

Mr Peltier for Defendr — The Prescription has not been well pleaded, as it does not state paymt — but the Pltff does not admit the debt by his plea

Saturday 16th October. —

Present

Justices Reid Foucher & Pyke

Ex parte — Petition of Antoine Monjeon & al — } On Petition to be discharged from their Caution as Sceurts for Jr Bte Bail a bailiff of this Court — on account of his misconduct — Has filed affidavits in support of their demand —

Mr Bleury for the Bailiff states that the charge made against him is ill founded — files sundry affidavits in support of his conduct. —

No. 1470 Thibaudeau & Martin } On Defendrs. mo. to quash process from short service —

Rollin for Pltff, contends that the service is regular —

David
v.
Hervieux
&
Lacroix sal
T. Saisi

On rule on T. Saisi to shew cause why he should not give caution according to the Judgt of this Court, and that Pliff should have ~~Judgt~~ Defdt according to the conclusions of his demand — as Pliff has not done diligence to notify the Tiers Saisi of the Judgt rendered

No 606
Johnson
v.
Gardner —

action for malicious arrest — on demurrer — Gugy for Defendt — demurrer founded on 2 grounds — the non-existence of the debt — and absence of reasonable or probable grounds — Pliff allowed to amend — in consequence he struck out the part respects the existence of the debt — the declaration now stands merely on the ground of reasonable or probable cause — then it is insufficient, as the words falsely and maliciously are not sufficient — it must shew to be without ground or cause — for a man having a right, it is not necessary to investigate the cause which may induce him to exercise it — even if malicious —

Mr Driscoll for Pliff. The word falsely shews sufficiently a want of good cause to use the proceeding —

No ~~1152~~ 335
Desrivieres
v.
Stoliker

action petitoire — hearing on question whether Defendt can be admitted to adduce verbal testimony of sale under the commencement de preuve par cent made in the Cause —

Walker for Defendt — one Ph. Reuter being the authorised Agent of Messrs Todd & McGill the proprietors of the land sold the land to Spears, who from time to time made payments on that account — certain letters from Mr Reuter are produced in support of this fact —

Mr Morrough for Pliff — The Defendt has produced

certain papers from Mr Ruiter, who was agent of Todd & McGill, but not to extent to sell or locate any lots of land in the Township of Stanbridge — that Mr Ruiter was agent for the Crown and clergy reserves, and by the letter it does not appear to what lot it applies whether that of the Pliff or any of the Clergy reserves — there is therefore no com. de p. par ecrit — tit. 20. art. 3. No. 2. ordre 1667. Poth. Obl. No 792. No 801 — 807. — Denizt. vo Adminicule. vo comm. de p. par ecrit. 1 Bourg. p. 470. 471 —. Denizt. vo Ecrit Double — Repre vo Double Ecrit — Id. vo Promesse de Vendre — Danty. p. 238. — No 51. — p. 260 — 261 — p. 571. 2. 3 — & p. 579 — p. 582 — 3. — 585. —

Walker for Defendt — It is admitted that Ruiter was the agent of Messrs Todd & McGill in regard of the location of the lots of land in question —

No 508
Brisson
Manchester

On Report of Exp
Depdt says the Costs ought not to be given agt him — consents to report. — Action in garantee to stand over —

No 433
Scott
Phönix Co

Action on Policy of assurance —
Buchanan for Pliff. — The Policy is proved the fire also — Damages £5000 — claimed — Observes with regard to state of plea — its irregularity without any conclusion —
Refers to evidence adduced and exhibits filed in proof of value of goods on hand — loss as well by

fire

fire and by pillage — There was a quantity of these goods saved to the amount of about £1000 there were deposited in Mr Henry's Stores & notice given to Defendr. to take charge of them — they refused & in consequence were taken to Stores of Spragg & Hatcheson by Pliffs — here Defendr. interfered by such acts of ownership over these goods as to charge them with them & intitle them to the full amount of their Insurance — gave orders to Spragg to advertise the goods for sale, which was done — 2 Marshall 613. Poth. assurce. 135 —

But without abandonment Pliffs are intitled to the full amount of their assurance of the greater part of the goods has been lost and damaged — here what was saved was so damaged as not to be saleable — Poth. assurce. No 112. 113. 114 — 2 Marshall. 562

124 It does deprive Pliffs of their right of action that they did not deliver in their vouchers in time, this can only regard the right of bringing the action, but does not take away their right. Poth. assce. No 124 —

1 Ph. p. 170 Has objected to the testimony of Mr Auldjo in so far as regards not the transactions before the Court, but to foreign matters & other transactions between the parties. 1 Phil. Ev. 170 — evidence of character cannot be admitted in a Civil Suit. —

Mr Ross for Defendt — The plea is sufficient & meets the demand of the Pliffs — The Pliffs have no right of action whatever — the fire took place in Augt 1821 — there was a fire previously in March 1821 — on qt there was an arbitration & a sum of £12.10 allowed them — In Augt 1821 — the fire took place qt consumed the goods now in question — the fire took place in the back part of the house — there was little in the back shop — qt were saved — as were the goods in the front shop — so that 19/20 of the goods were saved — the claim here is as for a total loss — but the policy

of

is to indemnify the Pltffs for their loss, but not to leave the Pltffs a right to abandon what was saved —

The Pltffs are bound to make their claim immediately after the fire and give notice of it to the Defendts. After the fire in March 1821, the Defendts asked for an Inventory of the goods they Pltffs. had then on hand apprehending another fire — this Pltffs refused. On the 18th Augt. Pltffs. notify to Defdts that considerable injury had happened to their goods of which they promise to give an account as soon as possible — but no statement was given in till May 1822 — here the Pltffs chose to make what they call an abandonment in order to claim for a total loss of the goods — but all authors & decisions agree to reprobate such an act, as dangerous & not to be admitted particularly under such circumstances — 1 Douglass 294 — parties bound to account in a reasonable time, otherwise himself answerable for delay — 2 Bur. 904 — where insured cannot recover more than the actual loss — here 2 days after the fire the Pltffs took poss. of all the goods in Henry & Bethune's Stns — seven afterwards carried to another place before abandonment was made, yt was several months after the fire — 2 Bur. 298 — Hamilton v Mendez — 1 Hy Bl. Rep. 276. 2 Bur. 697. Goss Lal v Weathers — 2 Bur. 683 — Park's Insurance 230. 231 — The Insured may abandon, if the loss exceeds half the value — but under certain conditions Id. p. 237 — a partial loss cannot be converted into a total loss by the act of the party — Id. 246 — 7 — There can be no abandonment when the thing is in safety — Id. 248 — reasons agt abandoning being allowed — refers to opinion of Ld Mansfield on the Case — 10 East. 329. Bembridge v Nelson — to same point — It wd

be

be holding out temptation to Insured to defraud Insurers if an abandonment would be allowed und circumstances such as here stated — And it is held in last case, that even if the Insurers had paid & found that the abandonment was not well founded, they would be entitled to recover back the money. Park. 254 — the precautions to be used agt admitting an abandonment — cites 4 Bur. 1966 — where abandonment was refused 1 T. Rep. 608. Mitchell & al. v Eddy — notice of abandonment must be given within a reasonable time — or will not be allowed afterwards — 7 East. Rep. 43. Anderson v Royal Exch. Insr Co — where an interference with the property saved prevented the party from making an abandonment —

2 Marshall: 560 — no abandonmt. ought not be permitted when the greatest part of the goods exist & are in the power of the party — p. 262. same doctrine — refers to Gordon — Id. p. 583 — 589 — 560. — this last case shews that by Defendrs saying do the best with the goods — cannot allow of a partial loss being made a total loss — Poth. Assn. No. 77. — If there be a total loss, the Insured must prove the value of the loss of the goods lost — Id. No 118 — 143 — 158 — 159 — to same point —

There is no evidence to prove the value of the goods at the time of the fire — the books and evidence adduced here may have been made up in the time the Pltffs took to deliver in the statement of the Pltffs goods —

The certificate of Pltffs character is dated 22 Nov. 1821 which they keep back till May 1822 before it is delivd. to the Defdrs

On Defdrs mo. to reject papers filed by Mr Jessi Reeves a witness produced in the Cause — as coming from Pltffs & ought to have been filed with the declaration. —

Under general issue Marshall 694. 695 — any facts may be given in evidence to disaffirm the Contract — Peakes Evidence — general issue

Mr Grant in reply — The plea is very irregular. it consists in saying that Pltffs are not entitled to recover as no notice was given to the Defendr — It appears

by

by the evidence in the Cause the notice was given on 18th Augt — and further statements given as soon as circumstances would admit — & this is also shewn that the further statements were so given —

The loss sustained in this Case is made out by the testimony of several witnesses — who were present at the fire —

The Pltffs contend here that there has been a total and not a partial loss — goods were saved to extent of £1000 — but so damaged as not to be saleable. see evidence of Bridge & others —

This is not a valued policy, and Pltffs have proved their loss — The possession taken of the goods by the Pltffs was for the benefit of the insured. — and after notice to Pltffs to do so — The acts of Defendt towards the goods when in the possession of Sprag, shews they accepted the abandonment. —

That Mr Auldjo is interested in this Cause, as blame must fall upon him as agent of the Pltffs should succeed in the Cause —

As to the regularity of producing the papers by Reeves's testimony — the rules of practice do not require such to be filed with the Declaration they are subsidiary documents only & may be produced at enquete.

No 960
McKenzie
Moffat, Exr

Action to recover arrears of an annuity given by late Kenneth McKenzie by will —

Gale for Pltff — The difficulty here arises upon the interpretation of the words of the will — whether the Pltff shall be entitled to the sd annuity

since

since Sept 1820 when she ceased to have the care and charge of her daughter — But Pltff contends that while the Pltff was unprovided for she was entitled to the annuity — The Testator has made no difference in case the Child should be removed from the Care of the mother — and the rules of construction are favorable to the Legatee —

The contingency must be taken here as a limitation 1 Swinburne p. 378 - p. 386 — 2 Black. 155. —

There being conditions subsequent — both contingencies must happen before Pltff can be deprived of the Legacy —

The Testator was here providing for the subsistence of the mother of his Children Domat. Tit. 1 Sec. 7 - des Testamens —

Buchanan for Defdt — The Court will supply the words to this legacy in the manner set up by the Plea — in supplying words in interpreting a will, it must be done in such way to do as little violence to the other words of the will as possible — The construction should be made so as to relieve the Residuary Legatees — but it is so doubtful that the Court may reject these words in toto as non scripta — 2. Turgole p. 253 — ch 7. sec. 4. No 121 —

135 When there are two affirmative conditions the non performance of one of them determines the Legacy — 2 Turgole 139 — No. No 78 —

This is a potestative condition as the mother had alone the Controul over the Child —

1 Domat. 356. 3 lib. tit. 1. sec. 8. No 33
Corp. Jus. Dig. lev. 32. law 30. §. 5 —
Dig. lev. 35. tit 1. 8th law —
Code. lev. 6. tit. 46. 3d law —
2 Turgole p. 235. ch. 7. sec 5. No 133 —

Id. p. 337 – 335 –

2 Despresses. p. 324. part. 1. tit. 3 Sec. 3 –

Repr. vo Condition. p. 207.

2 Furgole 268.

Repr. vo Condition. p 409 –

2 Bourg. 361. –

2 Furgole. p. 142. – word while – is conditional when it fails, legacy fails also –

When a legacy depends upon 2 conditions whether affirmative or negative the failure of one the legacy ceases – Dig. liv. 28. tit. 7. law 5 – 2 Furgole. 314 – 319 – 317 –

Poth. ob. No 223 – 2. p. 316 Despresses – part 1. Sec 2 No 18 –

No 1957
Corbeille dux
v
Dazenais

action en reddition de Compte –

Peltier for Pliff. To this action Defde pleads that he has already rend. an acct. yt he files & not bound to render any other – To this Pliff answers this no acct. & the discharge given thereon by Pliff therefore null – The formalities req. by Law not having been observed, not being sworn to – & the Pliffs being then minors – art. 8. tit. 29 Order 1667. requires this formalities – The acct. rendered contains Immoveable as well as moveable rights and therefore a Tutor ad hoc was necessary – Repr. vo Compte – 2 Pigeau 28. 30 – p. 310 – 1 Bourjn p. 74 –

L. Vigé

L. Vigé for Defdt — The account rendered contains all that an account render à l'amiable ought to contain, and being rendered to Minors who were emancipated by marriage & therefore entitled to demand the acct rendered — refers to the Case of Verve v Beaupré — where a similar account was rendered and admitted by the Court as sufficient — Lacombe v Mineur No 13. — In this account nothing is contained but the moveable rights of the parties and not anything regarding their Real Estate, except what the Defendt received as the issues and profits of the Real Estate —

Peltier in reply — The Defendt ought to have rendered a new account when sued by this action Pltff not bound to look at the account nor to contest it till sworn to by Defdt —

No 492
Beauchamps
&
Monjeau

Action to recover a sum promised by a marriage Contract —

Papineau for Pltff. Mar. Contract 7 Novr 1818 en qt. it was stipulated that the sum should be paid à la Commodité des Donateurs. — Either this clause is wholly null, or it must be executed in a reasonable time, and this the Court must determine — There are no pointed authorities upon this point — Poth. Obl. No 48 — After the death of the mother of the Pltffs wife, the one half of the sum was paid to the Pltff — The Pltff has instituted this action on acct. of his minor whose interest is concerned that it may not appear he neglected it —

Quesnel for Defendt — The Court must either dismiss this action, or condemn the Defdts to pay immediately, — but the Court cannot go beyond the terms

terms of the Donation — Denizr. &c Donation No. 20 — all licit clauses may be inserted in a donation — Poth. Don. vip — sec. 2. §. 4. p. 469. in 4to — on ne doit donner & retenir. — mar. contracts
455 are an exception to this rule, in gt. the will of the Donor is the Law — Id. p. 455 — §. 9. — — Id. p. 506. §3 —

Here it is the commodity of the Defendt. that must be considered, of which he alone can judge and the Court cannot alter the nature of his obligation —

## Monday 18th October 1824

Present

Justices Reid, Foucher & Pyke. —

Kuper
Molson } On mo. to discharge Pleff. mo. that Cause be tried by Jury. —

Action of damages arising from collision of 2 Steam-boats —

Buchanan for Defendt. the question turns upon what can be considered to be personal wrongs — 3 Bl. Com. p. 2 — 1. Chitty on Pleads. 165. — 3d edit. — 3 Wooderon. 170 — distinction between persons & personal property ch. 7. to ch. 9. Bl. Com.

Boston for Pleff — This action regards not only the property, but the person and feelings of the Pleff — Bunker v. Watson. —

No 2074
Brunette
vs
Handyside
&
Beaudry

On Defendrs mo. to extend rule for ex. of Garant on facts & articles from want of time to serve the rule —

Roi for Pluff. The Pluff must have Judgt. and allow the parties to proceed on the action in garantie —

No 1259.
Gravelle
vs
Charbonneau

On mo. that Cause be inscribed de novo on the role de diliberé —

Lacroix moves to be permitted to plead de novo —

No 1145.
Gratton
vs
Roi —

On Defendrs mo. for new trial. —

Mr Bedard for Defendt —

1st The direction given by the Court to the Jury was contrary to law. The Court refused to hear evidence of certain facts previous to 11th March — as well as the evidence of certain facts subsequent thereto — as the want of these facts may have influenced the Jury in forming their opinion as to the damages — The Court directed the Jury not to attend to the facts of Justification set up by the Defendant — Respn vs Injure. p. 240 — The relative situations of the parties was to be considered — Here the Defendt. was not the partner of the Pluff — but had a superintendance over the conduct of the Pluff. Domat. Dr. Pub. liv. 3. tit. 11. art. 10. — State of parties. Dig. 47. tit. 10 loi. 7. § 8. — Id. art. 11 — art. 14. any subsequent transactions between the parties that may bear upon the injure in question ought to have been admitted in evidence, & therefore the acts of 24 March & 1st May 1824. ought to have been recd in evidence — The evidence of Bizaillon shewed that the Defendt was not the partner of the Pluff. as regards the parties to the contracts — The act of 1 May 1824 shews this partnership never existed — but Pluff thereby acknowledges Defendant to have been his protecteur — The act between the Creditors also shews that Defendt was considered as the principal Creditor —

liv 3. tit. 11 art. 10.

Dareau. 388 — the circumstances may alleviate the injury — and Ib. 472. & 473 as to nature of damages to be recovered —

2. Ground, that the Jury were surprised in rendering their verdict were mistaken & surprised, not having had all the facts of the Case laid before them. —

3. The damages are excessive, —

Mr Grant for Pleff — The Defendt. has not adhered to the points stated as the grounds for a new trial as he relies rather on a principle that the evidence he offered had not been allowed to go to the Jury —

The Defendt. was allowed to go into the grounds of his ~~his~~ justification, but failed in it. —

In cases of this kind, new trials are never granted there is but one case in the books where a new trial was granted — The Jury are the sole Judges here — Chambers. vs Robertson. 2 Strange — where a new trial granted — 2 Mod. Rep. Townsend. v Hughes — mo. refused. 2 Wilson. 206. Hubbel. v Money — Leeman v Allen 2 Wilson — Beardmore v Livingston — 3 Bur. 2 Wilson. Arthur Bedmore's case — Sharp. vs Brice. 2 Sir Wm Blackt Rep. 942. 2 Id. 929 — Gilbert v Buttenshaw — Leith v Pope. — Duberly v Gunning — 4 T. Rep.

Mr Sewell in reply — in all cases there may be new Trials — In cases of excessive damages it is commonly granted — 3 Bl. Com. 387. new trials granted in cases of excessive damages — 1 Bur. 609 Wilford v Buckley — 3. Bl. Com. 388 — 1 Bur. 383 — Gilbert v Buttonshaw — Cowper Rep. — Farmer v Darling 4 Bur. 1971 — Innes. v Sparrow 5. T. Rep. 257 — Ashe v Ashe, Comberbach's Rep. Chambers v Robertson 1 Str. 692 — Clamp v Yudle. Salk 649 — Comberbach 170 — 1 Bur. 394 — 1 Earl. 245. to 256.

Bourré. v Grandpré — in this Court — in 1820 or 1821 —

No 2149
St. Blin
Forrest
Forrest opp.

On opposition afin d'annuller — heard
on law
Quesnel for Pfff — This opposition is made to revenue a Judgt. already given & make another.

The Seigneurs joined in a procedure of 21 Sept. 1821. to the Pfff to obtain payt of arrears due in the Seigneury for rents &c — The Pfff recd. one relief on the fief in question from Mr De Bleury — another was due by Defendt. on his purchase — Defendt. gave his note, ongt. Judgt. was confessed by him — the papers mislaid — a new contest arose — Judgt. finally actd & exon sued out — to this Defdt. has made present opposn. — But this opposn. is irregular. Poth. Proc. Civ. p. 142 — Denizt. vo Reg. Civile Forr. vo Requete Civ. 2. Pigeau 548. — ~~Rept~~ Repn. vo Requete Civile all these auth. founded on Ordre 1667 — art. 1. tit. 35. art 3. même tit. — The party can have only the moyen d'appel but cannot be heard in this Court — But even in a Court of appeals he cannot be heard as the moyens used by him as they are not moyens de Requete Civile — The opposition contains none of the moyens of a requete Civile — ordre 1667 art. 34., admitting that a requete Civile came be admitted under the shape of an opposition — The opport. makes use the word dol, but it is improperly — ved. Denizt. vo Dol — In the Cases of Confession of Judgt. no fraud can will be alledged — At all events this opposition cannot suspend the effect of the Judgt —

Bedard for Opport — There can be no new contest nor no new demand formed in the Court of appeals this Court must be the Court where the remedy can be granted — ~~Arrêt~~ Dec. du Roi 10 Mars 1685 — p. 265. Arrêts Edits. — and Dec. Roi avril 1681 — p. 487 — which gives power to the Conseil Superieur to take cognizance of Requetes Civiles — this power is vested in this Court by Prov. Stat. of 1794 — & more especially as this

Court

Court is the only one qt can exercise original Jurisdiction — and the demand here made is a demand to be heard and determined in the Court of original Jurisdiction —

No

Tuesday 19th October 1824

Present

Justices Reid Foucher & Pyke

No 443
Bergeron & Perodeau } act. Petitn Rep. of Exp. hom. —

No 2012
Guay & ux vs Guay. } action en Rescision de Donation — Dismissed —

No 538.
Turgeon v Achim. & Achim oppt } Judgt. as to Costs on Opposition

No 594
Cates. v Kittson } Judgt for Pltff. —

No 528
Bowron v Linley } P. Verbal of manuel, Surveyor hom. —

No 239.
Tetu & ux v Masse & Drolet Interv. } Intervention dismissed with Costs —

| | |
|---|---|
| No 1100<br>Cartier vs Degen<br>Sasseville opp^t | Interlocutory, on admitting the Oppos^n |
| No 1877<br>Gagnon vs Metras<br>Metras opp^t | Opposition dismissed — |
| No 316.<br>Mix vs Jones. | Judg^t |
| No 748.<br>Ruiter vs Mayoal | action dismissed — |
| No 1638.<br>Baird & McNider. | Mo. in arrest of Judg^t over-ruled |
| No 97.<br>Duplessis & ux vs Cardinal & al | Report of Opp. homologated |
| No 176<br>Guertin & Audette | Judg^t on Rule Nisi |
| No 1625<br>Lamb & ux vs Williams & ux | Interlocutor. |
| No 1957.<br>Corbeille & ux vs Dagenais | Interlor |

| | |
|---|---|
| No. 169. Kent. v. Forsyth & al & Burket opt. | Opposition dismissed — |
| No. 1151 Rouville v. Hamel. and No. 815. Rouville v. Desnautels | Defendts motion over-ruled |
| No. 938. Rouville vs Dame. | Defendants mo. over-ruled |
| No. 1470 Huberdeau & Martin | Defendt mo. to quash process for short service over-ruled |
| No. 1551 Ross & al v. Williams | Rule discharged — |
| No. 1300 Dec: Volontre In Bte. Dubreuil | Mo. to reject opposition as filed too late, granted. — Practice |
| No. 606 Johnson v. Gardener | On demurrer — over-ruled |

No. 1099.
Cadieux v. Cadotte. — } Pykes notes — Judgt for Pliff

No. 1117.
Wragg v. Dwight } Demurrer over-ruled —

Wednesday 20th October 1824. —

Present

Justices Reid Foucher & Pyke. —

No. 1560
Watson v. Heath, Cur } Judgt for Pliff

No. 1050.
Donegany v. Main. — } Judgt on Verdict. —

No. 543
Kinsler v. Rochon } Action dismissed. —

No. 544
Kinsler v. Rochon } Action dismissed. —

No. 275
Mathieu v. Plucknet & Sewell Intervs } Pliffs action dismissed —

| | | |
|---|---|---|
| No 1195<br>McFarlane<br>vs<br>Finchley<br>and<br>& Contra | | Judgt |
| No 279.<br>Frost & Porter<br>v<br>McKenzie | H | Action dismissed. |
| No 966.<br>McKenzie<br>v<br>Moffat Exr | H | Judgt |
| No 40.<br>Chrysler.<br>vs<br>Simmons<br>&<br>Aykeroyd | H | Judgt |
| No 1018.<br>Bronsdon<br>et al vs<br>Wilson. | H | Dismissed |
| No 674<br>Piché<br>&<br>Mancizre<br>et al | | Judgt |
| No 681.<br>Piché<br>&<br>Bourré | | Judgt |

No 1968. & No 2098

M^c Callum
v^s
M^c martin
and
Same.—
v^s
M^c Intire

Judgt.—

£25 annually as long as she may have charge of her daughter Margaret, and otherwise unprovided for.

## JUILLET. Le Soleil entre au Lion

Premier Quart. le 3 à 9h. 23m. Matin. | Dernier Quart.
Pleine Lune le 10 à 11h. 27m. Soir. | Nouvelle Lune

| MOIS. | Sems. | FÊTES. | |
|---|---|---|---|
| 1 | Jeudi | *Octave.* s. Jean Bapt. | L |
| 2 | Vendredi | Visitation de la B. V. | 2M |
| 3 | Samedi | s. Jean de s. Facond, | |
| 4 | DIM. | 4. après la Pentecôte. | |
| 5 | Lundi | Antoine de Pade, | |
| 6 | Mardi | *Octave* des Apôtres. | |
| 7 | Mercredi | ste. Marguerite, | |
| 8 | Jeudi | ste. Elisabeth, reine, | |
| 9 | Vendredi | | |
| 10 | Samedi | ss. Sept Frères martyrs, | *Eclipse.* |
| 11 | DIM. | 5. DÉDICACE, | M |
| 12 | Lundi | s. Jean Gualbert, abbé, | |
| 13 | Mardi | s. Anaclet, pape, mart. | M |
| 14 | Mercredi | s. Bonaventure, évêq. doct. | M |
| 15 | Jeudi | S. Henri, II. empereur, | M |
| 16 | Vendredi | N. D. du Mont Carmel, | M |
| 17 | Samedi | s. Aléxis. | M |
| 18 | DIM. | 6. *Oct* Dédicace, Sol. Jac. | 2 M |
| 19 | Lundi | s. Vincent de Paul, | |
| 20 | Mardi | s. Jérôme Emilien, | M |
| 21 | Mercredi | s. Camille de Lellis, | M |
| 22 | Jeudi | ste. Magdeleine, | |
| 23 | Vendredi | s. Apollinaire, évêq. mart | M |
| 24 | Samedi | De la Vigile, | M |
| 25 | DIM. | 7. s. Jacques, Sol. ste. Anne. | 2M |
| 26 | Lundi | ste. Anne, | |
| 27 | Mardi | s. Pantaléon, mart. | |
| 28 | Mercredi | ss. Nazaire, &c. martyrs, | |
| 29 | Jeudi | ste. Marthe, vierge, | |
| 30 | Vendredi | s. Abdon et Sennen, mart. | |
| 31 | Samedi | s. Ignace de Loyola. | |

## AOUT. Le Soleil entre a la Vierge.

Prem. Quart. le 1 à 5h. 2m. Soir. | Dern. Quart. le 17 à 3h
Pleine Lune le 9 à 2h. 39m. Soir | Nouv. Lune le 24 à 9h.

| MOIS. | Sems. | FÊTES. | |
|---|---|---|---|
| 1 | DIM. | 8 s. Pierre aux Liens. | 3M |
| 2 | Lundi | s. Etienne pape mart. | |
| 3 | Mardi | Invention de s. Etienne. | |
| 4 | Mercredi | s. Dominique. | |
| 5 | Jeudi | N. D. des Neiges, | |
| 6 | Vendredi | Transfiguration de N. S. | |
| 7 | Samedi | *Jeûne.* S. Cajetan. | |
| 8 | DIM. | 9. Sol. s. Laurent, diac. mart. | |
| 9 | Lundi | s. Cyriac. mart. | 2M |
| 10 | Mardi | St. Laurent, diacre martyr | |
| 11 | Mercredi | De l'Octave | M |
| 12 | Jeudi | ste Claire, vierge, | |
| 13 | Vendredi | de l'Octave, | |
| 14 | Samedi | *Jeûne.* Messe de la Vigile | 2M |
| 15 | DIM | 10 ASSOMPTION. | |
| 16 | Lundi | s. Hyacinthe | 2M |
| 17 | Mardi | Octave de s Laurent | M |
| 18 | Mercredi | de l'Octave | M |
| 19 | Jeudi | de l'Oct. | |
| 20 | Vendredi | s. Bernard. | |
| 21 | Samedi | ste. Jeanne de Chantal, ve. | |
| 22 | DIM. | 11 *Oct.* Assomp. Sol. s. Barth. | 2M |
| 23 | Lundi | s. Phillip, de Benit. | M |
| 24 | Mardi | s. Barthelemi, apôtre. | |
| 25 | Mercredi | s. Louis, roi. | M |
| 26 | Jeudi | s. Joachim, | |
| 27 | Vendredi | s. Joseph de Calasantz, | |
| 28 | Samedi | s. Augustin, évêq, doct. | |
| 29 | DIM. | 12 Décol. Jean. Bap. Sol. Louis. | |
| 30 | Lundi | ste. Rose de Lima, vierg. | |
| 31 | Mardi | s. Raimond Nonnat. | |

## SEPTEMBRE. Le Soleil entre à la Balance

Pleine Lune le 8, à 6h. 46m. Matin. | Nouvelle Lun
Dernier Quartier le 16, à 2h. 24m. Mat. | Premier Quar

| MOIS. | Sems. | FÊTES | |
|---|---|---|---|
| 1 | Mercredi | s. Gilles, abbé, | |
| 2 | Jeudi | s. Etienne, roi, | |
| 3 | Vendredi | | |
| 4 | Samedi | de la ste. Vierge, | |
| 5 | DIM. | 13. | |
| 6 | Lundi | s. Laurent Justinien, évêq. | |
| 7 | Mardi | | |
| 8 | Mercredi | Nativité, | |
| 9 | Jeudi | de l'Octave. | |
| 10 | Vendredi | s. Nicolas de Tolentin, | |
| 11 | Samedi | de l'Octave, | |
| 12 | DIM. | 14 s. Nom de Marie, Sol. Nat. | 2M |
| 13 | Lundi | de l'Octave, | |
| 14 | Mardi | Exaltation de la Ste. Croix, | |
| 15 | Mercredi | 4 *Tems*, Oct. Nativité. | 2M |
| 16 | Jeudi | ss. Corneille, &c. mart. | |
| 17 | Vendredi | 4 *Tems.* Stigmates de s. François, | |
| 18 | Samedi | 4 *tems.* s Joseph de Cupertin. | |
| 19 | DIM. | 15 Janvier, Sol. Matthieu. | |
| 20 | Lundi | ss. Eusache, &c. mart. | M Vig. |
| 21 | Mardi | s. Matthieu, apôtre. | |
| 22 | Mercredi | s. Thomas de Villeneuve. | M |
| 23 | Jeudi | s Lin, pape mart. | |
| 24 | Vendredi | N. D. de la Merci, | |
| 25 | Samedi | De la Ste. Vierge | |
| 26 | DIM. | 16. Sol. Michel, | |
| 27 | Lundi | s. Côme, &c. | |
| 28 | Mardi | s. Vinceslas, duc, mart. | |
| 29 | Mercredi | s. Michel, Archange, | |
| 30 | Jeudi | s. Jerôme, prêtre doct. | |

## NOVEMBRE. Le Soleil entre au Sagittaire

Pleine Lune le 6 à 2h. 49m. Soir. | Nouvelle Lune
Dernier Quartier le 13 à 7h. 25m. Soir. | Premier Quart

| MOIS. | S. | FÊTES. | |
|---|---|---|---|
| 1 | Lundi | TOUSSAINT, (*d'obligation*) | |
| 2 | Mardi | Trépassés. | |
| 3 | Mercredi | De l'Octave, | |
| 4 | Jeudi | s. Charles, évêque. | |
| 5 | Vendredi | De l'Octave, | |
| 6 | Samedi | De l'Octave | |
| 7 | DIM. | 22. Messe. du Patron, | 2M |
| 8 | Lundi | Octave de la Toussaint, | |
| 9 | Mardi | Dédic. Basiliq. du Sauveur. | |
| 10 | Mercredi | s. André Avellin, | |
| 11 | Jeudi | s. Martin, évêque. | |
| 12 | Vendredi | s. Martin, pape, martyr, | |
| 13 | Samedi | s. Didace, | |
| 14 | DIM. | 23. | |
| 15 | Lundi | ste. Gertrude, vierge, | |
| 16 | Mardi | | |
| 17 | Mercredi | s. Grégoire Thaumat, év. | |
| 18 | Jeudi | Dédic. Basiliq. s. Pierre et Paul, | |
| 19 | Vendredi | ste. Elisabeth, veuve. | |
| 20 | Samedi | s. Félix de Valois, prêt. | |
| 21 | DIM. | 24. Présentation | M |
| 22 | Lundi | ste. Cecile, vierge, | |
| 23 | Mardi | s. Clément, pape, et mart. | |
| 24 | Mercredi | s. Jean de la Croix. | |
| 25 | Jeudi | ste. Catherine, vierge, mart. | |
| 26 | Vendredi | st. Pierre Alexandrin. evêq. mart. | |
| 27 | Samedi | *Jeûne.* De la ste. Vierge, | |
| 28 | DIM. | 1, de l'Avent Sol. s. André, | |
| 29 | Lundi | Messe de la Vigile, | 2M |
| 30 | Mardi | s. André, apôtre, | M |

## OCTOBRE. Le Soleil entre au Scorpion, le

Pleine Lune le 7, à 11h. 3m. Soir. | Nouvelle Lun
Dernier Quart. le 15, à 11h. 32m. Mat. | Premier Quar

| MOIS. | Sems. | FÊTES. | |
|---|---|---|---|
| 1 | Vendredi | s. Rémi, évêq. | |
| 2 | Samedi | ss. Anges Gardiens, | |
| 3 | DIM. | 17. Sol. du Rosaire, | M |
| 4 | Lundi | s François d'Assise, | |
| 5 | Mardi | ss. Placide, &c. | |
| 6 | Mercredi | s. Bruno, | |
| 7 | Jeudi | s. Marc, pape, | |
| 8 | Vendredi | ste. Brigitte, veuve, | |
| 9 | Samedi | ss Denis, &c. mart. | |
| 10 | DIM. | 18. | |
| 11 | Lundi | s. François de Borgia, | |
| 12 | Mardi | | |
| 13 | Mercredi | s. Edouard III. roi, | ✓ |
| 14 | Jeudi | s Callixte, pape, mart. | |
| 15 | Vendredi | ste. Thérèse, vierge, | |
| 16 | Samedi | De la ste. Vierge, | |
| 17 | DIM. | 19. | |
| 18 | Lundi | s. Luc, évang. | ✓ |
| 19 | Mardi | s. Pierre d'Alcantara, | |
| 20 | Mercredi | s. Jean de Canti, | |
| 21 | Jeudi | s. Hedwige, veuve | 2M. |
| 22 | Vendredi | | |
| 23 | Samedi | De la ste. Vierge. | |
| 24 | DIM. | 20. N. D. de Victoire, | M |
| 25 | Lundi | ss. Chrysante &c. m. | |
| 26 | Mardi | s. Evariste, pape martyr, | |
| 27 | Mercredi | De la Vigile. | |
| 28 | Jeudi | ss. Simon et Jude, ap. | |
| 29 | Vendredi | | |
| 30 | Samedi | *Jeûne.* De la Vigile, | |
| 31 | DIM. | 21. Sol. ss. Simon et Jude, | |

## DECEMBRE. Le Soleil entre au Capricor

Pleine Lune le 6, à 5h. 32m. Matin | Nouvelle Lune
Dern. Quart. le 13, à 2h. 51m. Matin. | Premier Quarti

| MOIS. | Sems. | FÊTES. | |
|---|---|---|---|
| 1 | Mercredi | | |
| 2 | Jeudi | ste Bibiane, vierge, martyre | M |
| 3 | Vendredi | s François Xavier | E |
| 4 | Samedi | s Pierre Chrysologne, évêque, | 2M |
| 5 | DIM. | 2 Sol. s François Xavier. | M |
| 6 | Lundi | s Nicolas, évêque | M |
| 7 | Mardi | s Ambroise, évêq. doct. | M |
| 8 | Mercredi | CONCEPTION [*d'obligat.*] | M |
| 9 | Jeudi | De l'Octave | M |
| 10 | Vendredi | De l'Octave | 2M |
| 11 | Samedi | s Damase, pape | 2M |
| 12 | DIM. | 3 de l'Avent | |
| 13 | Lundi | ste Luce, vierge, martyre | 2M |
| 14 | Mardi | de l'Octave | |
| 15 | Mercredi | *Jeûne* 4 *Tems.* Oct. Conception. | |
| 16 | Jeudi | s. Eusebe, évêq. martyr, | M |
| 17 | Vendredi | *Jeûne.* 4 *Tems.* | |
| 18 | Samedi | *Jeûne.* 4 *Tems.* | |
| 19 | DIM. | 4 Sol. s Thomas, | |
| 20 | Lundi | Messe de la Vigile, | |
| 21 | Mardi | s. Thomas apôtre, | E |
| 22 | Mercredi | | |
| 23 | Jeudi | | |
| 24 | Vendredi | *Jeûne.* De la Vigile, | |
| 25 | Samedi | NOEL [*Fête d'obligation.*] | |
| 26 | DIM. | *vacat.* S ETIENNE, (de dévotion) | |
| 27 | Lundi | S. JEAN. [de dévotion.] | |
| 28 | Mardi | ss. Innocents, martyrs | |
| 29 | Mercredi | s. Thomas, évêque, martyr | |
| 30 | Jeudi | Du Dimanche dans l'Octave | |
| 31 | Vendredi | s. Silvestre, pape. | |