Kings Bench. Montreal.

Civil Pleas.

February Term. 1827.

April Term. " "

June Term. " "

October Term " "

JANVIER. Le Soleil entre au Verseau

Premier Quartier, le 4, à 7h. 48m. Soir. | Dernier Quart
Pleine Lune, le 13, à 1h. 8m. Matin. | Nouvelle Lune

Lev. H.M.	Cou. M.H.	Cl.	MOIS.	SEMS.	FETES
7 39	4 21	b	1	Lundi	CIRCONCISION, (A
7 38	4 22	r	2	Mardi	Octave de s. Etienne
7 38	4 22	b	3	Mercre	Octave de st. Jean,
7 37	4 23	r	4	Jeudi	Octave des ss. Innoce
7 36	4 24	b	5	Vendre	De la Vigile,
7 36	4 24	b	6	Samedi	EPIPHANIE, (*d'obl*
7 35	4 25	b	7	DIM.	1 après l'Epiphanie,
7 35	4 25	b	8	Lundi	du 2d jour dans l'Oct
7 34	4 26	b	9	Mardi	du 3e jour dans l'Octa
7 33	4 27	b	10	Mercre	du 4e jour,
7 33	4 27	b	11	Jeudi	du 5e jour Mém. de St
7 32	4 28	b	12	Vendre	du 6e jour,
7 31	4 29	b	13	Samedi	Octave de l'Epiphanie
7 30	4 30	b	14	DIM.	2. s. NOM DE JESUS.
7 29	4 31	b	15	Lundi	s. Paul, hermite. *Incip*
7 28	4 32	r†	16	Mardi	s. Marcel, pape, mart.
7 27	4 33	b	17	Mercre	s. Antoine, abbé,
7 25	4 35	b	18	Jeudi	Chaire de St. Pierre à
7 24	4 36	r†	19	Vendre	s. Canut roi, mart.
7 23	4 37	r	20	Samedi	ss. Fabien et Sébastien
7 22	4 38	r	21	DIM.	3. ste. Agnès, vierge,
7 21	4 39	r†	22	Lundi	ss. Vincent et Anastase,
7 20	4 40	b†	23	Mardi	s. Raimond de Pennafo
7 18	4 42	r†	24	Mercre	s. Timothée, Evêque,
7 17	4 43	b	25	Jeudi	Conv. de s. Paul.
7 16	4 44	r†	26	Vendre	s. Polycarpe, évêq. ma
7 15	4 45	b	27	Samedi	s. Jean Chrysostôme, é
7 13	4 47	vr*	28	DIM.	4. après l'Epiphanie,
7 12	4 48	b	29	Lundi	s. François de Sales, é
7 11	4 49	r†	30	Mardi	ste. Martine, vierge, m
7 10	4 50	b	31	Mercre	s. Pierre Nolasque.

FEVRIER. Le Soleil entre aux Poissons

Premier Quartier le 3, à 4h. 12m. Soir. | Dernier Quarti
Pleine Lune le 11, à 5h. 29m. Soir. | Nouvelle Lune,

Lev. H.M.	Cou. H.M.	Cl.	MOIS.	SEMS.	FETES
7 8	4 52	r†	1	Jeudi	s. Ignace, évêq. mar
7 7	4 53	b	2	Vendre	Purification de Marie
7 6	4 54	b†	3	Samedi	s. Hilaire évêq. (14
7 4	4 56	b	4	DIM.	5. s. André Corsin, év
7 3	4 57	r	5	Lundi	ste. Agathe, vier. et r
7 2	4 58	r†	6	Mardi	ste. Dorothée, vier. m
7 0	5 0	b	7	Mercre	s. Romuald, abbé,
6 59	5 1	b	8	Jeudi	s. Jean de Matha,
6 58	5 2	r†	9	Vendre	ste. Appoline, vierge
6 56	5 4	b	10	Samedi	ste. Scholastique, vie
6 55	5 5	vl	11	DIM.	SEPTUAGESIME,
6 53	5 7	vl†	12	Lundi	*Or. Fidelium. Missa*
6 52	5 8	vl†	13	Mardi	*Feria* 2, 3 *et* 4 *ad Ma*
6 50	5 10	r†	14	Mercre	s. Valentin, prêtre, m
6 49	5 11	r†	15	Jeudi	s. Faustin et Jovite,
6 47	5 13	vl†	16	Vendre	
6 46	5 14	b†	17	Samedi	De la ste. Vierge,
6 44	5 16	vl	18	DIM.	SEXAGESIME.
6 43	5 17	vl†	19	Lundi	*Or. Fid. Missa sine T*
6 41	5 19	vl†	20	Mardi	*Feria* 2, 3 *et* 4. *ad. Ma*
6 40	5 20	vl†	21	Mercre	
6 38	5 22	b	22	Jeudi	Chaire de s. Pierre à
6 37	5 23	vl†	23	Vendre	De la Vigile.
6 35	5 25	r	24	Samedi	s. Mathias, apôtre.
6 34	5 26	vl	25	DIM.	QUINQUAGESIME. Sol
6 32	5 28	vl†	26	Lundi	*Or. Fid. Missa sine T*
6 30	5 30	vl†	27	Mardi	*Feriâ* 2, 3 *et* 4. *ad M*
6 29	5 31	vl†	28	Mercre	Les Cendres.

MARS. Le Soleil entre au Bélier, le 21, à 4h.

Premier Quartier, le 5, à 1h. 33m. Soir. | Dernier Quartier, le 2
Pleine Lune, le 13, à 7h. 15m. Matin. | Nouvelle Lune, le 27,

Lev. H.M.	Cou. H.M.	Cl.	MOIS.	SEMS.	FETES.
6 27	5 33	vl†	1	Jeudi	*Ad Magn. Ant. de Psalterio*
6 26	5 34	vl†	2	Vendre	
6 24	5 36	vl†	3	Samedi	
6 22	5 38	vl	4	DIM.	1. du Carême,
6 21	5 39	b†	5	Lundi	s. Casimir, prince, (hier)
6 19	5 41	vl†	6	Mardi	
6 18	5 42	b	7	Mercre	S. Thomas d'Aquin, Doc.
6 16	5 44	b	8	Jeudi	s. Jean de Dieu, [4 T
6 15	5 45	b	9	Vendre	ste. Françoise, veuve. 4 T
6 14	5 46	r†	10	Samedi	ss. Quarante Martyrs, 4 T
6 12	5 48	vl*	11	DIM.	2. du Carême,
6 10	5 50	b	12	Lundi	s. Grégoire, pape, doct.
6 8	5 52	vl†	13	Mardi	
6 7	5 53	vl†	14	Mercre	
6 5	5 55	vl†	15	Jeudi	
6 4	5 56	vl†	16	Vendre	
6 2	5 58	b†	17	Samedi	s. Patrice, évêq.
6 0	6 0	vl*	18	DIM.	3. du Carême Sol. s. Jose
5 59	6 1	b	19	Lundi	s. Joseph,
5 57	6 3	vl†	20	Mardi	
5 56	6 4	b	21	Mercre	s. Benoît, abbé,
5 54	6 6	vl†	22	Jeudi	
5 52	6 8	vl†	23	Vendre	
5 51	6 9	r	24	Samedi	
5 49	6 11	vl*	25	DIM.	4. du Carême,
5 47	6 13	b	26	Lundi	ANNONCIATION, (hier) *ni d'*
5 46	6 14	vl†	27	Mardi	[*tion, ni de dé*
5 44	6 16	vl†	28	Mercre	
5 43	6 17	vl†	29	Jeudi	
5 41	6 19	vl†	30	Vendre	

AVRIL. Le Soleil entre au Taureau, le

Premier Quartier, le 4, à 9h. 31m. Matin. | Dernier Quarti
Pleine Lune, le 11, à 6h. 29m. Soir. | Nouvelle Lune,

Lev. H.M.	Cou. H.M.	Cl.	MOIS.	SEMS.	FETES.
5 39	6 21	vl*	1	DIM.	De la passion,
5 37	6 23	b	2	Lundi	s. François de Paule,
5 35	6 25	vl†	3	Mardi	
5 33	6 27	b	4	Mercre	s. Isidore, évêque,
5 31	6 29	b	5	Jeudi	s. Vincent Ferrier,
5 30	6 30	b	6	Vendre	N. D. de Pitié,
5 28	6 32	vl†	7	Samedi	
5 27	6 33	vl	8	DIM.	Dim. des Rameaux,
5 25	6 35	vl	9	Lundi	Lundi Saint,
5 24	6 36	vl	10	Mardi	Mardi Saint,
5 23	6 37	vl	11	Mercre	Mercredi Saint,
5 21	6 39	b	12	Jeudi	Jeudi Saint,
5 20	6 40	noir	13	Vendre	Vendredi Saint,
5 18	6 42	b	14	Samedi	Samedi Saint,
5 16	6 44	b	15	DIM.	PAQUES.
5 15	6 45	b	16	Lundi	Seconde Fête, } de
5 13	6 47	b	17	Mardi	Troisième Fête, }
5 12	6 48	b	18	Mercre	De l'Octave,
5 10	6 50	b	19	Jeudi	De l'Octave, Ann. co
5 9	6 51	b	20	Vendre	De l'Octave,
5 7	6 53	b	21	Samedi	De l'Octave,
5 6	6 54	b	22	DIM.	Dim. de Quasimodo,
5 4	6 59	r†	23	Lundi	s. George. Mart.
5 3	6 57	r	24	Mardi	s. Fidèle de Sigmar.
5 1	6 59	r	25	Mercre	s. Marc. (*Abstinence*
5 0	7 0	r†	26	Jeudi	s. Clet & Marcellin.
4 58	7 2	b	27	Vendre	s. Léon I, pape, (11)
4 57	7 3	b	28	Samedi	s. Anselme, Doct. (2
4 55	7 5	r	29	DIM.	2 Dim. s. Pierre Ma
54	7 6	b	30	Lundi	5. ste. Catherine de

MAI. Le Soleil entre aux Gémeaux le

Premier Quartier, le 4. à 2h. 31m. Matin. | Dernier Qu
Pleine Lune, le 11, à 3h. 31m. Matin. | Nouvelle L

Lev. H.M.	Cou. H.M.	Cl.	MOIS.	SEMS.	FETE
4 53	7 7	r	1	Mardi	ss. Philippe et Jacq
4 52	7 8	b	2	Mercre	s. Athanase, évêque
4 50	7 10	r	3	Jeudi	Invention de la Ste.
4 49	7 11	b	4	Vendre	ste. Monique, veuve
4 47	7 13	b	5	Samedi	s. Pie V. pape.
4 46	7 14	b	6	DIM.	3. D. STE. FAMILLE.
4 44	7 16	r	7	Lundi	s. Stanislas, év. mar
4 43	7 17	b	8	Mardi	Apparition de s. Mi
4 42	7 18	b	9	Mercre	s. Grégoire de Nazi
4 41	7 19	b†	10	Jeudi	s. Antonin, *Com. Cr*
4 39	7 21	r	11	Vendre	s. Jean Porte Latin
4 38	7 22	r†	12	Samedi	ss. Nerée et Achilée
4 37	7 23	b	13	DIM.	4. D. après Pâques.
4 36	7 24	r†	14	Lundi	s. Hermenégilde, M
4 35	7 25	r†	15	Mardi	s. Soter & Caius, p.
4 34	7 26	b†	16	Mercre	s. Ubald, évêque.
4 32	7 28	b	17	Jeudi	s. Paschal Baylon.
4 31	7 29	r	18	Vendre	s. Venant, mart.
4 30	7 30	b	19	Samedi	s. Pierre Célestin,
4 29	7 31	b	20	DIM.	5. D. après Pâques
4 28	7 32	b†	21	Lundi	*Rogat.* St. Bernard
4 27	7 33	vl†	22	Mardi	*Rogat.* Messe des I
4 27	7 33	b†	23	Mercre	*Rogat.* M Messe d
4 26	7 34	b	24	Jeudi	ASCENSION, (*d'O*
4 25	7 35	b	25	Vendre	s. Grégoire VII. pa
4 24	7 36	b	26	Samedi	s. Philippe de Néri
4 23	7 37	b	27	DIM.	Du Dimanche dans
4 22	7 38	b†	28	Lundi	ste. Magdel. de Paz
4 21	7 39	b†	29	Mardi	De l'Octave.
4 20	7 40	b†	30	Mercre	De l'Octave.

JUIN. Le Soleil entre au Cancer, le 22, à 1

Premier Quartier, le 2, à 3h. 59m. Soir. | Dernier Quartier, le
Pleine Lune, le 9, à 10h. 56m. Matin. | Nouvelle Lune, le 24

Lev. H.M.	Cou. H.M.	Cl.	MOIS.	SEMS.	FETES.
4 19	7 41	b†	1	Vendre	
4 18	7 42	r	2	Samedi	*Jeûne* Vigile de la Pentec
4 17	7 43	r	3	DIM.	PENTECOTE.
4 17	7 43	r	4	Lundi	Seconde FETE } de Dév
4 16	7 44	r	5	Mardi	Troisième FETE }
4 16	7 44	r	6	Mercre	*Jeûne* 4 Temps.
4 15	7 45	r	7	Jeudi	De l'Octave.
4 15	7 45	r	8	Vendre	*Jeûne* 4 Temps.
4 14	7 46	r	9	Samedi	*Jeûne* 4 Temps. M
4 14	7 46	b	10	DIM.	1. STE. TRINITE'. M
4 14	7 46	r	11	Lundi	s. Barnabé, apôtre.
4 13	7 47	b	12	Mardi	s. Jean de Facond.
4 13	7 47	b	13	Mercre	s. Antoine de Padoue.
4 13	7 47	b	14	Jeudi	FETE DIEU, (*d'Obligat*
4 13	7 47	b	15	Vendre	De l'Octave.
4 13	7 47	b	16	Samedi	De l'Octave.
4 12	7 48	b	17	DIM.	2. Après la Pent. *Proces*
4 12	7 48	b	18	Lundi	De l'Octave.
4 12	7 48	b	19	Mardi	ste. Julienne, vierge.
4 12	7 48	b	20	Mercre	De l'Octave.
4 12	7 48	b	21	Jeudi	Octave de la FETE-DIEU.
4 12	7 48	b	22	Vendre	s. Norbert, évêq. M
4 12	7 48	b	23	Samedi	s. Bazile, év. doct.
4 12	7 48	b	24	DIM.	3. s. Jean-Baptiste.
4 12	7 48	b	25	Lundi	s Guillaume, M
4 13	7 47	r	26	Mardi	ss. Jean et Paul, mart.
4 13	7 47	b†	27	Mercre	De l'Octave.
4 13	7 47	b†	28	Jeudi	*Jeûne*, s. Léon II. pape.
4 13	7 47	r	29	Vendre	ss. PIERRE et PAUL, (*d'*
4 13	7 47	r	30	Samedi	Commémoration de s. *Pa*

A.

Armour & al & Nathan	26			
Arnoldi	& Perrault & al	55	120	185
Augé	& Pothier	58	118	
Allen & Grant	& Armstrong	60	118	
Annesley	& M^c^ arthur	66		
Auger	& Piet	68	84	122
Ayers	& Hulgate	73		
Arnois	& Ayet	79	121	
Ansell	& Fidler & J. S.	108		
Auclair	& Bourdeau	146		
Alsopp	& Buck	151		
Armour	& Pickle & opp^ts^	153		
Armour	& Armour & al	177		
Auclaire	& Talon & Lesp^e^	177		
Atkinson & al	& Patterson	205		

B.

Brousseau	& Boucher	2	6	
Bradwell	& Bland	3	48	
Bourdon	& Alliance C^o^	3	69	
Beek	& Monequondue	11		
Blestein	& M^c^ Kenzie	12	59	122
Bank of Mont^l^	& Knower	15		
Barron	& Watson & al	20	28	
Beattie	& Noxon	22		
Buchanan	& Lacombe & v^e^	25	68	
Beaubien	& Monjeau & al	28	132	221
Bell	& Stuart	47	70	236
Barclay	& Adams	62		
Bagg	& S^t^ Germain	64		
Bail. Vincent	Decret. Vol^s^	67		
Burton	& Wilsee & al^l^	69		
Burton	& Shaw	76		
Bagworth &	& Pion & op^t^	103		
Barnard	& Cameron & al	108	121	
Beaudreau	& Semai Détrm	115		
Bowsted	& Jafore & Reeves	125	146	
Bradbury & C^o^	& Woolrich	129		
Bouchette	& Chaudette	132		
Bent & al	& Spragg	134		
Belouin	& Baron	144		
Bedard	& Caput	145		
Byrne	& Johnson	145	226	
Berthelet & v^e^	& Munro	178		
Bruce	& Sanguedoc	179		
Byrne	& Hennigan & J.S.	185		
Bullis	& Douglass	193	201	
Brown	& Greenfield	196		
Bowsted	& Jafore	208		
Beards	& Todd & Ewart	209		
Bedard	& Durand	209		
Bowman	& Drummond	235		
Bourguoin	& Courrette	241		

Cartier	& Cartier	7	62		
Campbell	& Seaver	18	77	209	
Cuthbert	& Delanaudiere	18	119		
Corp^n of clergy R	& M^cMillan	26			
Crossland	& M^c Vey	27			
Cadieux	& Chodillon & o^s	35			
Crossland & al	& Ainslie	38			
Cartier	& Tetu & al.	56			
Card &	& Astor	56	68		
Crawford & ux	& Boston & al.	63			
Careau	& Debled & Gar^t	66	68		
Cook	& Wheeler & J. S.	70			
Cutting	& Mayo	71			
Chevallier	& Hicks	83			
Cartier	& Cartier	105			
Calarowitz	& Brown	108			
Currie	& Greenfield	112			
Colombe	& Pothier	118			
Chapman	& Foucher	128			
Cote - Ch^e & o^s.	& Requête	136			
Cadieux	& Breard & al	185			
Chapman	& Harrison	188	210		
Chartier	& Bullock	192			
Clarke, Alex^r	& Greene	204	221	245	
Campbell	& Seaver	209			
Champoux	& M^c Donell	216			
Chamard	& Meunier	216			
Currie	& Greenfield & al	237			

Drolet	& Parle Decret V	7	12	15		
Debartzche	& parle. Dec: Vol	8	15	29	87	131
Dawson & al	& Ansell	8				
Dagenais	& Berthelet & al	10	15	231	144	
Daragon	& Savaria	11				
Drolet	& Tetu	27				
Doré. on pet^r	& P. Verbal	27	145			
Deschamps	& Com^rs Lach. Canal	28	123	173		
Dufresne	& Pigeon	35				
Dufresne	& Berthelet	41	118			
Dancereau	& Johnson	45				
Desrivieres	& Ayres & Gar^t	72	93			
Deschamps	& Leduc	74	76	129	171	
Duplaise	& Duplaise	82				
Desaunier	& De Bouchenille	92				
Dawes	& Bain & E con^l	114	203			
Dabin	& Jackson	117	121			
Duchenois	& Roi	125				
Dagenais	& Berthelet	131	144	241		
Debled	& Bazinet	133				
Dubuc	& Wray	148				
Dufaut	& Dufresne	159	171			
Deschambault	& Meyer	159				
Donegani & al	& Donegany	163	244			
Dewitt	& Huot & o^s	188	202			
Day & al	& Morin	189				
Delisle	& Newell	206				
Desrivieres	& Martindale	216				
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Gates & al'. — & Cameron & Op^t 48 68
Girard — & Persillier & al 50 119
Gamelin — & Beaubien — 77
Gillespie — & Spragg & al 79 123 130 214
Gauthier — & Thary & al 87
Gates & al'. — & Bland — 106
Gowan. — — & Bell. — — 131 141
Gates & al'. — & Aberdeen & al 143
Gugy. — — & M^c Gillivray 148
Griffin. — — & Greece. — — 150
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Gay. — — — & Bingham 227

Hoyle	Stansfield	17	28	
Hart	Bowron	26		
Hurd & al'	Brown	27		
Hubbard & al	Bender	37		
Hebert	Toupin & al	71	214	
Hayes	Gerrard	88	244	
Hitchcock	Streeter & al	114		
Hunter	Donegani	123		
Hurtubise	Com^rs L. Canal	130		
Hayes & al'	Gerrard	168		
Hart	Watkins & ors	187		
Hart	Lathrop	198		
Holt: on petition	M^cNider & C^o	198	245	
Holt	Walker	201		
Hebert	Pilotte	204		
Holt	Carr	215		
Holmes	Charpentier	246		

Jameson	M'Gill Directors	32	62	232	246
Jannard	Lecompte	64			
Jerome	Robertson & ors	83	172		
Jobin	Page	111	121		
Jackson	Com^rs L. Canal	130			
Juneau & Latulipe	Juneau & al	150			
Johnson	Lagrange & ors	188			
Jones	Macqueen	195			
Jacobs	Bender	225			

K.

Keyes.	Welsh.	12		
Kingsley Exp.	Decrit-Vol.	29	45	
Kaumbz.	Edwards & al.	69		
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L.

Laprairie. Fab.	Longtin.	26	132			
Longueuil.	Brosseau	39	68			
Lewis.	Sergeant	40				
Lussier.	Carmel & op.	44				
Lukin	Classon & a.	51	64	119	182	
Lang.	Watson	66				
Leonard.	Keyes & al.	70				
Lacroix	Hogue & Ewd	73	120			
Leprohon	Charbonneau	87				
Lacroix	Gravelle & al	109				
Longueuil	Devins Cu. & al	147	153			
Logan.	Bender.	147				
Lewis.	Salaine	175				
Lacroix.	Gravelle & op.	183				
Lamoureux	Salois	231				
Lukin.	Classon & Ewd	244				

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M'Kenzie — & M'Gill & al' 8
Molson & al & Maitland & al 11
M'Nider — & Desrivieres 14 28
Masson & C° & Dewitt — 18
Mezeclier & Moro — 23 161
Molson — & Forsyth & al 26
Middleton Bank — & Pearl — 27
Metzler & ux & M'Robb — 32 69
M'donald & Penn — 32
M'Callum & Douglass — 33
Martigny & Dubois — 36 205
M'Killip — & Gendron & al 47 119
M'Dougall & M'Robb — 51
M'Nider & Bonner — 52 119
Maitland & C° & Rodgers & al 58
Molson — & Clarke & Ewart 60 108
M'Callum & Mathews 68
M'Donell & Greenfield 70 112
Morehouse & Morian — 72
M'Intosh & al & Chapman & C° 77
Miriam — & Leblanc — 78 172
Malbeuf & Charron — 80 147 213 237
M'donell & Dewer — 88
Maynard & Sewell — 88
M'donald & Maranda 93
M'Nider & al & O'Hara — 106 180 245
M'Kay — & Rutherford 109 162 171
M'Kenzie — & Ritchie & al & C° 110
Monjeau & Charron — 176
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Martigny & Lefevre — 183
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M'Gill & al & Benton & al 204
M'Cord & Huntoon 205
Martigny & Dubois — 205
M'Nider & C° & Payser & al 208

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Marié — & Roi — 213
Maynard & Sewell — 218
Millar — & Hallowell 226 236 245
Martigny & Beauchamps 228
M'Cord — & Pierce & al 237

Penn.	+ Caviole & al.	8	68			
Pothier.	+ Hall.	16	22	148	244	
Poirier.	+ Dufresne.	17				
Perrault & al'	+ Torrance & al	32				
Pasteur.	+ Fournier.	33				
Perrin.	+ Pasteur.	46	78	120		
Perrin.	+ Perrin & Pasteur	67				
Pothier.	+ Foucher & al	70				
Pothier	+ Eager.	73	223			
Pothier	+ Samondagne	89	116	121		
Pothier	+ Paliasso	102				
Pothier.	+ Berthelet	112				
Pluckner	+ Montigny	114	120	208		
Pothier.	+ Com^rs L. Canal	130				
Pigeon.	+ Dubois.	135				
Pothier.	+ Paliasso.	143				
Pothier.	+ Smith.	147				
Power.	+ Smith & al	160				
Paige.	+ Lyons & Econ^le	180				
Pillet.	+ Raymond	184				
Perrault.	+ Lacroix.	189				
Pominville	+ Perrault	211				
Perreval	+ Normandin & al	213				
Parent	+ Melzler	221				
Perreval.						

Rex. Dom^s	+ Gale & al	27				
Rolland.	+ Pothier	28	81	86	121	
Robin.	+ Bergeron	34				
Ross & al'.	+ Drummond	37				
Robert & Nanan	+ Fournier	37	70	86	225	
Reid.	+ Finchley	49				
Rex Dom^s	+ Gale & al'	69				
Ross & al'.	+ Drummond	76	117			
Rutherford	+ M^cKay.	86	192			
Robillard.	+ Raby & al'	89	171			
Roi vve	+ Kuper	106				
Ratté.	+ Brosseau	107	120			
Riccard	+ S^t Denis	113	233			
Raymond	+ Swords & Gar^t	127				
Roi & ux.	+ Richardson	135				
Rex Dom^s	+ Ball & al'	135	173			
Rolland.	+ Pothier & Lacot	179				
Rolland	+ Pothier	179				
Robertson.	+ Cain & ux	189	245			
Racine.	+ Garden	195				
Ratté.	+ Morin & op^t	201	202			
Roe	+ Tracy.	206				
Rex Dom^s	+ Kean.	215	235			
Robinson	+ Watson	227				
Rolland	+ Paquin	234				

S.

Spalding	Seaver	3			
Shedden	McGennis	7			
Seguin	Delziel & T. S.	12	59		
Sarrault	Esty	17	69		
Stansfield	Froste	26			
Stuart & al.	Saframboise	27			
St James	Charbonneau	43	119		
Stuart & al	Rickner & Cont	49			
Switzer	Remillard &	78	172		
Spalding	Seaver	84			
Scriver	Stanley & al	103	244		
Spinks	Botterill	103			
Stevens	Krouier & al	116	120	153	
Staeb	Anderson	129			
St James	Charbonneau	141			
Smith	Reid ux & al	142			
Scriver	Stanley Cur	166			
Swift	McDonell	184			
Shuter & al	Leste	194			
Sexton	Crawford	202			
St James	Duerillon & al	204			
Stansfield	Donovan	213			
Smith	Berichon	215	243		
Sold. Gent	Lamb	221			
Sumi	Dion	221			
Smith	Barrett	233			

T.

Turgeon	Villiot & Gar[t]	1	6	15	63
Tulloch	Chagnon	21	23	118	
Tetro & Ducharme	Sodouin	34			
Toof	Vincent	59			
Tessier	Sarrault	81	87	160	
Turgeon	Villiot & al	88	125		
Torrance	Peddie	94	171		
Torrance	Buchanan	147			
Tuckerman	Henshaw	151			
Turner	Brown	206			
Tetro	Sodouin & al	211			

Vigneau — + Spraggval 26
Vegiard — + Privé — — 193

Walker — — + Herrieux — 10
Warwickval + Raymond — 13 28 93 123
Webster — — + Maitlandval 60
Warwickval + Fisterwalk — 81
Wright — — + Bingham — 82
White — — + Metzler & op^t. 82
Window — + Boucher — 128
Willard — + Dewitt — 129
Warwick — + Sesto & op^t 181
Walsh — — + Tibbitts & Ides 182 192
Warwickval + Frosteval — 196 246
Warwickval + Raymond — 206
Wilson — — + Seaver & op^t 231

February Term. 1827.

Thursday 1st Febr.

Present

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Pyke.

Mr Hugh Fraser, one of the Court Prothonotaries lately appointed to this Court having died on the 28th ult. and no new Commission having yet issued, Mr Samuel W. Monk was sworn by the Court to act as Prothy. and Clerk of this Court until further orders —

No 257
Turgeon
v.
Elliot —
Bourne Def. as Garnishee
&
Elliot & al mis en Cause —

On Pltffs. mo. to declare Dft. obt. as the father of the mis en Cause, on expediting ap. thereon —

Mr Bruneau for the heirs Elliot, states that they had pd. Mr Turgeon by paying to Mr Lacroix, who had been discharged by Turgeon and files his receipt in consequence — Has called Mr Bourne as his Garnt. & asks for Dft. as he can not be condemned in this Cause —

M. Roi for Plff, does not admit the Exception filed by the Defdr. nor does it apply to the object in question, but is for different specific objects therein specified —

ren'd till to morrow

No 1654
Gravelle
Rouleau dup.
& Leblanc T.S.
& Leblanc Opp.

On Plff. mo. that a Peremp. Exn. do issue —
Debt —

No 440
Brousseau
vs.
Boucher
Curé &c —

On Evocation from the Inferior Court —
Bedard in support of the evocation — Althó the action appears to be simply for damages for retaining the possession of certain papers — or that the Defendt do restore those papers, yet as Defendt is sued in his public Capacity of Curé under which he retains and claims a right to retain those papers as belonging to his office, the Court must necessarily determine of the right before adjudging any damages to the Plff, and this is a question which must affect the rights in future of the Curé of that parish, & of every parish in the District That an action of this kind may be framed in such way as to embrace the most material rights of the parties — as for £10 — damages or that a Defendt. deliver up the possession of his house to a Plff — as the damages is the only thing demanded. —

Vigié for Plff — This action is merely in damages for refusing to Plff. that which as a public Officer he is entitled to, the communication of those papers & regard his management as Marguiller —

Friday 2. February.—

Pres.t
Ch. Justice Reed
Justices Fowler Pyke & Smith

No 1121.—
Spalding
vs.
Seaver—

On Pltf's mo. to name an Expert in lieu of who is related to Pltf—
The Pltf names one Sawyer. The Defe objects to him as having been a Witness—

No 1076
Bradwell
vs.
Bland

On mo of Pltf to name another Arbitrator & prolong the rule of reference.—
Defendt contends that rule shd be extended only to 10.th inst.— as all the parties are present

No 984
Bourdon
vs.
Allianz Comp.y

On Merits.—
Action on a Policy of assurance of Fire Insurance for Pltf. The Pltf's hangard was burned, and the action appears well founded for the sum demanded.—

Rolland for Defendt. The Policy in this case was null from misrepresentation & concealment when there is error there can be no legal contract This holds in this kind of contract more particularly Poth. obl. No 17. & 19— here the property insured was not the property of Pltf alone, but belonged to

for

for 2 thirds to one Zinyraff — the authority is founded on regard of the person, whose ~~Conduct~~ property was in question the Defendts were interested to know the real proprietor of the thing insured — (Poth. assurance No. 191 — nothing should be concealed in regard of the property insured N. Dennys v. Dol. N. 6 — Rutgers v. Dol. p. 57. —

Denys. v. Aleatoire — sec. 5. 2 Sel. N.P. p. 981 — concealment & misrepresentation even by mistake may be proved under the general issue — 1 wils arrest. 76. p. 1030 — it is necessary that the party should have an interest — 2 Phs. on Ev. p. 53. & 58. — a variation as to the interest in the policy is cause of non suit — it being material to know the true proprietors — Park on Ins. ~~p. 74~~. p. 179. 185. — fact necessary — 1. Black Rep. 463 — 1 Comyns on Cont. p. 38. 3 Burr. 1910 — 14 East 494 — 3 Taunt. 37. — 1 New Rep. 14. 2 Marshall. 46. 6 Taunt. 338 —

The Pltff had insured at the Quebec Insurance office of the agent after seeing the premises got recorded without letting Pltff know — the pltff then went & insured at Defts office without telling this circumstance — the Pltff told generally to several that he was afraid his house would be burnt on acct of his bad tenants — he even told that he had insured his house & that it depended on him only to set fire to the house & he would get the money — The organ in question, belonged to the partnership of Pltff & Zinyraff according to Pltffs own shewing — this organ was placed in a kind of hangard attached to this house & was in such danger, as on that acct he had insured — he insures it as in his possession — but the kind of possession was not explained —

The organ in question was insured

for

for much more than its value, wh under the circumstances here, the Defts consider as a circumstance of fraud joined with others — The value of this organ is best proved by one Goodridge who was the work. of Pluff in his case Sayr Zengraff he says, the organ is so badly made that it can not serve as a Church Organ —

Mr Dunscomb — The Pluff has strictly complied with all the requisits to entitled him to the benefit of the Policy of Insurance — the property described is with out, the tenant who occupied it — so as to give a sufficient notice of the danger the Pluff himself apprehended —

The organ was the instrument insured, and is proved to be an instrument of great value, & altho' not in a perfect state yet was so far perfect as to require but little to complete it —

as to the right of Pluff to recover, as being only proprietor for a part — this cannot be denied — he had a valuable interest in the thing, & could be ascertained, and the part was the Pluff was the proprietor of the whole as before the action instituted the other partner had transferred all his right to Pluff — altho' at the time of Insurance the partner Zengraff was the apparent proprietor but not the real one — The Pluff has shewn that what he had insured was his property and he has proved the value of it — & he has complied with all the requisites of the Policy — The testimony of Davis the Defts wit is much in favor of the Pluff, as he explains the circumstances under wh the first Policy was annulled —

Objects to the testimony of the wife — Mrs Pivin — as idle and inconsistent & contradictory — Demands

that it be rejected —

No 257
Turgeon
vs
Villiot
&
Bowe. Gart
&
Villiot mis
en cause
&
Lacroix mis
en cause as Gart
of all parts

Mr Lacroix the arrière Garant. en 1812 he was the attr of the Pltff under a Spécial power executed before a Notary — that having received the money in question the present rule cannot be allowed, but he ought to bring his action of the Garant. Lacroix to account — the Pltff do will know that Defr had paid Gart Lacroix that he settles other accounts he had w Defr on 11 March 1822 without reservation or even mention of the debt in question —

Roi for Pltff — the arrière Gart ought at all events to pay the Costs of the suit for not having given sufficient notice to the pltff of the settlement the Garant had made with the Villiots —

— —

Brousseau
vs
Bouchers

Evocation allowed — the Court considered that both the parties pltff & Defendant were public officers, and that the dispute between them regarded the respective rights of the two parties, & that by the decision of the Court those rights must necessarily come in question. —

—

Saturday 3d February.

Prest

The same Judges.—

№ 2270.—
Shedden vs McGerrin } Action dismissed — the writ not stated — action by the Indorsee, but Note is not described in the declaration payable to order.—

№ 1928
Maulett vs Goguet } On Report of Arbitrators —
Rollin for Plff moves for homologation,
M Ross for Defd — submits as to costs. & the Plff ought to pay on act of the expense unnecessarily accrued in defends a suit in this Court.—

№ 1333.
Cartier vs Cartier } On rule obt'd by Plff to shew cause why the act & papers filed should not be rejected from the Record as not being in conformity to the Interlocy Judgt

M Ross for the Defd. The act rendered and papers filed by the Defendr is in conformity to the Interlocr Judgt of the Court —

№
Drolet, ux requete. — vs Dewis ux opp[s] } On Petitioners motion that The Kings opposn be dismissed as being too general, & that the Sheriff be ordered to ~~pay~~ deliver a title to the purchaser —

Buchanan for King — The party must be called to file his moyens d'opposition —

Mr Le Vesconte on behalf of Mr Fere an opposn on rule to shew cause why the adjudication should not be set aside as the purchaser had not complied wth the terms of the adjudication — but until the things opposn to respond of the parties cannot proceed —

Ex parte Debartzche v Lewis offts

On motion to be permitted to pay the amount of the adjudication into the hands of the Sheriff & to get his title —

No 2185.

Dawson val v Ansell

On Pltff mo. to discharge the rule obtd by Defdt. pltffs Pltff to give Security for Costs —

Mr Gale the motion is irregular, the cause was returned on 20th Oct — and on the first day of this Term the Defendr moved for the Security for costs. pltff was regular & was granted —

Mr Buchanan, refers to the opinion held under the rules of practice

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No 28.

Penn v Carroll and

On Rule obtd by Defendt to shew cause why the Ca. ad resp. shd not be quashed as no copy of the Declaration was served wth the copy of the writ. a

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No 322

McKenzie v McGill and

On mo. for delay to 1st April to plead

Mr Rolland for Pltff agrees to 15th

№ 2218
Fisher
vs
Young

action by payee ag.t the drawer —
Mr Rolland for Defend.r submits case

№ 1705.
Frostedal
vs
Civilliez

Our case —
Action on a promy Note —
Mr Beaubien for Defd.r In last term the Pltff instituted an action ag.t Defd.r for £318. 4 — ag.t the Note was paid by different other Notes — Then the Defend.r obtained a rule that the Note should be delivered up — The Defend.r now sets up the same plea to this action ag.t is founded on the same Note — and as Pltff due in the poss.n of all the Notes, he is entitled to have this Note delivered up as no other consideration was given by Pltff for this Note, but the other Notes ag.t they now hold — The Pltff say they agree to produce & give the Note in question but not to be delivered to the Defend.r but the Defend.r contends he is entitled to have the Note deliv.d to him, to recover the am.t thereof —
Mr Scott for Pltff The Defd.r deliv.d this Note to Pltff as a collateral security, & it was agreed by him that it should remain in the poss.n of the Pltff

№ 2219
Field & Co
vs
Maillard et al

On Law
over to 5th

№ 2310
Walker
vs
Hennings

Action by posthumous
Mr Grant for Pltff submits con & prays
for Dismissal
Mr Bullard for Defts did not appear

№ 1082
Dagenais
vs
Berthelot et al

On Pltff's mo. for a Com. Rogr

Mr Borton for the Pltff. New matter was proved by Defendt & he had no reason to expect under a general plea — he was surprised & ought to be allowed to rebut the evidence — 1st as to the character of Pltff's witness & has been impeached by Defts — 2d That Defendt was the Curator to a delaissement & the Pltff was his servant & therefore he had a right to turn the Pltff out of possn — when & how he pleased

Mr Cherrier, the ground of Pltff's action is quiet possession, and this he ought to have proved not only a manual, but a Civil possession — without sufficient proof of this poss. the action must have failed and the Defendt might have made no proof — but having denied the fact of possn — the evidence the Defendt have offered is merely to controul the fact alledged by the Pltff — & the Pltff's motion does not demand the right to give evidence in support of the

Pltff's

witnesses produced by him, but merely to controvert the new facts as he calls them proved by the Defendr. That the Pltff is too late under the rules of practice to obtain a Com. Rogr and when the Enquete was closed last ~~Term~~ Vacation the Pltff assumed no right to make further proof or to demand such Com. Rogr

No 67
Davajon ~ Savariau

Mo. on part of the Defendr for delay to call in his garant to 11th inst.
Bender for Pltff - action is for prise de Vente & the Defendr personally bound -
Delay granted to 10th without prejudice to Pltff right -

Monday 5th Febr

Perst
All the Judges

No 41.
Beek ~ Montequenais

on report of arbitrators case submitted.

Molson et al ~ Maitland

On Pltff mo. for Com. Rogr to Quebec Three Rivers -
Swell for Defendr the names of Wits are not given, nor their residence stated - it does not appear when they went to 3 Rivers or whether they are not now in this District -

№ 2035
Blestein
vs
McKenzie

On Plffs. mo. to rejet Defts answers to 15th & 16th Interrogs —
Cause submitted

№ 2479
Hayes
vs
Welsh

Hears on Law
Quest. as to the admissibility of plea

№ 2423
Sequin
Doziel
&
Lauzon T.S.

On Plffs. mo. to be permitted to contest the declaration of the Turs Saisi —

№ 2356
Ex parte —
on Requete of
Jos. Doré

On rule on the Inspectors to shew Cause why they should not be held to comply with the Judgt of this Court by bringing before it the original procès verbal —

Mr Grace for the Inspectors — the Certificate is not the mode required to bring this case before the Court — moves that it be quashed, because it was not regularly issued — The Inspectors have no power over the P. Verbal, it has been deposited by them as by law required in the office of a public Notary —

Mr Rolland of counsel for the Inspectors — the Inspectors are not in possession of the Procès Verbal

Verbal and cannot be brot before this Court under the writ of Certiorari — Besides there is irregularity in the mode of issuing the writ —

Mr Currier for the Pet. The writ of Certiorari law is merely a writ to bring the proceedings before the Court, not to deprive the party of the benefit of an appeal as given by the Law

No. 2312

Warwick Exch Co
v
Raymond

On Law

Mr Boston for Plff. action ag. Defendt on Case for damages for discontinuing the trade in gt. an association Steamboat was employed

Mr Rollins for Defendt this action cannot lie ag. a partner, the law does not grant such an action — The Plff lay no ground of complaint on gt. the action can be maintained — The action is not for mismanagement as a partner, but for doing acts as a stranger to the prejudice of the Plff — This cannot be admitted in this Case — The action ought to be pro Socio & damnify on the act. rendered their indemnity for bad management. Poth. Soc. No 68. & 71 — Rapor v. Société — p. 331 —

Mr Boston for the Plff — Not necessary that an action of this kind should be an action pro Socio, but an action of Tort for an injury done by the Defendt

No. 1866.
M'Nider
Dessuviers

On rule Nisi of last Term —
on merits —

M'Beanheim for the Defendt — The Defendt is in goal under a Ca Sa. without having first discussed the estate personal and real of the Defendt — An execution was sued out by Plff. and the Defendt goods seized & sold to the full amount of that writ, but oppositions coming in which claimed a proportion of the monies the Plff. were not satisfied — The Defendt has proved that at the time of the first seizure there remained a great many goods & chattels still in the hands of the Defendt — the Plff. ought to have sued out an alias writ of Expn ag[ainst] the Defendt goods before suing out the Ca. Sa. — The Plff. have not discussed the real Estate of the Defendt and altho' there is a return of the Sheriff that there were no Lands & Tenements of the Defendt yet the fact is otherwise. the Defendt was then in the possession of real Estate —

The Plff gives no credit to the Defendt for monies ag[ainst] were levied on the first writ of Expn — but charges 39/- only by Sheriff in the writ of Vend: Expo.

Dorion for Plff. after first sale the Defendt shut up his house & carried off the remainder of his effects, in ag[ainst] case the Plff was not bound to discuss the effects so carried off — The Defendt should have given in the statement of his real property to his Creditor, without ag[ainst] the Law is not obliged

Poth. Hypt ch. 2. sec. 1 art. 2 §. 3.

obliged to know it — The Defend. ought to have tendered what was due, — admit however there is an error in the sums named in the writ of Plaint. opp. —

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The Bank of Montreal. — vs — Knowlton. — Action of assumpsit on Notes. — Trial by Sp: Jury. — Verdict for Pltffs. —

—

N°1085. Dagenais — Berthelet &a — Mo. for Com: Rog^re granted. —

N°257. Turgeon. — Villiot. — Boucher — & Lacroix Gar. — Ordered that the Garnt Lacroix give his reasons in writing agt the rule obtained agt him. —

N°1700 Frostedal — Cuvillier. — Reserved to determine on the Exception till hearing on the merits. —

N°984 Ex parte — On Petition of Debartzche — The Petitioner's motion refused, on the ground that the Court could not relieve him agt his own act in having become the purchaser under the Conditions of Sale as regulated by the Sheriff —

N°2201. — Ex parte. On Petition of Drolet. — Petitioner's motion rejected. —

Tuesday 6th Febry

I was not present in Court to day, there being a trial to be had in which I could not sit —

Wednesday 7th Febry. 1827. —

Prest

No 1705.
Frost
Cuvillier

On Depnds mo. to ex. one Roach a witness at New York, by Com. Roge

Mr Gale for Plff. the mo. without any ground shewn for obtaining it — The party is too late under the Rules of prac. to obtain his Com.

Mr Brandin for Depnds — It was necessary that the matter of law should first be determined before applying for the Com — Roge.

No 94
Pothier
Hall

On Depts mo. to call on Plff if he means to make use of the pleas filed —

Mr Rae for Plff the mo. is premature, as the first step is to obtain leave to make the Inscription en faux p. 334. Pothr. Proc. Civ. Ravaud. Lt. 1 ch. 4. p. 23. —

№ 1494
Surrault
vs
Esly —

Action on deed of Sale
Mans ex parte —

Scrall for Dep^t. The action is brt. by heirs — no proof that the person who sold to Defend^t. is dead — One Le St. Denis says he was present on the Banks of the Mississippi when the said person died — but this is not proof, because it is not proved that there were no Residus left in the place when he died — wch cannot be presumed — The further evidence is mere hearsay

Bluny for Plff contends that the evidence is sufficient —

№ 1806
Poirier
vs
Dufresne

On Law — action en sup^{on} de biens. —
M^r Thibaudeau for Plff — says there is no plea filed — Plff proceeded to his proof which he says is sufft & prays Jug^t —

M^r Bourié for Dep^t. says the evidence in this case is not sufficient to maintain the action the parties are poor, and there was no room for the proceedings had in this Cause. —

№ 1068
Hoyle
vs
Stansfield

Action for goods sold & deliv^d — on Law.

M^r Buchanan for Dep^t — the plff sold goods to one Henderson & it is d^o that it was on the promise of the Dep^t to warrant the

pay^t

praye- but it is not stated in the declaration that any consideration was ~~stated~~ given for such guaranty-

Mr Thibaudeau, not necessary that any consideration should be stated according to the Laws of the Land

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No 1369
Campbell
vs
Seaver

On Defendts mo. to have the Enquete declared closed-

Mr Walker for Plff- There are 2 motions upon the Court- one by Plff to have a further day in Court & the Defts mo. to have enquete declared closed-

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No 2002
Masson & Co
vs
Durocher

On mo. for rule upon the heirs Shay to be held to take up the reprise d'instance in the Cause-

Mr O'Sullivan for Defts did not appear

No 1182
Cuthbert
vs
De Lanaudiere

Hearing on the Report of the Surveyors on a rule Nisi obtd by Defendt-

Mr Beaubien for Plff moves for the hom. of the Report of the 2 Surveyors made under the Interlocutory order of last term- It will appear that the operation of Orjinan was correctly made

M. Rolland for Defdt. There is only one report before the Court, in as much both Surveyors are agreed but the application the Defend. now has to make to the Court for an enquete - to prove the existence the line of Lafore, which does not appear to have been found or verified by the Surveyors, and which is of importance as the true line of division between the two Seigniories, and this line is known to exist in many places in the rear of the Seigniory, and serves as a boundary with several neighbours & in the concession of several lots of land

Beaubien for Plff - The line found and verified by the Surveyors must be considered as being the line of Lafore -

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№ 1832 à 1838

Finchley et al
vs
Ls. Consigny dup

In 2 Causes -

On action to obtain a permission alemintre on report of Practiciens -

M. Mondelet for Plff, Practiciens were named to determine the con. & they have refused to admit evidence of a prescription pleaded by Defend. upon them - This is a legal obligation ~~and~~ of which no prescription can run. Rapon vo Aliment. p. 319. à 321 - Dic. Droit. vo Aliment. 2 Louet on adv. 1667. p. 312. à 313 - Instructions sur les Conventions. p. 14 -

Rep. 319 vo Aliments -

M. Bourret for Defendt - the plff & Defr are named to two Surveys, and this action is had in order to ascertain the report in the discussion

f

of the father & mother of the parties — The demand of the Plff is for alimenti furnished to his father & mother 8 years ago, & is now set up after their decease — When the people had a certain property of w^h they were possess^d with the Plff — who lived with them — But of the Plff have — fulfilled the natural obligation of maintaining their father and mother. They are not entitled to a civil demand of their brothers & sisters to be reimbursed in such expences, unless they had been previously called into a Court & had agreed to pay their share of maintainance —

—

No 1933
Barron
vs
Watson

On rule to shew Cause why the Bail Bond given by the Bail in this Cause should not be amended by the Prothonotaris of this Court, in the manner stated in the rule —

Mr Rossiter for Plff — the rule has been served on the bail who appear by their Counsel — The Bail bond may be amended by this Court, and made conformable to the other proceedings in the Cause particularly the declaration, and it was by the mis prision of the Profft that the error was committed — The intention was to give bail to the Plff in the Cause — it was their Act — Com. Dig. v. Amendment — Letter D. 2d. Lilly T. — T. Rep. 3. p. 349. Roll^e abr. 198 — Case of Carter v. Dundass Orde Term 1823 — in this Court —

Nelson Robertson & Co.
McDonald
Feb Term 1821.

Mr. Buchanan for the Bail — The cases cited do not apply, as the party there applying for amendment was to correct his own act, but here the Pltff applies to amend my act, the act of the bail, who do not wish for any amendment. This is a Contract which the bail enter into, & it cannot be altered without their consent. — In no instance has a bail bond in England been amended without consent of bail 1 Bos. Pul 481. 3. Taunt. 263. 1 Bar. & Warne — 5. Taunt. 814 — 1 Bos. & Pul. 31 — where bail piece was ordered to be amended but the bail piece & Recog. of bail are two very different things — —

N°1954
Tullock Pltf
Chagnon Deft

action en Petition d'heredité —
En moyens de faux of the Testament.

Mr Pettus for Pltff. it is alleged that the Testator was not of sound mind when he made his will — Rep. de Test. p. 102 — the Pltff has proved his allegation sufficiently the Testator was attacked with a strong stroke of apoplexy which left him without the use of speech — and this is always the Case when death follows the stroke — the Pltff has proved that at the time of executing the Testament the Testator was without sense or movement 1 Fodéré. p. 263 — sec 5. p. 268 — p. 316 —

The Testator answered only to the Interrogatories of

of the Notary — vs Thompson vocd. 4 G. Com. p. 101 —
Repr 137. vs Tutament — p 196. vs Indre. 6 Dunlop 590.
art. 2. 2 Bouy. 405. ch 11. sec 1. note on No. 2.

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Thursday. Friday, & Saturday, were Enguter days

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Monday 12th Febry

—

Present

Ch. Justice Reid, and
Justices Fowler Wyke & Wiseman.

—

No 94
Pothier
Neall. } on 2 motions, one of dispde. heard by Pltff
on for Interim in favr, the other for ~~Interim~~
~~in favr~~ procedendo ex parte —

Roi for Pltff — the mo. to proceed ex parte ought to
be granted, as being according to rule of practice — the
mo. for Interim in favr comes too late —

No 2381
Beattie
vs
Noxon. } on mo. for a Com. Rogr
Obp. no affidavit to shew why are necessary
cons. there is an affidavit —

— W Noxon

№ 1515. № 1229 & № 1506.

Menedier
Moro

Def^dr mo. to have these three actions united —

№ 1954

Tulloch
Chapman

Mr Mondelet for the Defendant —

There may be intervals of weakness under the disease complaind of as in the Case of Jolly, and the dispositions contained in the testament would lead to believe it the act of a man who understood what he was doing — The Def^dr has objected to the competency of the witness instrumental and now moves to reject their testimony —

Lefaivre & Desjardins

The opinions of Medical men in a case of this kind must always be uncertain and this can it is so — there can be no certain rule to guide a Judicial decision in the case from such opinion and Zidere admits that the principle of reasoning by the Medical men on general principles ought to be received with much caution, as they who are in the habit of seeing the party often is much better able to determine the true situation The testimony of the Curé is material, & from some of the witnesses who say the testator spoke to them cannot some parts of his will — & he wished to be interred in the Church —

626

There is a legal presumption in favor of a mans will who has been in the habit of doing business and who has lived to a certain time of life — — vide Old Dunz v^s Suppression p. 626 —

It has been objected that the will has been made upon the interrogation of third persons — but this is not always fatal — particularly when not done at the instance of the party interested — Decision on art. 289 of Custom — 1 Despeisses — when there are lucid intervals the will shall be taken as made during such intervals — Lamoine. p. 736. 737. Vo Testament 2 Lower. D'Arg. liv. 6. Ch. 26 — will under similar circumstances confirmed — arrets de Bardet liv. 8. Ch. 25 Tronç on 289. art. of custom — Brillon. Vo Testament — Poth. Don. entre vifs. ch. 2. p. 325 — same principle in Furgole — all that is necessary that the Testator express the name of his heir so as to be understood — 1 Furgole 312. 313 — The dispositions which are not altogether clear may be rendered so by the circumstances — 1 Furgole — Domat. liv. 3. tit 1. de. sec. 6. p. 450 — Rep. Vo Suggestion. p. 602 — Where favorable Testaments ought to be favorably construed 4 Merlac. p. 122 — 1 Ricard. 440. No 26 — No 48 — 2 Despeisses. p. 20. 2 Bourg. 405 — Upon to Evidence Dupin on Apoplexy — to shew that the person affected gradually recovers his understanding —

1 Furg. 312

Pillet in reply — The circumstances of the case must be considered, and the Court must judge thereby, but the Testator being attacked by a violent apoplexy of which he died, is of great weight in the Case. The Court cannot well believe those who say that he recovered in a moment all his senses so as to express his meaning & dictate about his testament —

The

The Pltff has been obliged to call the witnesses to the tenement, not knowing who else was present, but they are good witnesses — and they detail facts — shew that the Testator in many instances could not express his ideas, nor make himself understood and they were obliged to endeavour to make him repeat what he said to try to find out his meaning they also state what may be considered favorable to the will, but being strangers they may have been in error & the Court must judge of the whole —

№ 1241

Buchanan & Lavombe & Econtra } action of assumpsit to recover balce of ant. rendd by Defdt who had been the agent of the Pltff —

Mr Buchanan for Pltff — The Defdt has set up an Incidental demand for the same objects on wh the ant was rendered — & on pt he admits to do the agency for 5 ℔ Ct — yet the Defdt now claims more — then is a demand for a horse not made ant —

Mr H. Bidwell for Defdt — The Defdt has proved his demand, & more than he demanded he has also proved the charge for the use of a horse and carriage & for the injury done to the horse — admits that a sum of 4 ℔ should be deducted from the demand as have been mentd by him. but as to all the other objects they have never been rd to by Pltff

Buchanan for Plff. The answer of Defendr are same above at the same time as the cert. rendered by Defdr. The proof as to horse is not sufft. notice to shew that the person who had the horse was authorized to borrow him for the Plff

№1988.
Hart
v.
Bowron
H
Judgt for Plff

№143.
Molson
Forsyth & al
Berthelet & ors
H
Opposition dismissed

№1985
Stansfield
v.
Frost
H
Action dismissed

№2095
Corporation of Clergy Reserves
v.
McMillan
Action dismissed

№1398
Armour & al
v.
Nathan
H
Action dismissed

№2098
Fabrique de la Prairie
v.
Jerome Longstaff
H
Defendr Exceptions dismissed

No 2326. Dom. Rep. v. Gale & al Justices	W	Judgt of Quarter Sessions quashed.
No 171. Middleton Bank. — v. Pearl. —		Judgt
No 2252 Crossland v. McVey. —	W	Judgt — Plff to pay costs from time of tender —
No 1105 Drolet v. Tetu —		Judgt
No. 1476. Stuart & al v. Laframboise		Judgt
No 1167. Hurd & al v. Brown & al		Action dismissed
No 2336. Ex parte on Petition of Dore' & al		Judgt on motions.

N°2312. Warwick et al v Raymond	H	Defendts exceptions dismissed
N°1068. Hoyle v Stansfield	H	Action dismissed
N°1933 Barron et al v Watson et al & Strew et al mis en Cause	H	Rule to amend made absolute —
N° 1866 McGrider et al vs Desrivieres		Rule for quashing Ca Sa. absolute
N°465 Rolland & Pothier		Judgt. on Faits articulés. —
N°1449. Beaubien & Monjeau & Garants		Judgt for Pltff —
N°170 Deschamps v Commissioners of Lachine Canal		Interlocr nominez Experts —

Tuesday 13th February.

Prest.

all the Judges.

On Reguete of Debarbyehn

On Petitions motion to be permitted to pay the amount of the adjudication into the hands of the Sheriff & to obtain his title —

M.Rolland for Petr — it is evident by the stat. that it was never meant that the adjudicataire should be bound to more than the amount of the adjudication whatever the amount of the adjudication may be — if the law considers it to be a privilege for the adjudicataire to give security for the amount of the oppositions, if they amount to more than the purchase money —

M. L. M. Vezé for the oppos.ts the intention of the law is very different from that given to it by the Counsel for the Petr — That it is the duty of the poursuivant Dame to give security for all the oppositions, and if he does not chuse to do so, he can stop his deeret, & not proceed — & with this view the law requires that persons having claims should file them 8 days before the sale —

Ex parte On Petition of Jeremie Kingsley

On motion of Ph. Bruneau to be admitted to file an Intervention in the Cause & to be admitted to claim the rights of our Pr.e Sedue on the lands sold — his oppos.n having been dismissed for want of proceeding in June Term last — By the rules of practice the party may intervene at all times until final hearing

which

which was done in this Cause — moves that a delay be given to produce a power of Attys —

Ravaut 110.

McKie for one of Oppos[ts] — The party cannot be allowed to intervene in this Cause — the party had already his opposition before the Court which was dismissed — the party cannot have an Intervention in the Cause when he has already come into it by Opp[n] —

Mr Letourneux for Oppos[ts] — The opposition of Lodge has been decided upon, and he cannot come a second time —

№2366
Ferrie
vs
Turner

Ord Defend[rs] rule to shew Cause why Pltff should not file his power of Attys before being allowed to proceed —

Rolland for Pltff, it is not necessary that Pltff who was here when the action was brot — can now be obliged to produce any pr of Attys —

Mr Borton for Defend[rs] — Pltff on leaving the Country ought to have left his power of Attys, & so held in many Cases —

№969
Gates & al
vs
Gordon dec[d]
&
McTaggart
& al Intervs

action on obligation —

Mr Buchanan for Pltffs. the action concludes to an amount of Mr Ross who has had the administration of this Defend[rs] property — an Intervn filed, but dismissed — Pltffs are now entitled to the monies in the hands of the Trus Saisi, without prejudice to any further discussion —

Intervn 29 Jan[y] 7
by Judge

Mr

Mr Bedard for Mr Ross. — The Plffs can have no action nor support any demand agt. Mr Ross, who never rendered any account to the Plffs but to other persons who ~~to~~ intervened in the Cause — the Plffs. have ought to have demanded the subrogation of their debts and thereupon proceeded agt Mr Ross before he can obtain the monies in his hands — but in the present case the Plffs have no right of action agt Mr Ross — the Creditor cannot even be subrogated in the rights of his debtor so as to proceed agt the debtor of his Debtor — The Plffs ought to have proceeded by saisi-arret in the hands of Mr Ross, and thereupon the Tiers Saisi would have been bound to account —

Mr Ross in person — there has been no Judgment by which he is held accountable to the Plffs or Defendr he never was liable to account to them — but when the Intervening parties came in he was bound to render an account to them — but their Intervention having been dismissed, the Acct rendered by the s^d Ross who plea must be considered as going with the Intervention — the Plffs. took no steps to ascertain that the acct rendered was ever rendered to the Plffs or that he should be entitled to the benefit of the account rendered to another person —

Mr Buchanan for Plffs — when there is insolvency the law subrogates the Creditor in all the rights of his Debtor —

№ 111
Metzler vas
M'Robb

On Pltff. Defendr mo. that the Ca. be quashed from insufficient affidavit —

№ 1320
Perrault &al
v.
Torrance
& contra

action for goods sold & delivered
Hearing on law — on plea of prescription set up by Defendr

M'Beaubien for Pltff — the prescription here invoked is uncertainly set out and cannot be admitted. — The Incidental demand is inadmissible as it is a demand aft. Mariè Claire Perrault alone the demand in chief is by a Partnership. —

M'Lacroix contends that the prescription is regular & also incidental demand —

№ 105.
M'Donald
vs
Penn —

On Defendr mo. for security for Costs —

M'Walker for Defendr it appears by the affidavit that the Pltff is not a man who has any fixed residence in this Province — this is further evident by the affidavits filed on the part of the Pltff —

M'. M'Millan for Pltff — the pltff is a resident in Montreal, & was so when the action was brought

—

№ 2234
Jamieson
M'Gill & Desrivieres

On Defendrs mo. to reject certain pleadings filed by Pltff in answer to Defts pleas. The pleas being separate & separate conclusions, whereas the answer is general and comprehends ~~both pleadings~~ but one answer to both pleas —

Mr Scott for Pltff all the pleadings of the Defendt are stated exception peremptoire, to which a sufficient & regular answer has been made—

№ 1263
McCallum
v
Douglass

action by posthecarie —

Mr Boston for Defendt — the only question before the Court is whether the Pltff ought to give security for the improvements made on the land by the Defendt — Poth. p 439. Fr. Hyp.

Kyd — Raimond

Buchanan for Pltff cites Loisean Liv. 6. ch. 8. № 8. the party may come in by privilege on the sale Rep.re to amelioration. p. 347.—

№ 2500
Pasteur
v
Fourrier

Action on Ablegation — on laws

Mr Pasteur Rupaud — for Defdt — pleads that a prosecution has been commenced at Pltff on distribution and on that account the Pltff cannot be entitled to recover by action all the monies of his minor Instit. de Just. liv. 1. tit. 26. § 7. Tit 50. de Suspectis Tutoribus — Merlin ch. 10. p. 228 — Lacombe vo Tuteur. 1 Bouj. p. 70.— to shew the Tutor cannot prosecute for the Capital —

Mr Terroux for the Pltff states that the Tutor ought not to be staid in his proceedings —

№ 2119
Robin
vs
Berzeron

On Law & Ex parte —
action to obtain partition of two Succ.
Pltff to draw up an Inbulevs

№ 42.
Petro & Duchasne
vs
Sodoun —

action for an Inventory & account of a succession

M. Mondelet for Defendr. The Pltff admits that she ratified the deed of donation which gave away her rights, except 800" qr. wh reserved to her and she shews no sufficient grounds why this act should be rescinded & herself restored to the same state as before it was made — The Defr has excepted to this action the want of sufficient allegation to annul the deed she so made — The woman has no children of her own & could legally make a gift to her husband — 447. 8. Poth. Don. entre vifs — Cr. Comr — art 283. — № 4. Grou unique —

The Pltff cannot maintain the present action en nullité of the acts she has passed, she can only bring action en Restitution only — Aland. v Guevoth Cal — where a similar action was dismissed

327

Rolland for Defrde The reasons of nullity are not sufficient, as it is not stated that she the Pltff had children — nor can the person who made the act come of it — no children

Roi in answer — the Pltff allegs sufficient to be allowed to come of the act — the parties must be admitted to proof for — the woman was under coverture at the time & bound to submit to the will of her husband — the art 282. & 283 shew the husband could not make such a donation to his children —

Cour. d'Appels 17 Mars 1831 — Cour. d'Appels 29 fev. 1828 —

Mr Mondelet for Defr The arrêt cited by Plff are inapplicable in the case of the pnt the stipulation was alledged as a ground of nullity —

No 1147.
Cadieu
vs
Chodillon
Brien &
Desroches &

On opposition of Desroches
Mr Cherrier for the Oppost says he is entitled to a guarantee on the land for the payt of monies for which he may be troubled as due on the land which the Oppost purchased

Mr Bourré for Plff — The party cannot maintain this opposition even upon the very allegations of the oppost — he appears to have confided in the personal responsibility of the person who sold him. The Oppost knew the right of hypotheque which the Plff had on the land in preference to that of Oppost —

—

No 255
Dufresne
&
Pigeon

action pour Rente & pension viagère
on merits

Mr Brunean for Plff — The Plff has removed to another house since the act was made, and the difficulty now is whether the Defendt should be held to carry the arrears of rente to the new residence of the Plff —

Mr Le Vigé for Defendt — The stipulation in the deed of donation is that the Rente should be paid in the then residence of the Plff —

№ 1740
Martigny
&
Dubois

Action by Pluff as Seignior to depriver Defr of his right & title to the land conceded to him he not having kept fea & chem on it as required

Mr Mondelet for Pluff action founded on the special clause of the Contract of Concession dated on the arrêt of 1711 —

Mr Cherrier for the Defendt states, that he has commenced his defence from the nature of the land being a forest he cannot comply with the requisitions of Mr Pluff nor fulfill to the letter the stipulations in the deed of Concession —

Wednesday 14th Febry. 1827. –

Pres.t

Ch. Justice Reed
Justices Fletcher, Pyke & Uniacke. –

№ 23 Rossdale v Drummond	on Plffs mo. to close enquete – Grant for Defdt was always ready to proceed
№ 1419 Robert & Namur v Fournier	On Plffs motion to be allowed to grant a Sheriffs title in lieu of the Security which she was directed to give by the order of this Court Ross for Defendt – This would be making another agreement between the parties different from that stipulated between the parties –
№ 847 Atkinson v Maitland	Plea withdrawn
№ 299 Hubbard &c v Bender –	Demurrer on law – and then on facts fact to be proved
№ 1149 Foley v Foley	action to ans.r Defdt says he is ready to answer –

No 2197
Crossland
cur.
vs
Ainslie

Action on note — heard on law
Driscoll for Defdt. the allegations set up as a plea by Defdt. apply only to another note on qt. no action is brought — has however demurred only to a part of the plea, qt. he thinks he was entitled to do —

Mr Buchanan for Defend — The note given for goods not delivered — the demurrer here to Defts plea is general — it ought to have been special — but the action ought to be dismissed, because the part of the plea qt the Pltff. admits is sufficient to dismiss the action —

No 1337
Evans
&
Gregory
&
McNaughton
&
Co

On Law
Mr Rolland for Pltff val —
The original action was for damages for an act done, but the parties by consent afterwards agree to name Experts to regulate the Cours d'eau in question — the Experts were authorised to call before them such persons as were interested — this they do, in the manner they think fit — the Report made the interessés are called in — the parties here plead ex exp. à la forme en nullité d'expert. code Civil art. 10. tit. 2. as this demand contains nothing specific as it is to shew Cause qt the hour. of a P. V. qt they never saw, and the contents of which they know not — there is no such action as an ~~Cause~~ action to shew Cause — next as to the Declaration de novo — he has pleaded peremptory Exceptions — here the action was not to obtain a Procès Verbal to regulate a Cours d'eau, but for damages for an act done by the Defendant —

The

The late law for establishing a water course between neighbours ought to have been followed & not this particular proceeding –

Mr Pelton for the Pltff. The exceptions are founded on an error, as the Report of Expts. is merely giving an opinion as to the mode and manner in which the cours d'eau ought to be established, and not to be considered as a Judgt – The Judgt of the Court of appeals has never gone beyond calling in the parties interested into the suit by the King's mandat and not by simple order of Court –

Mr Sewell for the Pltff – The proceedings in the Inferior Court are summary, and were here conducted in the regular course and according to the practice of the Court – The Defendr should have pleaded the nullity of the assignation in the Inferior Court – but his exceptions here are not only to the form here, but he goes further and pleads partly to the merits, which must be considered as a waiver of the other pleadings – The demand before the Inferior Court was legal and regular, and there was nothing illegal in ordering a visit of Experts – and this report is the ground of proceeding at the Interrs –

& Consorts.

№ 2037
Longueuil
&
Brosseau

action for Seigneurial rights –
On Law

Bedard for Defdr moves to join this action with another which the Defendr has instituted against the Pltff to rescind a deed of Sale made by one

Joubert

Conbent to Defend and the Pltff thereupon ought to be depriued of all benefit of right on this Land wh must be considered as reunited to the Domain of the Crown — This same matter Defend^r has pleaded as an exception to the present action, which is for the same land —

Sewell for the Pltff — The two actions cannot be joined — That this Court cannot take cognizance of the matter pleaded by the Defendt This Court cannot give a grant of the Land to the Defend^r — There was a special authority given by the Crown under the act of 1711. to certain persons — This law has fallen into desuetude.

Brossman + Delongueil

Bedard — The question has been determined in the Case of Brossman v De Longueuil, that this Court had Jurisdiction — so also had in case of Perrin v Delonguenil — also in case of Cartier & Delonguenil

—

No 1317
Exrs Fisher
vs
Holt
&
Holt ppts

Quest. as to Right of Pltff or his Just

No 1720
Lewis
vs
Sargeant

action for damages by fire done to Pltff. property —

Bowen for Pltff — says he has proved his demand —

Mr. McCord for Defendt The Pltff. will say that they believe that the fire in question came from the

the farm of the Defend— but the damages found do not exceed £5— one wit. Davis Hopkins speaks to 300 dols suffered by Plff— he is the only wit who speaks positively— but of him 2 of the contrary wits say that this Hopkins is not a man worthy of credit— There are also wits of Defts who state that it was the fire of the neighbours which did the damage— the wits who examined the Plffs land immediately after the injury who state the damage did not exceed £5.

Dupras
Berthelet Cie
&
Perrault Opt

Ors opposition afin de charge—
Ors ments—

L. Vigé for Oppt— three things are demanded 1° The charge of a road— 2° the use of a Barn— & 3d That the adjudicataire shall build a certain house on the land— In 1814— the late Jos Berthelet in a Donation made to his children of the whole land of of the land sued is one half— the half sued was given to Jos Bte Berthelet the Son— the sons were charged to pay a certain sum to each of their sisters & the Plff having married one of them, prosecuted for the money given to his wife, & sued the present possrs the land given to Jos Bte Berthelet. vrp on plaintiff— he abandoned the land, & Benjn Bte Berthelet was named Curator— Jos. Perrault purchased the share of Denis Berthelet, and now claims the rights in the land of Denis Berthelet was entitled to— By the deed of Donation Bte

Berthelet

was bound to build a house on this land so given to Denis – also the use of a barn – There is a road proved to have existed for many years which was conveyed to the appt. and which he used up to the present time – it is proved that this road existed at the time that the donor Luc Berthelet possessed the land –

Mr Blenny for the Defendt when Bte. Berthelet sold the land to Plunkett, it was expressly stipulated that he should establish no servitude on the land until he had paid it – he did not pay it – but made some arrangement with appt. for this road. before he had pd. for the land, upon this the appt. relies –

As to the house to be built, it was a personal obligation on Denis Berthelet to do so, but he did not take the land by Donation subject to this right – This right Denis Berthelet never sold to the appt – & this is apparent by a transaction made between Denis Berthelet & the Appt after the sale to Pinault – admits the right to the Barn the Defendt admits it. –

Vigé in reply, the consideration here was that it was a father making a division of his property among his children & as there was a road in existence at the time, which was necessary for Denis Berthelet to enable him to enjoy his land, the right to the use of it must be admitted – The transaction between the Appt. & L B Berthelet was merely a renunciation by the appt. of this right of Guarantie against Denis Berthelet

Butthelb in case he could not maintain his right to the road. — The arrangement between Durand and Plunknett regards merely the mode of deriving the travaux mitoyens, but shews what was the intention of the parties in regard of this road

No 1318
St. James
Charbonneau
dal ——

On action of damages for breach of Contract between the parties —

Mr Blenny for Plff — the point before the Court now, is just on plea of general issue, & that Defendants were not authorised to make the Contract — The Plff contends that he has made sufficient proof of the agreement and of his damages. — as to 2d point it was dismissed

Mr Ros for the Defendr — The Plff has ~~pleaded~~ stated, that by reason of their refusal to go before a Notary & make any agreement in writing he has suffered damages — not that he had suffered by not getting the work to do — The Defendrs say they were not authorised to make any Contract w[ith] Plff & their promise to do so without authority would not bind the fabrique — But the Plff has not proved his agreement — the undertakings of the Defds was conditional, & the condition was never complied w[ith] — the other proof built on this is wholly insufficient — being isolated conversations by the individuals, but not together — as to the testimony of Barré it ought not to be admitted

as

as he was the partner of the Pltff at the time — But this agreement even if proved cannot bind the fabrique without authority. Jousse. Govt p. 111. 113 — Dic. de Durand Maillane. Vo Fabrique. Denizt. Vo Marguillier. p. 250 — Id. Vo Fabrique — Rpse Vo Marguillier. p. 328 — Jo. Fabrique 245 —

Mr Bleury for the Pltff refers to the evidence as sufficient — particularly the testimony of Barret who was present when the Contract was entered into by the Defendt — and the other testimony corroborates his testimony. —

Lussier & Carmel & McKenzie & Bethune opp

Ore opposition afin de annuller

Bender for Oppt Berthelet — the Pltff could not come to the hour of the Oppt and make a saisure of property belonging to the Defendt —

The oppos. of Jno McKenzie claims a certain quantity of flax and seized in the mill of the Defendt —

—

No 144
Gormain
vs
Henry
& Contra

action for work done — Ments

Roi for Defdt admits pltffs act but sets up another act of Pltff & that he had spend to pay the balance to pltff before the action — but Pltff sent them to his lawyer — has proved his act in the best manner he could —

Mr Grant for Pltff. Defdt has made no proof of any demand

№ 271
Gautron
Leblanc

action en declaration d'hypo. —
Mr Rollin for Pltff has filed a statement of his demande as proved —
Mr Brunean on behalf of Defr who filed no plea says the Pltff agreed to take his pursuit at the house where she lived, but she has now removed to another parish —

№ 2440
Dansereau
Johnson

action for goods sold
Mr Bender for Defr There are many bons for which no value was given — № 46 particulars one 17 Lard & 25 Lard — The Dr says that nothing was ever delivered without bons, yet we find that a young boy of Defr got cloth without any bon. —
Mr Brunean, admits that no value was given of 17 Lard 1825 — That the Defrds bons were all given for goods delivered —

—

№ 1577.
Ex parte
On Petition of
Jos: Kingsley

The motion of Dr Le duc to file an Intervention was disallowed — The Court considered that an Intervention was not the proper course after a return by the Sheriff had it even been made in time, but the party having already made an opposition afin de conserver, which was dismissed the application was wholly irregular —
See Case Lacroix v Lacroix & McKenzie Intervs
18 June 1821 —

Thursday 15th February.—

Pres.t

Chief Justice Reid
Justices Fourchu & Uniacke

№1993.
Perrin
Pastew

On motion of the Defendt bail to be discharged.—

Mr Mondelet for the Bail states that the original action having been illegally served without a copy of the declaration on the Defendt the Bail is entitled to be discharged — 2.y The Pltff did not lodge a Ca. Sa. within the time reqd by law — it having been sued out too ~~late~~ soon & before due —

Mr ~~Mondelet~~ Blowy for Pltff — the first question has been decided on the application of the Defendt the D is now in delibn upon the Judge at Chambers — the writ of Ca. Sa may be sued out at any time & if sued out before the 7 days, yet it could not be put in execution till the delay had expired —

№1181
Vigneau
Spragg &al

action for wages as a Clerk —

Mr Bender for Pltff. the wages agreed upon were £36 ~~£~~ an, to be increased if he was found to have a capacity for aiding in the business of Defendt That Pltff was found very capable and was employed in collecting in the monies of the Defts to a great extent & for wh he now asks at the rate £60 ~~£~~ an. —

Mr Grant for Defendt the Pltff was employed merely a better kind of Servant or porter in the Defts store — is willing to allow Pltff at the rate of £40 & even in that case he has been over paid —

№990
Bell.
vs.
Stuart.

action by a Mason for work done &c
heard on law

Mr Mondelet for the Pltff to this action the Defendt have pleaded prescription. —

Mr O'Sullivan for Defdt. the prescription is founded on 127 art. of the Custom —

Mondelet for Pltff. the prescription will not apply, this action is for materials found, and in the case of Hogue vs. Lacroix that the prescription did not apply — the 2 count in the declaration is for goods sold & delivered — when only the six years prescription could be urged — the other Counts in the declaration are of a nature not admit of the prescription —

Mr. O'Sullivan for Defendt — the article applies to whatever the Mason furnishes as well as for his work —

№375
McKillip
vs.
Gendron
et
Gervais

On 3 opposant Saisies —

Mr Lacroix for the oppost — states that the oppost. was not in Comté vs Defendt but had a right to her separate estate & management thereof —, and has proved that the effets seizeds were her separate property —

Mr Greece — for Pltff. the marriage Contract between the parties contains a clause of separation of properties, we some articles mentd but this marriage Contract is of no effect not having been

been insinuated — That by the laws of Lorraine all ~~pers~~ pers in qt the publick are interested ought to be insinuated — Repse vo Insinuation. p. 275 — Ordce of Hen. 2 — a subsequt. ordce of 1703 was made to explain the Ordce of Hen. 2. Id. p. 276. 7. Arrêts de Bollet p. 1. — Pigeau. The sentence of Repse ought to be made public, & same reason will apply to the Repse contradictle — Id. vo Separation — That the proof made by the Oppost. of her property is insufficient — That the Opposant cannot by verbal testimony prove her property — 1. Pigeau. Renault & Cantini 2 vol. Pigeau p. 197.

Lacroix for Oppt states, That she has produced receipts for all the purchases she made she has not been able to identify the articles particularly, but only in small articles where the oath of the Oppost ought to be allowed —

~

No 1075
Bradwell & Bland & Contra

On Report of arbitrators —
Case submitted —

~

Gales & al & Cameron & Cameron & al Oppt

On opposition
Mr Lewis for Duncan Cameron. That subsequent to the rendering of the Judgt it was assigned by the Plff to Gardner & Coldyer who entered into a contract with Allan Cameron & gave him 9 years to pay w. Security — The goods of Duncan Cameron have therefore been illegally seized. That Duncan Cameron was originally only a Security on the Contract made between the Plff. & Allan Cameron

cites Instits. Jaubert sur les Conventions. p. 304. 305 — refers to Argou 2 Vol. 240. 242 — to shew that a Cautioner is entitled to the benefit of every change or novation made by the Creditor —

Mr Scott for Pltff — The Indx is the criterion to determine this question, & by it the Defts was condemned jointly & severally — The agreement entered into by Gardon & Co did not in any way alter the effect of the Judgment —

№ 2025
Stuart & al
vs
Rickner
&
Contra

Action for goods sold and delivered
Beaubien for Defts has filed sundry receipts in proof of monies more than the amt of Pltff's demand
La Gt. an Incidental demand is made —

Mr Walker in answer. The receipts were given for debts contracted prior to the amount now produced. —

Mr Beaubien — The Pltff has not proved any value having been delivered for the receipts filed prior to the act. filed.

№ 815
Reid
vs
Finchley

Action for wages —

Mr. McMillan for Pltff. the defendt has pleaded the general issue, and wishes to prove under it a special contract — to this the Pltff has objected & now moves to reject the proofs that effect —

Mr Grant for Defts The raft was in the rapids & Pltff employed men & expence in getting the rafts off the shoals. to this the Defts objects as the Pltff was bound to bring the rafts safe to harbour

No 1828
Girard
v.
Persillier
&
Garant

Action for monies due to Pltff as Commissr
on his late wife —
Sewell for Pltff. the Defendt has filed a
receipt for this money —
Mr Pellier for Defdt. says he has called in
his garant who is bound to defend him at this action
Mr Lavaisse for Durand the Garant — about 25
years ago the Defdt purchased a land & agreed to pay
Caisse 500 an action was brot. agt the vendr &
the Garant for the money — but the cause was
discontd but the money having been paid, a
Receipt was drawn up and signed, & was delivd
to the Defendt who pd the amount therein specified

Mr Sewell for the Pltff. according to the
evidence in the cause the receipt was made out
but no money paid, when made out the
woman took the receipt & run away with it —
and the belief is that she got the money and
gave this receipt for it — but such a payment
is not valid — And it appears by Act of 22 July
Sale by Mad. Colin her son & Pre Durand
1808 & filed by Defdt — that there remained something
to be done to perfect the conditions of the deed, & agt
which the Garant undertakes to indemnify the Defdt
The Receipt in question had not then been given
being dated in 1801 — so the parties must have contemd
& have stipulated in view of this very paper — and at
this time the woman was dead, & she could not have
received the money afterwards —

№ 169A
Sutkin
vs
Classon
& contra

Action on deed of sale of waste lands in Godmanchester –

Boston for Defd. the lands were sold before letters patent had issued from the Crown, in consequence Defd was unable to obtain possession of only a small portion of what was so sold to him, the Pltff not having been able to procure the letters patent – Pltff has brot his action for the value of the whole land, in consequence whereof the Defendt has set up an Incidental demand for the damages he has suffered by the non-performance of the Pltffs Contract – these damages are considerable –

McBrennan for Pltff. The Defendt ought to have put the pltff en demeure before asking for damages in this case – for the Pltff was bound to do only what was in his power to procure the letters patent – This he has done –

—

№ 235
McDougall
vs
McRobb

action on deed of sale – heard on law

Stanley for Defd – The Pltff does not set forth the quantity of land nor its situation but refers to an exhibit – so that Defd – is compelled to plead to an exhibit – 2d Not said that the Defendt was ever put in possession –

Heneker for Pltff the exception without foundation –

№1055
McRider &c
Bonner

Action on a Mercantile Garantie
for £394. 12. 9 for goods sold to one
Kinney on their order —

Mr Walker for Pltff states the order, dated
4 July 1825 — for such goods as Kinney should
want at that time — on 8 July. 85. 11. 10 —
on 12 July £129. 7. 2 — 13 July £28. 13. 11 &
on 16 July £87. 0. 7 & on 20 £93. 19. 3 — The
Defdt contends that his guarantie did not
extend beyond the first delivery — when
Kinney deld. this order he required a considerable
quantity of goods being a busy season there
was not time to complete the selection he wanted
& some of the goods were not then unpacked, when
Kinney &c he would call again to complete his
supply — According to usage of trade & as purchases
made on different days are considered as one
in regard of the delay for part — Thos Kinney
was a stranger to Pltffs & had been referred entirely
before this — The assortment he wanted was only
what may be termed a Dunnage assortment —
Witnesses have been examined to ascertain the usages
of trade — refers to testimony of Mr Frost, as to the
purchases made at different times — The testimony of
the other witness is nearly to the same effect —
That after the delivery of the goods & up to the
time Kinney absconded Bonner was on friendly
footing wd him & had means of seeing the goods
he had purchased —

Pltff

Poth. obl. N° 91. as to rules of interpretation of Contracts – refers to 11 Dig: Law of the Digest – 1 Term Rep. 701. Dow. v Bunt – Park Ins^ce p. 439 – as to the words of Contract – Fonb. 1 book. Dec 13. p. 427. 428 – Poth. N° 92 – & 1 Burr. Rep. 282 Wright. v Courtwright – Coup. 714 – Fonb. book 1 ch. 6. sec. 18 – p. 438. 439 – Wallis Rep. Parkhurst v Smith. p. 332 – Fonb. p. 436 – 98 Law Dig. Dec 5 – L 219 Law. de Kub. Dig. – The 6^th Rule of Poth. N° 96. 1 P. Wms 457 – 428. Shep. Touchstone – 87. 88 – 2 Bos. & Pull. 13 – 1 Ph. Ev. 544 – 1 Peer Wms 420 referred to 4 Ph. on Ev. 550. 551 – Paleys Moral Philos^y p. 126 – 4 East 135 – Evans Poth. p. 62. & note – Powell on Contracts. 370 – 373 – 376 377 – 382 – 384. 5. p. 395 – 403 – 99 Law Dig. 13 East. 510. 12 East. 227 – 2 Camp. 436 – do – 413 – Starkie p. 478. part 3. 481. 482 p. 1036. 7. 8. & 9 –

Consider the different parts of the Contract – words some goods, very different from a few goods – some goods is like as if he had said open an acct. with you – the kind of credit, implied a considerable purchase – according to general usage – credit on a single purchase is a thing rare in Montreal – all retail shop keepers rarely can make up their purchases in one day – The extent of credit was left to Kenny alone – what goods he wants – the words at this time, cannot be limited to an hour or a day – if he had added to the extent of £400 – & the goods advanced at diff^t times – the Defd. could not take advantage of the words at this time, yet the words must have same interpretation, without the sum as with it – If the construction to be limited to the time when the guarantie exhibited, as it would not be thus considered to extend beyond the day when

made

made – when the time of making the purchases of this nature of general purchases – and to the goods which Kinny wanted at the time –

Com. Dig. tit. Parol. Letter (A) N° 3. 4. 7. 23 – Evans Poth. Appx N° 5 –

Mr Borton for the Defendant – There is no Count bottomed upon the instrument produced in evidence. – Defendt admits his liability to plaint. of £85 – his other pleadings meet the declaration – There should have been a special count setting forth the particular instrument on which the warranty is founded – the Stat. of fraud requires this – The ord. of 1667 is similar – in regard of an undertaking for a third person – The Defts here was only as a collateral security – and then the instrument must set out – In the case however the contract cannot be considered as extending beyond the first purchase as a bill of parcels was made out & sent home to him with the goods – here it terminated – the subsequent purchases were made ~~upon~~ at subsequent times, upon a principle wholly unknown to the Defendt – and without his participation – The Defendt. got hold of the original bills of parcels by the evidence of the Pluff clerk, as Pluff unlawfully took possession of all the of Kinny's property at the time he left the Province – and this without any notice to the Defendt – or any legal authority – Poth. Obl. N° 404. 405 – no interpretation can be admitted by Wks – of a written contract – but it must be restricted to the most fav. construction for the Obligor – The words, at this time must be limited to something – it cannot be extended, to months ~~Different~~ from one day to another, any more than to years – for if it can be extended to one it can be extended to the other & to any subsequent time – The authorities cited refer to contracts between parties – this act is to bind a third person – & must be more closely construed

2 Camp. 41

2

2. Camps. 41— Fell on Mer. Gar. 107. 108— when general credit is given a general responsibility attaches— 2 Sand. Rep. 414—

2 Sand 414

Had the Pltff. considered the Defendt as liable they ought not to have done themselves justice by taking possn of the absconding debtor property— they by that means were interfering with what they had no right to take— Poth. Ob. No. 406— when the Creditor interferes improperly so as not to be able to make a clear right of action to the Caution—

Mr Walker in reply the Declaration is made upon the most approved precedents in this case see 2 Chitty 314— 1 Sand. 276— It is usual for pltffs as every days purchase to send a bill of parcels wt the goods—

1 Pa Ev. 570 — as to collateral evidence to explain the intention of the parties — 8 Term 379—

Friday 16th February

Prest

Chief Justice Reid
Justices Foucher & Pyke.—

No 2118
Arnoldi
vs
Perrault
et
Ten Eyck

On merits.— Saisie-arret on Judt— Bedard for Defendt— the pltff cannot avail himself of the declaration of Wilson as it is not ascertained what part of the rent is due to the Defendt—

Mr

Mr Boston, states, that the Pltff is entitled to recover the rent in question, as the wife of Cuvellier made the lease, and the husband is bound for her acts —

No 738.
Carter
v.
Tittle, Curr

on the Intentor's order for Defendt. justify delayers for recovery of debt —

Mr Brennan says he has done all the delayers the State of the Succession would admit of — Mr Holland submits case, but says Defdt. should pay Costs

No 245.
Card
v.
Astor

Action on Injunction Bond —

On motion of Defendt. to be permitted to plead anew from a change of Circumstances the Bond in question having been vacated —

Mr Gale for Defendt. on the Rule — States that when he was arrested, he was entitled to be discharged as the Judge of the State of New York of him had been vacated by his assignment of his property to his Creditors by the Laws of N. York discharge his person from arrest — and even from all actions — The document to substantiate this are filed — but the plea does not extend to the fact of exoneration from the action —

Mr Sullivan for Pltff — the Debtor by the laws of New York, the assignment of his property to his Creditors he is discharged from all personal arrest — the Defendt has pleaded this, but the Defendt has said nothing as to the debt to pt Defendt. is still liable — Now the Defendt may have extensive property in this Country — when a remedy is to be sought it must be according to the rules of the Courts where it is sought

Kent's Com. Dam. Com. 1. bk. 2. § 76. Des Cousins — Hubers — Grey Pafs 361 — 1 Ernerton. p. 122 — Dauty Ch. 1. No 11. — Desposses

2 vol. tit. 12. Sec. 1, art. 6. № 3 – Voet des Statutes –
3 2a. Ch. 3. № 1 – & Sec. 10. № 6 –
2 East. 453 – Bullenois –
11 Johnson's Rep. Durand vs Whale. also vol. 7. & 12 –

~~If it~~ on the rule

If the document on wh the Defts mo. was made was in the poss[n] of the Defts since January last it ought to have been sooner filed – and the manner in which these papers come before this Court they cannot be looked at or moved –

1 Camp. 63 Buchan v Rucker

But the document in question is a fraud and cannot be imposed upon this Court the case Douglass. chevallier vs Lynch. 170 – The Defts has run to the Judge of New York, since this action was brot in order to obtain a release from the debt – but after this Court is seized of the Cause they will not allow such a proceeding to have effect –

Mr Gale for the Defendt – The arrest of the Defts here is not to be considered as a mode of proceeding but as an oppression & Plff cannot operate here – the plea goes to the merits of the case – but if this plea were put aside, & Defendt were excluded from filing a new plea, as the documents filed must shew the right of the plff is annihilated – and this document has been admitted as true – & it is impossible the Court can overlook it –

But the plea here is sufficient – the Plff could not arrest the Defts here more than he could have done in Newyork – and if Judt given here it will have the effect of confining the Defendt in Gaol for life – cites, Pannes 70 – The law has the same effect as an agreement made between the parties –

№ 1987
Maitland
v.
Rodgers exrs

Action for goods sold -

Mr Stanley for Defdt The demand is not ~~of the~~ proved - only proof is as to four barrels of sugar, but it is not so they were came to the possession of the Defend - The delivery stated by Watts is contradicted by the testimony of Delevan The Pltff cannot recover at most above £17. -

Bleakley for Pltff. the delivery is sufficiently made out vide ~~for~~ Exps. Ev. p. 66 - Peake. 246 - 5 Est - Exps. Ev. 66
2 Ph. on Ev. p. 134 - 1 Ph. 152. 3 - presumption must be received until the contrary is proved -

№ 2274.
Angel
v.
Bothwick

Action on 2 promy Notes signed by one Isaac Pennis, his authorized Agent -

Mr Bostwick for the Defend - This is not a mercantile ~~transaction~~ & the evidence adduced by the Pltff will not apply - Pltff has attempted to prove this, but the fact of selling the produce of his land will not make him so - The Pltff has proved no authority in Phineas to make them Notes for the Defendant - Paley. Pr + Agent - 162 the special agent must shew a special authority Phineas here was such special agent & his authority to bind his principle has not been proved - The Notes to Defend were altered after given, & the addition of Agent afterwards added - and it appears from Phineas's own testimony that Ben Notes are antedated -

Bourne for Pltff

№ 2035
Blestein
vs
McKenzie

action agt Defendt as Curator to the Estate of the late Seibert —

Mr Buchanan for Defendt — The Pltffs were bound to establish their title and relationship to the deceased before they can maintain this action — The documents produced are not proved — these documents ought to have been proved by Wits in open Court. here we have only what is called only a translation. The verbal testimony goes only to prove the declaration of the deceased — Denisart vo. Etat — Lacombe co. Rubo — this declaration in favor of a collateral relative has never been admitted —

Mr Ross for Pltffs. The evidence before the Court is sufficient to maintain the action — The Defendt by his answers to the Interrogatories on faits & articles admit Hein to be the attorney of the Pltffs —

—

№ 2154.
Toof
vs
Vincent et al

action for Promy Note —

Mr Grant for Defdt The plea here is that the note was obtained by fraud — The evidence adduced shews that no value was given for the note by the Pltffs

Bourré for Pltff — The evidence does not support the defence —

—

№ 2433
Sequin
vs
Discelle
et
Laurion
T. S.

Saisie-arrêt en Inds[1]

Ross for Pltff — The Tiers Saisi, says he owes to the wife of the Defendt but nothing to Defendt — by her marriage Contract she has transferred one half of her property into the Community —

№428.
Webster
vs
Maitland &al

action to recover from Defts & assignees of their Estate a certain sum of money

№1754.
Molson Jnr
vs
Clarke &al
&
E contra

On rule of reference
to be spoken

№866
Allen Grant
vs
Armstrong
and
E contra

Action on a Promy Note
Walker for Defendt — Since the institution of the present action certain sums of money have been paid — this appears under the commission Roger sued out in this case — moves that to be admitted to prove thereon The Defendt became a bankrupt & assigned over his property to Trustees for the benefit of his creditors — and among other things the debt of the Plffs was to be paid by purchase and property set aside for this purpose — the Com. Roger was sent to ascertain what had been paid to the Plffs in consequence — and it appears by the evidence that a large sum of money has been paid on 15 Nov. 1820. 370.96. was pd to Plffs — on 23 Jany. 1822. the assignee pd to one Davis on order of Plff 678. in bank Notes of Bank of Kentucky — on 15 March 228. in Commonwealth paper — on 7 Augt. 1822 250. to Sloan & Adam. for Plffs order — on 22 Augt 1824 — 26. these are all the payts

payts previous to the action — on 17 Nov 1825 the assignee pl Pltff 250 Dr — on 16 May 1826 100 Dr more in Cash — in all 1902. 96 cts on act of this note — besides this considerable number of Notes & book debts were placed by Defdt in the hands of the Pltff to be by them received from the debtors — & they rec'd them — 14 Jan. 24 Dr & 27 — on 4 June 1820 48 Dr. 40 c — & to be cash for Stolts note — on 31 ~~June~~ Dec 1821 — credt. by Cash 165 Dr 87 c — proceeds of a quantity of land — on 1 Sep. 1824 — 139 D — in all 377. 44. —

There is besides a note due to Pltff on which a balance is claimed, & a long statement of interest is given, but Defdt contends no such interest can be allowed, as the Note does not bear interest ~~Beg etc~~ the Pltff received several payts on this note 1 April 1822 rec'd from Downie 423. & 75 & 24 Aug same 125 Dr — from the assignee — But in allowing interest to Pltff they must allow Downie on payts made to them — in fact — case there will be a considerable sum due to Defdt on his Incidental demand —

Mr Grant for Pltff — the evidence addduced here is not applicable to the demand, nor are the Defts competent from interest — Thos Pltff never consented to any assignment by the Defdt nor was any such assignment ever made by him alone — That Downie cannot be a Deft being interested, allows such assignment to be made — Downie was not the agent of the Pltff — had no right to receive & to pay the money — his interest therefore is apparent, because Downie

came

crimes to discharge himself — ex diverso — Downes evidence then is nothing to support the claim set up by Defendt — That Pltff allen never allowed Wakefield to take proper cummys for his debt —

Saturday 17th Febry 1827

Prest.

Ch. Justice Reid
Justices Fowler & Pyke

No 1381

Barclay vs Adams

Mo. for security for costs
Borton for Defdt — mo. too late, affidavits taken on 8th & only now produced

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No 1333.

Cartier vs Cartier

On Pltffs. motion to send the cause to Practicum —

M Ross for Defendt — objects to the rule

No 2234

Jamieson vs Desrivieres

Action on ~~[illegible]~~ Note — on law
Beaubien for Defendt The declr is insuffe — the necessary fact not stated — not stated by the necessary party from whom protest was made — a note made by a person not a merchant must be indorsed by a full indorsement to make the holder to sue — that a holder without suffe title cannot make a protest for non payt —

M Scott for Pltff — the declaration is sufficient —

№ 2211

Crawford Dax
v
Boston Def

Action for Wages -

Ryan for Pltff - The Pltff - were employed by the Defend John Boston - on a farm which was owned by his brother - the demand is joint & several as the parties - The Defr the Wm Boston ex- on fact sat. admits the demand - does not avail - himself of the answers of John Boston. - That the Defend - being the proprietor is bound for all the expences incurred about the farm - that John Boston must be considered as commettant and the Defend Wm Boston, as the preposi - and consequently both are liable to the Pltff -

John Russel Pltf
Kidd Def -

Boston for Defr In Boston never undertook nor ever incurred any liability - this action is a jointly of both Defends & must be dismissed as there is no proof to support the contract as laid in the Declaration -

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on Law

№ 257.

Turgeon
&
Elliot -
&
Boucher
&
Lacroix

On Rule to shew cause why Ludgt rendered in this Cause should not be revived and executed -

M Bancbin for Mr Lacroix - states that the present proceeding is vexatious, as the arrest Garnt Lacroix under the power of atty he held from the Pltff, received the amount of the present Ludgt -

M Roi for the Pltff - The Garnt. Lacroix has pleaded that he re the money, he ought to be condemned to pay to pltff. but the Pltff denies that the Dr Lacroix ever had any authority to receive the money -

That

That the plea of Lacroix is inconsistent, as he denies the debt, and afterwards pleads compensation

№1080
Jannard
&
Lecompte

action for rents & pension — on Report of arbitrs
Bleury for Plff — asks Judt on report & for costs —
McCharrier for Defendt — The Court can
give no Judt upon the Defendant, as his defence is
fully justified by the report of the arbitrators — &
as no demurrer was made on the Defendt before the
action the costs are due to Defr — the Plff having
chosen to change her domicile & go to a distant
parish —

№2355
Bays —
&
Germain

Case ex parte
McCord for Plff asks for Judt
Mr Bruneau, says the proceedings have
not been regular, the Exparte not having yet
been closed —

№1694
Sutton
&
Casson
&
Contra

Hearing on Incidental demand
Mr Bruneau for ~~Defendt~~ Plff — The principal demand
for a note for £12. 10 ~~0~~ is admitted
and 2½ ~~for~~ on a deed of sale — to this
second count the Defendt says the Plff was bound
to provide Letters patent from the Crown of the
land sold to Defendt — this obligation however
is only conditional, and the Plff has done all
that was requisite and has complied with

the

the Condition — The Pltff has put the Defendt in possession as far as was in his power, and the Defendt was aware there were other persons en possn of the land, and even agreed to settle with some of them who had made improvements thereon — but Defr obtd possn of the greatest part of the land demanded grant for 15 months never complained of any infraction of possn until the present action was brot. after him for the money he owed the Pltff. But it is not apparent that there are any persons en possn of the lots in question as the Defendt has made no diligence to obtain possession or that it has been refused to him by any person in possn

Boston for Pltff. The Pltff has sold to Defr what he avows he had no legal title to sell, & undertakes to procure a title — after the sale & undertaking to procure a title — after the sale the Defendt went to take possession, and found different persons in possession — & particularly one Cartier who then and still holds possession of a very valuable part of the land — There is also one Chalebois on another part of the land of the lot N 43 — so that Defr got only a small part of the rear of s.d lot, and as to Lot N 44 — he found one Drouin en possession of it and Defendt could not dispossess him or any other of the Occupants — That here the Pltff had no title to these lands, yet has sold them — The Defendt has thereupon founded a demand for damages against the Pltff in this Cause on this act —

No 1265
Lazzy
vs
Watson

Rule for hears dismd

No 197
Carean.
vs
Deblois.
&
Bazinet.

On action en declaration d'hypotheque
On Law
Mr Letourneux for Bazinet says he
is not bound to give up the possess.n of
the land until he be reimbursed his improvements
refers to Instr.s of this Court — The authority relied
on by Plff. from Lorieau, is not applicable —
it is even Sd by him that the principle does not
hold in France — adis Pigeau —

No 191
Annesley
vs
M.cArthur

On Pass.r mo. to declare the Enquete
closed —
Walker for Plff. a Com. Roy.r sent to Kingston
by post, where the Com. Roy.r remained in the Office
some of the parties willing to take it, from there
it was sent to the General Post Office & there —
destroyed — The Defend.r says that some original
documents were attached to the Comm.r & now refuses
to proceed —
Mr Grant the Defend.r cannot be considered
as in default, as it was the Plff who sued out
the Commission and ought to be held to procure the
return hereof

Monday 19th Febr

Pres.
Ch. Justice Reid
Justices Fowler & Pyke —

—

№2446
Perrin
&
Perrin
&
Pasteur
Intervs

The Pltf having dis contd his cause, the Intervg party moves that his Costs be allowed to him as having been occasioned by the Pltfs Dismissal —

Mr Fleming for Pltf — the Pltf had a right to discontinue his demand —

On Requete
of Michel Fournier
v
Pasteur

On Pltfs motion of the 17th inst
Mr Mondelet for Defts Cause is in the same state as when the Petr made his application last Term — the Court is not now better informed, the requete is not closed —

—

№969.
Gates et al
v
Gordon et al
&
Ross —

Judgt on the motions, directing payt to be made by Mr Ross of £500 — to Pltfs reserving the balance until further hears

—

№2456
& parte
on Requete
of Vincent Bail

Order for changing the Conditions of the Sale —

—

No 31 Penn. v Carrol.	W	Def. Defendants motion to quash process Motion over-ruled — see J. Pyke's notes —
No 1241 Buchanan v Lacombe & Econtia		Judgt. for Plff.
No 197. Carreau v Dibled & Bazinet Gt	W	Plea of Exception by Defd. maintained
No 1259. McCallum v Mathews	W	Interlocr. for estimating improvements on the land made by Defdt.
No 1430 Auger v Piet.	W	Interlocutor order Defdt. to acct.
No Gates & al v Cameron & Cameron Gt.		Opposition dismissed.
No 245. Card & al v Astor	W	Defendants motion granted
No 2037 Longueuil v Brosseau	W	Defendants exceptions dismissed.

No 1494.
Sarrauet & Esty. } W — Judgt for Plff — J. Ryke —

Burton. v Wilsee. & Wilson. } — Judgt as to Wilson on Rule nisi —

Tuesday 20th Febry. 1827.

Present
Ch. Justice Reed
Justices Fowler & Ryke

No 1494.
Dom. Rex v S. Gale. val. } W — Judgt of the Justices quashed

No 984.
Bourdon v Insurance Co } W — Judgt for Plff for £300 —

No 1221.
Kountz v Edwards & al. } W — Action dismissed —

No 111.
Metzler v McRobb } W — Defendt mo for quash Cap. reputed

№1879
McDonell
vs
Greenfield

Defts mo for Security for Costs rejected
Defts affidavit that Plff left the Country in
Novr last – he allowed Plff to inscribe the
cause afterwards & to proceed in his enquête, and
now moved for security for costs + The Court held
it was too late –

№990.
Bell. vs
Stuart.

Plea of prescription dismissed

№2248.
Leonard
vs
Reyes et al

Motion of the Gardien for an attachmt
agt the Defendants granted
Judgt for Plff +

№152
Pothier
vs
Foucher
et al +

Judgt for Plff

—

№1419
Robert Shannon
vs
Fournier

on Defendrs mo. to dismiss the action
and on Plffs for a further day to give Security

—

№9 & №14
Cook. vs
Wheeler
&
Wheeler T.S
& Curator –

On Defendts mo. that he allowed to
dispose of the leather seized – Opposed by
Plffs counsel, as unnecessary, & even as dangerous
for the interests of Plff –

—

April Term. 1827.

Monday 2.d April.

Pres.t

Ch. Justice Reid & Mr. Justice Pyke

No 1404
Hebert
vs
Toupin
&
Garant

Def.ts mo. to be permitted to discontinue Cause without payt of Costs, inasmuches the Record has been lost, and the Pltff under the necessity of recommencing the action. —

Mr Bruneau for Defts — says he has called on his Garant & cannot consent to the motion —

No 1472.
Cutting
vs
Mayo —

Def.ts mo. for dismissing Cause for want of proceeding —

Mr Green — says the parties have settled —

Tuesday 3d April, 1827.

Prest.

Ch. Just. Reid, & Mr Justice Pyke.

No 161
Earle
v
Cuvillier
& al —

on Pltffs mo. to reject certain pleadings filed by Defts Counsel

Walker for Pltff — the first pleads irregular as being a demurrer to form & alledges reasons to the merits — so also are the 2d & 3d pleas of Defts —

Mr Beaubien for Defts — If there are reasons for the demurrer pltff may be considered to the merits, then are the demurrer pltff may be considered to the merits.

No 16 & No 286.
Desrivieres
vs
Ayers
&
Johnson Gnt
in
Two Causes

On Pltffs mo. that Mr Rolland be called in as the Garant of the Defendant in the 1st plea of Mr Johnson the having guaranteed Mr Johnson's Title —

Mr Bourne for Defendt contends that he is not bound to call in any of the Garant than the one he has called — moves that the Enquete be declared closed —

No 1229
Moorhouse
Mot —

on Pltffs mo. to change name of Auditeur to Arbitrators —

№ 106
Pothier
&
Eager

On Pltff's mo. on Pothier's to produce the original of a certain paper in their affirm as Defendants of Notarial act of late Mr Chaboillez

The acte is not an acte authentique —

Boston for Defendt — The paper in question was intended to be an authentic act, but was never signed by the notaries, nor is there any acte de dépot of the paper, & therefore it does not appear under what it authority it came into the possn of the late Mr Chaboillez —

—

№ 1232
Ayers
vs
Hodgate

On a rule taken on one John McKenzie one of the securities in this cause, why, the Security should not be amended by inserting the title of the Cause correctly in the body of the act —

Mr Boston for Mr. McKenzie — The intention of McKenzie was to give Security for one Wood, but for the Defendt in this Cause — the case cannot be made to apply to the Instr already given in other Cases; as this is substituting the name of another Defendant

—

№ 1354
Lacroix
&
Eager
&
Contra

on mots —
Principal action on a promy Note —
Bramham for Pltff — moves for Judgt —
Mr Boston for Defendt — The Pltff by his answers to pits contains admits having received monies on acct —

The

The Incidental demand is for work done & Plff as a Carpenter — The Defendt pleaded prescription and payment, but this plea was over-ruled, & the parties were ordered to proceed to proof — but the Plff has not substantiated his plea of payt — & Defendt is entitled to the amount of his demand

Mr Beaubien for Plff in reply — Without waiving the plea of prescription, there is a plea of non assumpsit — the Plff plea of Prescription being dismissed, it is the same as if it had never been made & as if no proofs from the Record — it cannot be decided — There proofs Lies at Defendr

Boston for Defendt — it has been determined that when the plea of prescpn is dismissed the payts set up by Defendt must be proved — The Defendt has avowed the Debt

Lovell & Lewis

—

Wednesday 4th. April.

Prest

Ch. J. Reed & Mr Justice Pyke. —

—

No 4 bis.

Gibbs

vs

Ross

No 274.

Deschamps

vs

Leduc —

Boston for Plff moved to be permitted to proceed ex parte, for want of a plea — That action was founded on three different obligations for the payt of £25 each, that Defendt had made an inscription en faux as to one of these obligations,

but

but as this inscription in favr could not affect the other two obligations, the Defdt was bound to have pleaded thereto, and not having done so the Pltff was entitled to proceed ex parte agt the Defdt in so far as regarded the said two Obligations —

Bidard for Defdt referred to the rule of practice by which a Defdt is bound to make his inscription in favr before he pleads, and although the inscrpn in favr now made affects one only of the three Obligations on which the action is founded, yet contends, that he was not bound to plead to a part of the Pltffs demand now and to that part of it afterwards which is founded on the Obligation now in question should the inscription in favr fail — that the Pltff had concluded by his action to the payt of one Specific Sum of money in regard of which there could be but one Judgment and one Execution, but if different pleadings and different Judgments were to be allowed there must be also different Executions thereon, which was contrary to the practice of the Court and inadmissible —

Thursday 5th April.—

Prest

Ch. Just. Reid & Mr Justice Pyke

No 1584
Burton
vs
Shaw

On report of the Surveyor
Mr Rolland for Deft. That the
Defendt ought not to obtain the line he contends
for, as he sold his land, and by the title he gives
it appears that he has described the limits of
his land, & cannot now beyond it — this land
is cut by a road, having 11 arp. on one side of
the road and 17 on the other, & so described by the
titles of sale made by Defendt — whence it wd
appear that by the report of the Surveyor the Defr
will have 17 acres in each side of the road, &
was never the intention of the original concession

No 2010.
Rolland
vs
Drummond

On Pltffs mo. that Enquete be declared
closed —
Granted — the Record not complete. the Defr
& a Writ partly wants —

No 274
Deschamps
et
Dedic—

Pltffs motion rejected —

K

Friday 6th April 1827

Prest

Ch. Just. Reid, & Justices Pyke & Minick

No 132
Kemp & al
vs
Sills —

On Defendt mo. to quash the Saisie, from the insufficiency and falsity of the facts stated in the affidavit —

Mr Bourré says he is ready to verify the facts stated in the affidavit —

No 327
Gamelin
vs
Beaubien

On Plffs mo to reject the pleadings of Defts as irregular, being a jumble of law & fact —

Mr Beaubien for Defts contends the pleading is right, & that he is entitled to assert the law & the fact in the same pleading —

No 1369
Campbell
vs
Seaver —

On Defendt mo. to have the enquete declared clos'd —

Mr Walker for Plff — the Cause has never been inscribed for Enquete —

No 125
Mc Intosh
vs
Chapman
& Contra

on Defts mo. to refer matters in dispute to Arbitrators —

No 26.
Miriam
vs
Leblanc.

On merits ex parte —

Henshaw for Plff — states action founded on a Judgt in the Superior Court, & brot here on a Ca. ad resp. —

L. Vigé for Defendt. This action cannot be maintained in this Court, & has been so adjudged in several instances — The debt here has been augmented by the Costs on an execution which are but an accessory of the principal demand —

Henshaw for Plff, no Judgt such as that referred to has ever been given — The case of a debtor flying from the Province to evade the payt of his debt —

—

No 68
Perrin
vs
Pasteur
et vir et al

On merits

action for board of the Minors of which Defendt is the Tutor —

Mr. Mondelet for Defdt — Defendt has filed no plea — but contends that the proof made will not extend beyond £18 — The action is founded partly on a Judgt for a debt due personally by Defdt which cannot be united with a debt due by Defdt as Tutor, in qt capacity Defdt is here sued

No 1504
Switzer
vs
Remillard
et
Provonsau

action en Saisie — asset on a Judgt in the Superior Court — ex parte — Pltfs cite cases Chartier & Dufresne. 1 Dufresne T. S. ap. 1826 — Tessier & Labrèque — 2 Mondelet. T. S. where proceeding has been allowed

№1478
Arnois
&
Ayet —

Action for damages In a servitude on the land sold by Defendt to Plff

Mr Bleury for Plff — the proof has been made to establish his right to damages —

Mr Bruneau for Defendt — The Plff cannot maintain this action, because the act of conveyance here was a deed of Donation, which was hereby to Plff who became bound in consideration of the enjoyment he had had of the land to pay the Debts of Defendt — to pay a small pension to Defendt — & was a natural obligation on Plff — That the reserve in question was for wood of no value & the cutting it down was more beneficial than otherwise to the land. as all wants the value of the reserve has been estimated by competent Witnesses at 200tt — and it is not worth more —

Bleury for Plff — The Defendt is not a poor man but has a land on wch he resides & has a good house built — The evidence of the value of the reserve is better proved by the Wits of the Plff than by those of Defendt

№168.

Gillespie val
Spragg val
McGill val
& Hutchinson
Interv

On Mr Bedard's motion on behalf of the Intervening party to be allowed to file certain papers wch have come to his possession since the Enquête was begun — in order to prove the existence of a partnership between Wm Hutchinson & the Intervening party —

Mr Swell for Pltff. The affidavit filed by Defts
party is not sufficient to let in the papers proposed

—

No 2100
Malbouf
Chiron

action of Separation de corps & de biens
Report of Practicien —

Mr Rollin for Pltff prays Instr. thereon in the
terms of the conclusion of the declaration —

Mr Christy for Defdt — The practicien has
fallen into an error by saying that all the
property of the first community of the woman
fell into the 2d community we Defend. The
effects of the first community were sold, and shortly
after the Pltff intermarried with the Defdt and
the Notary founds his opinion on a supposition
that from the short time that intervenes between
the sale and the 2d marriage, that the Pltff had
in her possn and not into the Community w
Defdt the produce of such sale — The Proces
Verbal of Sale, of how is material to ascertain
the value of the effects is wanting —

Rollin for Pltff — The presumption is that
the property in question fell into the 2d Community
as it does not appear the money was employed by
the Pltff in any other way — The Defdt refused
to appear before the Practicien to contest the Pltffs
rights —

№465
Rolland
Poirier

On Defendt mo. to continue the inquête
with usual Term for the exn. of Mr Roy
now absent from the Province —

Saturday 7th April.

Present

Ch. Just. Reid, & Justices Pyke & Uniacke

№1908.
Warwick &c
vs
Fisher &c

On Plffs motion for a Ca. Sa. agt Defts
Blenry for Defendt — moves to be permitted
to plead in writing. —

Mr Boston for Plff — the Defendt too late — the Case
was inscribed on the enquête book, no Wits were
produced & so marked on the book, and the Defts
cannot have a day for pleading further —

№
Tessier & Lavigne
vs
Sarrault
&
Sarrault opt

On Plffs motion for the appointment
of a Sequestrator to the property seized
and claimed by the Defendt — 1 Ryan 114 —

Blenry for Defendt — the motion cannot be granted
there is a contest between the parties which must be
first decided — & enquête prayed for the 9th —

№ 891.
Wright
vs
Bingham

Ore Plff's mo. for nomination of Arbitrators
Mr Grant for Defend^r — Plff has no right
to compel him to go before Arbitrators

№ 2496
Duplaise dit
v.
Duplaise dit

ments Ex parte —

Action en resiliation of a Donation
made by the Plff to the Defend^r for
having contravened the stipulation in the
deed of Donation ~~without~~ to hypothecate or alienate
the land given without their Consent. —

Mr Guy for the Plff — the Defend^rs have exchanged
the land in question with one Galipeau without
the consent of Plff — this ~~is~~ is a contravention to the
stipulation of the parties & operates the resiliation of
the deed. Fer. Dic. v^o Alienation — Id. v^o Prohibition
d'aliener — Rep^re v^o Alienation. p. 306. — 1. Dunpass
p. 4. Sec. 5. Traité d'obligation du Vendeur —
2^e moyen de resiliation is the non-compliance w^t
the stipulations in the deed, in not cultivating the
land as regards — 1 Domat des Donations — the
failure by Donee to comply with the terms of the Donation
is a cause of revocation. —
Rep^re v^o Donation 199

№ 1063
White. —
vs
Metzler.
&
Louisseau
opp^t

On opposition of Louisseau — & for Dist for his
costs —
Mr Guy for oppos^t — says his oppos^n has been
admitted, but he has held no Dist on it nor
for his costs — now prays Dist. —

The Court observed that a Dist had been already given on
the question & on ex amining the record found the Oppt's motion for
dist. of costs, on which a Dist was given —

№213

Chevallier
vs
Hicks

action for balce of one years house rent from 1 May 1824 to 1 May 1825—

Grece for Defendt action is for year 1824— & Defendt by error admitted a small balance to be due. but at enquete finding the error, he produced the recepts for money paid & on Pltff on faits & articles — by his answers, he says, that 12.10 is due apart for 1824 & £ for the year 1825— but the recepts produced must apply to the year 1824— Obl. № 920— № 566.— The Defendt has a right to imputer the payts as he shall see fit & certainly in favor of a debt due —

Abbott
Curtis

Lacroix for Pltff— the answers of Pltff shews the real state of the payts made & shews that there is a balance due to Pltff of £17.10—

—

№1223.

Jerome
Robertson
vs
Robertson
opt

Ou opposition afin d'annuller—

Grant for Oppt— oppos— founded on the principle that there has been no discussion of the Defendrs moveables — facts are proved —

Roi for Pltff. opposition without foundation — the moveables of Defendt were already under seizure at the time of the issuing out the exon in this Cause & on the saisie and as the moveable it appears there were two or 3 small articles, of would not pay the costs of the sale, in consequence of of the Sheriff made a return of Nulla bona, of return is

the

is the only legal evidence in this case & the testimony of the witnesses cannot avail aft it.—

Grant for Appt. It is enough to shew that the effects of the Defendr were under the seizure of our Sheriff, & the Plff in this cause ought to have compelled the Sheriff to proceed to discuss the effects seized by proceeding to the sale of them—as their effects may be more than sufficient to pay the Plffs debt.—

—

No 1121
Spalding
vs
Seaver

On Report of Experts—
Sewell for Plff moves for hom. of report
M Barton for Defr contends that the sum allowed is extravagant,

—

No. 1430.
Auger.
vs
Piette

On Defendr motion to revise and amend the Interlocutory Judt rendered in this Cause—

418. M Bedard for Defendr this is an action tending to its conclusions of a Compte & partage, / Pigeau 418. 419— The Plff does not ask for a Judt entitling him to any certain Share in the property in question, but a general demand to render an acct— 854 An arrêt may be come aft & set aside. Obl. No 854. 855. when more is given than is demanded— when all the points in dispute have not been decided upon als. No 856.

(27)

2 Pigeau 413

They minor heir cannot be presented by the Defendt. as his Tutrix in an action de compte & partage, but a special tutor shd have been appointed to him. Poth. Comtie No 627. 2 Pigeau. 413. & 415. — Dinoz. Vo Partage No 12. —

Mondelet for Pltff — The Defendts being in default are not intitled to make a motion in the Cause — The Defendts have rendered out & have submitted to the Jurisdiction of the Court, & cannot now come of their own act —

Monday 9th April 1827. —

Enquête-day. —

Tuesday 10th April. —

Enquêtes. —

Wednesday 11th April

Enquetes

Thursday 12th April. —

Enquetes

Friday 13th April.

Good Friday.

Saturday 14th April 1827.

Pres.t

№473.
Rolland & ux
vs
Pothier. —

On Plff's mo. to be permitted to make a new conclusions, for the capital of the legacy for the interest of which the action was instituted

Bidard for Defend.r says, he does not object if the same can be regularly granted under the present course of proceedings. —

1. Pigeau 330

M.r Rolland, cites 1 Pigeau 330 — N. Demol.e de Conclusions № 81 — Rép.se de conclusions. — p. 352. —

№1819.
Robert
vs
Fournier

On Plff's motion to be admitted to give Security —

M.r Ross for Defend.r The cause was in default & this motion could be made —

№2306
Rutherford
vs
M.r Kay —

On Plff's mo. that Defend.r be held to answer over to certain Interrogatories proposed to him by Plff

Rolland for Defend.r The answer of Defend.r that he does not recollect, is sufficient — as to the 24. 25. & 34.e Interrog.s the Defend.r declines answering 1 Pigeau 240 — as to 24.e Interrog.e it is answered fully. —

No 10
Lepropon
vs.
Charbonneau
&
Hubert. T.S.

On Pltff's mo. of the 11th inst. that T.S. be held to pay a sum due in his hands to Defr since he made his declaration —

Debartzch
for Duret
Volontaire

On mo. to correct entry in the report on the Petitions mention for a title from the Sheriff

Mr L. Vigé contends that the Pets cannot be allowed to change the conclusions. —

No 2121
Jervis & Lavigne
Sarrault
&
Sarrault
opt

On Oppost mo. to be permitted to file certain affidavits on Pltff's motions for the appointment of a Sequestrator —

Mr Grieve for Pltff — application too late after cause in delib. & denies contains nothg in answer to Pltff, on contrary supports Pltff's mo. —

——

No 1657
Gauthier
&
Shaw

On mo. on part of mis en Cause for delay to plead, as the Inventory of the Estate of Shaw has not yet been made —

Rollin for Pltff — the Defrs have had time to make the Inventory, but they Defendrs. ought at all events to take up the instance, as they may afterwards renounce —

№ 930
M^c Donell
v
Dunn —

On Pltff's mo. to be permitted to file
2 bpth. not in his poss^n - when action was
instituted —

Beaubien for Pltff. The Defend^t has not yet
pleaded & no inconvenience can arise to him by
filing these papers —

Mr Grant for Defft was not present

№ 257
Turgeon
v
Villiot
&
Bone Gar^t
&
Lacroix

On Pltff's motion that Lacroix answer
over to certain Interrog^s proposed to him
& to reject certain parts of his answers
to other Interrogatories —

M^r Roi for Pltff. the 2^d Interrog^y not rightly ans^d —
the answers to 14 & 16 Interrog^s —

M^r Lacroix says. that his answers are clear & positive
& not suspicious. —

№ 574
Maynard dal
v
Smith —

On Pltff's mo. to reject the plea pleaded by
Defend^t —

M^r. Salmon for Pltff — the defend^t has pleaded
law & fact together & it is irregular —

№ 319
Gordon
v
Gillespie dal

On

№ 547
Heaps
v
Girard

on Defft's mo. for delay to plead till
opht. be filed by Pltff

Mr Buchanan for Plff all the exhibits of Plff means to produce are filed, except a note of hand in the poss^{n} of Defend^{t} — & ye Plff could not produce

No 97.
Pothier
Lamontagne

On Plff's mo. that Defend^{t}'s counsel answer to the 3^{d} Interrogs —

No 1885
Robillard
vs
Rabyoul

on Law

Action of Debt on Contract —

Mr L. Vigé for Defend^{t} The work done by the Plff was insufficient & fell down — & to avoid all contest the parties submitted their difficulties to Arbitrators who on 18 Jan^{y} 1826, made their award — wh was not favorable to Plff, as it shows that the Plff has not complied with his Contract. — Domat. on Compromis, p. 187. 2 Dousse. on arb. & comp. No 75. p. 717. No 76. 77. & 78. 3 Denis^{t} v^{o} Compromis. — No. 9. & suiv. Pigeau. p. 24 & 25. Rep^{e} v^{o} Arbitre — to shew that the necessary formalities of the Compromis have been complied with —.

Mr Bedard of Counsel for Defd^{t} the Plff ought to be held to pay the penalty before being allowed to come against the award of the Arbitrators. cits can. Burtlet. vs Burtlet 20 Fev. 1806 — where the Court ordered the party to pay the penalty — Dic. For. vo Sentence Arbitrale — Lacombe. v^{o} Compromis. Rep^{e} vo Arbitre. p. 557. 1re col. —

Mr Roi for Plff — answers, that the compromis not signed by the Defd^{t} is not his act or deed — that the Arbitrators named a third without having deferred an opinion

That the third arbitrator had given his opinion before he was named — . That two of the arbitrs had a direct interest in the award they made — The arbitrators heard the Wr without the particip^{n} of the Pltff & particularly of the Curé —

1. On exam^{n}. the Compromis, no power is given to chuse a third without a difference in opinion — q^{e} was don here, q^{e} is a cause of nullity — Dic. Depot. 1re Arbitre. Domat. liv 1. tit. 14. sec. 2. N° 6. — Dr Dr. pub. liv. 2. tit. 7. Sec. 1re N° 5. —

as to the allegations of fact as the conduct of the arbitrators there must be established by Wr —

That the penalty cannot here be insisted upon except where the party comes as the Sentence arbitral but in this case the nullities in the Acts are excepted, as in the cases above cited — this is a clause de rigueur deemed enfrced. Domat liv. 1. tit. 1. Sec. 4. N° 18 — des clauses resolutoires & des clauses penales ne s'executent pas à la rigueur Dic. Droit clause penale. — Rep. co. verb. 554 — N. Denizt. v° Compromis §. 2. N° 6 —

M^{r} O Sullivan of counsel for the Pltff. the principle of penalité cannot be applied here — Pothier de Proc. v^{e} arbitre. N° 61 — But the act of Compromis here is a Nullity — The power was given to two arbitrators only, with power to name a third only in case of difference of opinion, but such a third was appointed without any difference in opinion 4 Tab. Book. 6 tit. Dig. where three are appointed

and

and proceedings had before that only – this was held irregular, because the last days, that had the third one been present he might have prevailed in influencing the opinion of the others –

L. M. Vigie. – The allegation that the Plff is not a party to the Compromis, is not made out – he has signed it as an acte authentique – The nullity of the 3e person adjoined in the making the award, cannot be so considered – It may have been the case that the Chevallier & Delorme, may have differed in opinion before Mr Fournier was called in, as he appears only on the 2e day of the proceedings, nothing appears to the Contrary – this is the Case of amiables compositeurs whose proceedings must be favorably considered they had a right to name a third, they exercised this right, but had they done this even irregularly yet this cannot vitiate the award given by the two arbitrators originally named – The allegations against the persons named as arbitrators are not apparent defects in the award and cannot be admitted as a ground against the exception pleaded by the Defendants – Even it were alledged that one of the arbitrators had not been present, it is not a ground apparent of the report which can exonerate the party from paying the penalty – Louisse – No 76 –

No 427
Lacroix
Lebeau

Action on note
L. M. Vigie for Defts –

Monday 10th. April 1827.

Pres.t

Sr Just. Reid
Mr Justice Pyke
Mr Justice Uniacke...

No. 265.
Metzler
v
Reeves. — On mo. to open enquete & hear evidence anew

No 373
Gibson
v
Moss — On mo. to submit matters to arbitration —

No 450
Desaunier
v
DeBoucherville
et al — Action en partage —

On mo. to reject the pleadings filed by Defts — Mondelet for Plff — the plea here is called peremptoire whereas it ought to have been a la forme & comes on too late to the merits — Gurney v Johnson — Wragg. v Dwight — alteration v to debenture of 1794 — Cates v. Knight — v to the time the plff took poss.n of the land — Roi v Willard & Derriviere Beaubien —

Mr Ogden for Defendt the mo. founded on a wrong principle — it is said that in no case will a demurrer apply for a defect in law, this is error, it will apply for as well as in a defect of substance not sufficiently set forth —

№16 & №826

Desrivieres & Ayers vs Johnson Qq.t

On rule to shew Cause why a Surveyor should not be named to draw line of division between the Seigniory of Monnoir & the township of Stanbridge —

Mr Beaubien for Plff —

Mr Bourret for Defend.t consents that the parties should proceed to proof as already ordered, as they must visit boundaries between the Seigniory & Monnoir & Stanbridge, if it can be proved — but the Plff cannot convert this action into an action de bornage,

Mr. Mondelet for Garant — opposes, motion as now made — there exists a bornage already made about 30 years ago: according to it he possesses, this line can be verified & the possession of the parties regulated accordingly. — .

№874

M.c Donald vs Maranda

On Plff.s mo. that Defd.t be condemned to pay possession of his Chateau or that Experts be named to ascertain amount thereof —

Mr de Vigé for Defd.t did not appear —

№2312

Warwick et al vs Raymond

On Plff.s motion to obtain a copy from the notary Gamelin of a deed of Sale made by Defend.t to Mess.rs Molsons, of the Steam boat in question & certain wharfs, as being necessary to make evidence in the Cause —

№331.
Lo Torrance
to
Peddie

action on ~~a bill of Exp. of 18 Dols.~~ cut by
one — by Indorsee agt Indorser of a bill
of Excha. —

Mr Fisher for Plff bill returned protested for
non acceptance & non payt — there is a note at the
bottom of the note saying that the ~~Drawer~~ holder
insure to the amount & charge the amt. to the
Drawer — but this was a discretionary not
not a condition. Bayley on bills. p. 25. 2 Ed. 4 —
this is to be considered as no part of the instrument
but detached from it — 5 Term. Rep.
Not stated when & when the Insurance was to be made
& carried on the face of it almost an improbability to
effect it — but this cannot alter the obligation of
the indorser — whether the insurance was made or not
the Drawer could not avail himself of this clause — nor
can the Indorser, who is in law as a new Drawer —
the Drawer could have no interest to have this insurance
made, as he eventually must have paid the whole —
& the indorser cannot be in a better situation — the
indorsement constitutes an absolute responsibility
to pay on dis honor —
Defend withdraws demurrer to Decl & therefore
argument now rests on the pleas to the action
— Walker for Plff — the N.B. at the bottom of the bill
is not noticed in the Decl — but it is set up in the
plea of per. Excep. — There is a distinction between the
2 pleas of exceptions as to the laws & the Customs of merchts
in London — # 1st the words in question form no part
of the Contract, but are words of option & not imposition

But this note or memorandum at the bottom of the bill can have no legal effect on the Plff — because —

2. That if they formed a condition, they ought to have been set out by Defdt— in his plea &c— a sufficient conclusion thereon, & liability of Pltff—

3. If at all obligatory, is the object of a separate action—

4— If a covenant, it must be considered as a mutuum pactum, & not obligatory —

5. If even a Covenant— it cannot avail him, no damage being shewn from its non-performance

6. That it could not be carried into effect, the object being a voidable Insurance, if not absolutely void —

7. If the Pltff— had a right to make the Insurance, it could enure to benefit of Insurer only & not to the benefit of any other of the parties to the bill. —

8. Such insurance was impracticable by person in Situation of pltff & whose residence would not enable him to effect it —

This is an attempt to engraft a separate and distinct obligation on the right of the indorsee, & cannot discharge the obligations of any of the parties to the bill — it would tend to destroy the effect of bills — Bailey. p. 35 — Chitty on bills. p. 47. this may be considered as a parole agreement & cannot be admitd to affect the terms of the Note. 3 Comp. Rep. 57. — Bailey. 25 —

565 3 Chitty's Comm. Law. p 565 — a bill of exch. ought to offer a sufficient security for its operation & pay. —

The words added, are not a condition precedent. 1 Chitty 312. on Pleading — or the words of constitute a condition precedent.

Com

Com. Dig. title (A) No. 2. & No. 6 — Powell on Contracts p. 267 — as to conditions —

The words form a distinct & separate contract, & ought not to impede the operation of the bill — it is a mere mandate for the restitution & guidance of the holder — the Defendt. here states no damage resulting from the omission of holder nor any consequence to exonerate the party from paying —

The oblign of the Defdt. here is independant of this mandate to pay the bill, seems his redress for the failure of party to insure — Thompson v Renton Doug. 690-691 — Jones v p. 684 more fully stated — as to the different kinds of Conditions of Covenants — also 1 Durf. East. 645 6 East. 564 — where the contract is complete without any condition being stated — case of a Carrier — Mucklestone v Thomas. Bulles's Nisi Prius — Id. also. p. 496 — Thomas v Cadwallader — the reason that the damage sustained by the breach of one Covenant may not be adequate to the damage sustained by the breach of the other. Here no damage is set out. —

These words are a mere nudum pactum, not at all obligatory but merely directionary to be observed by holder & as a distinct & separate transaction & not binding as part of the bill — no consideration appears for this unnecessary undertaking — the absolute obligation of the Drawer here was that the bill should be honored — Ch. Com Law. p. 63 — for there was no reciprocity — as no means furnished to enable Plff to insure — the Drawer was to have the benefit 1 Fonb. on Eq. 326 —

It is necessary to state the consideration in an action on a contract not under seal, for if it was made to prove it Chitty on pleads. 294 —

2 Bos. & Pull. 79. 3 Ch. Com Law. 561 —

7 Jour Rep. 350 —

No damages are stated to have resulted from the performance of this Contract, if so considered. — Poth. ch. 138 — Powell on Cont. 231. 232. —

This contract could not be carried into effect — the condition being voidable, if not void — the only kind of Insurance that could have been contemplated could not have been of the Bill of Exch as such, but of the Ship & cargo as a lien on it for the amount of the money advanced — none of the parties could effect this as they had no interest insurable in the Ship & Cargo — The holder of a bill of Exc. could not have acquired an insurable interest in the Ship & Cargo. nor as to entitle him to recover in case the Ship were lost — 3 Chitty Com Law. 453. 5 T. Rep. 709 Cameron v Anderson — as to insurable interest — the equitable interest of a Partner is not such as to entitle party to insure for freight of a vessel — nor was the interest of Owner sufficient to entitle to insure 1 Bos. Pull. 313. 316 — a transfer of bill of lading was 1 Mk. & Selw. p 39 — money advanced to Capt. abroad is not a subject of Insurance — Doug. 539. the freight of a Ship has not an insurable interest in the freight — 2 Vern. Rep. in Ch. 269. Goddard v. Garrat — without an interest in the Ship or Cargo, the person advancing money to Ship has no insurable interest — 5 East. 316 — the interest of a commissioner broker allowed but not further — Park. 404. 405 — some certainty in the interests & profits arising from the arrival of the Ship — here Plff could have none — 3 Bur. 1394. When bottomry interest is insured, it must be specially stated in the Policy — here the interest of the Ship & Cargo was in the owner of the vessel — Park. 14. 3. Chitty Com Law 455 the only case q's appears to favor the right of Defts —

but this was under the particular usage of a particular trade. That that was respondentia interest charged on the money advanced -

The insured can recover only one satisfaction, nor more than he has suffered of damage - now here this was an indisement held out to accept the bill of, could inure only to the benefit of the holder. The would still have had his recourse of the parties to the bill - Doug. 468. Lowrie & Purdies similar case to present in many points -

Doug. 97. 9 East. 426. 1 Bar. Ald. 581 - a master of a ship has no lien on the ship for his wages, nor for monies borrowed to prosecute a Cargo. Therefore no insurable interest for it -

6 Taunt. 234. similar case to that before the Court - the features of the shew that such insurance would have been void -

If such an Insurance could have been effected it could not have been done by Pliff, from the situation he was - he is a remote insurer - the Ship may have been sailed & have arrived before Pliff or the bill - he could not have given the necessary information to effect an Insurance, as to the Ship the name of the master, the sailing of the vessel, or the nature of the risk - the port from & to which the vessel sailed - the nature of the Cargo - or its destination - these things are necessary in a Policy to be ascertained Park. 476. 477. time when risk commences to be settled

3. Chitty 477. 483 - Doug. 12.

Mr Buchanan for Defendt

It is necessary to look to the nature of the contract of exchange - it is a contract of mand atum & the person taking the bill bound to all the obligations of the bill - Pardessus. No 60. contrat de change. No 371 No 396 Laws commercial - same point 3 Chitty Com. Law 366. - commercial contracts are made wt Conditions - as a bill of lading - liable to insurance being made 2 T. Rep. 190. Smith v Lascelles - the party cannot accept a part of the Contract & reject the other -

The indorsor may make his indorst liable to a condition Chitty on bills. p. 179. 180 - also 3 Campb. Rep. 376.

This is a bill of hypothecation, assignable in the ordinary form - there is no set form of words for an hypothecation - Marshall on Insurance - Abbot on Sh. 152 153 - where a transaction of a similar nature is referred to - where the master may pledge the Ship & cargo for money advanced to him - 1 Stolb. 405 - on Navigation - 2. Pardessus. No 800 - Poth. Cont. à la Grosse Aventure No 30 - a hypothecation may be by bill or by bond - and are transferable like all negotiable instruments - Pardessus. No 785 - a memorandum in many instances forms a part of the contract - this not a loose memdm but found in the body of the instrument above signature of Drawer - Beawes Lex Merc. No 154. 156 157. 158 not unusual to make bills on conditions - they must be complied wt by holders there is nothing in this condition at Law is impossible. it was introduced for the benefit of the payee of the bill who became entitled to the hypothecation in case of - 6 Taunt. 235 - cited by Duff shews that

The

Condition
bottt was for the benefit of the payee of the money
& gave him a sufficient interest in the Ship
to effect the Insurance — The Stat. 19. Geo. is in
favor of Defts. the Insurance here cannot be considered
as a Gaming Policy — the general rule of interest
or no interest is laid down in 2 Bos. New Rep. 313
3 Bos. & Pull. 75 — Here the payee had the greatest
interest in the preservation of the Ship to effect an
Insurance thereon — had she been lost the payee sustained
1 Marshall 117. the owner of Respt. bond has an
insurable interest in the Ship — No 837. Pardessus —
The payee could stipulate that his interest should
be insured here by all parties — particularly in
a hypothecation contract — That although
consideration be necessary to support an obligation
it is not necessary to support a condition. Poth
Obl. No 139. — Even if Insurance were unlawful in
England, yet if it would be done there where it was
binding — This bill is an assignment of a <u>chance</u>
liable to contingencies being performed — it is lawful —
the consequence of the non fulfilment of the condition
must not fall on Defts — any more than it could
if the Drawer a maker of the condition who has
a right to avail himself of the non performance of it —
whoever undertakes a <u>Mandatum</u> must execute it —
& however undertakes a Mandatum must execute it —
she is liable for damages if he does not — The Plff
ought to have shown evidence of his diligence in all respects
on the bill, as well the dishonor as the insurance on the
bill —

Jr

It was not necessary to have stated any special damage from the non-performance, but it is enough to state the fact, the inference arises therefrom — Can it be the Defendt to be driven to an action when he has the option —

This condition is called a conventum factum — but in England as well as here the contract of mandatum is binding without consideration the taking the bill bound to the performance

The case in 6 Taunt. Rep. Scott — has not been positively determined as Chitty writes. it is on the contrary in favor of the Defendt — as he lent his money on bottomry —

Mr Walker in reply — This altho' a contract de mandat, yet it should have been shown that an injury arose by the non-performance of it —

The words in the bill wont a condition for any holder to insure for his own interest, not for that of the drawer a proviso only —

No hypothecation of a ship can be transferred, but by a respondentia or bottomry bond — a Capt may hypothecate the ship for a supply for the repairs of the ship or for a Cargo — Parke —

3 Chitty Com. Law. p. 540 — Captain has no lien for his wages or for money advanced for the ship —

Hypothn on a ship a cargo can be acquired only

19 Geo. 2. c. 37. 1 Bur. 489. v London Assurance Co where held that a factor has a lien on goods as long as in his possn & no longer — as to hypothecn when it holds 3 Chitty Com Laws. 313 — There must be an instrument in the nature of a bottomry bond — see Case of Doug. 468. case of Louisa v Bourdieu — where money advanced gave no lien on the Cargo — this case strongly opposite to the present —

The only insurance to be made here must have been Intent or no intend & that the production of the bill of Exch. should show be proof of intent this was the only proof he could make of such intent & yet ought to have been as proved — but this could not be available, as the right of property in the Ship & Cargo was the Owner

Altho' the party having an action may have the exception, yet he must shew that the exception would give an action, and the injury must be made to appear — Thus the Defend does not shew by his exception — This assent as to the bill of Exch. the right to do injury or at the law establish a damage — the contract as to insurance this cannot be by law implied & must be shewn —

Tuesday 17th April 1827.

Pres.t

Ch. J. Reid & Justices Pyke & Monk

No 152
Pothier
vs
Paliasso —

Action en exhibe de titres. —

Plff. mo. to be allowed to make new conclusions in the pay.t of Lods & Ventes on the titles exhibited

1. Pigeau 337. — Rep.re vo Conclusions. p. 352. 1.re Col. Poth. Proc. Civ. 39. & 40. —

Mr Bourré f. Defend. says he has confessed Lods.t —

No 1292
Scriver
vs
Stanley
Cur –
Scott mis
en Cause –

On Pltff's mo. to be permitted to adduce evidence to rebut that given on the part of the mis en Cause. –

No 1724
O'Keefe dup
vs
C. E. Monk
&
McKenzie &
al' mis en Cause

On mo. of mis en Cause for delay to answer to the Pltff's rule – until 1 June next –
Opposed by the Pltff, as delay in this case cannot be granted –

No –
Bagworth & McCord
vs
Peon &
Peon & oppt

On mo. to reject verbal testimony adduced by Oppost –
McCord for Pltff – The Pltff opposes verbal testimony to oppose return of the Sheriff –
McBeard for Oppost – The return of the Sheriff may be true but the evidence be admitted because he says, that he could not find any moveable property of the Defd – but he does not say that he ever went to the domicile of the Defd to enable him to make this report –
Mr. McCord for Pltff – The Oppt now too late to make his inscription en faux –

No 434
Spinks
vs
Bolland

On Pltffs mo. for nomination of a notre arbitr

No 178
U States Bank
v
Pearl

~~Maryland~~

No 1104
Tiddeal
v
Raymond
& al.

action on notes — submitted —

On report of Experts + on merits —

Mr Boston for Plff — on action for monies laid out beyond Plff's proportion on a certain joint concern between Companies of Propts of 2 Steam boats — There are two reports — one of Mr Fisher & Mr Gates, who report in favor of Plff to extent of $ — as to the report of Mr Jacquedon for the Defendt — That the report of the two Experts does not determine on the whole points in question, & puts entirely as to the extra time & trouble attending a longer voyage made by one boat beyond the other, and the Court can give an additional sum in damages for this object according to the evidence on record

Mr Rolland for the Defendt — The demand is founded on two Counts in the Declaration, on an account partially made, which has been set aside two other reports have been made set aside — the report here is merely that of Experts. & the Court is not bound to follow, but only as a means of rendering Justice in the Cause, but this report is in error, and the report of the third Expert is correct and must be followed — the affidavits of the two ~~reports~~ Experts cannot be admitted — but they at the time show the error of the 2 Experts — The expence of navigating the two boats was deducted before dividing the profits.

Mem

there is nothing in the declaration as to the extra expence of navigating, this was all in common — wages & victuals to the men & repairs to the boats were not in common — for this only the demand is made, but the report is for the extra-expence, which is not demanded by the action, as being a thing in common & already deducted from the profits —

The sum of £75 respecting which the Arbitrators differed in opinion, has been allowed as well as all the other expences although it cannot come within the contemplation of the Court —

Mr Boston in reply — the produce of 2 boats was in common — wine &c by Raymond, but there was never any allowance of expences, nor settlement of accts. as Mr R. retained what he pleased — the £75 demanded were for a Clerk, & was the Clerk of the boat of the Montreal

—

No 1333.
Cartier
Cartier

On report of Practicians —

Mr Rolland for Plff asks for Judt on the report —

Mr Ross for Defendt — The Practicians never called upon the Defendt in making their last report, but proceeded upon the matter in his absence —

Mr Rolland for Plff says, that as no motion has been made to set aside the report —

№ 410.
Gates &al
vr
Bland

on Law
action for money due on deed of Sale –
Mr. McMillan for Defend. action by Trustees but not mentioned that any deed of trust had ever been made by Garden & Aulds to the Bankrupts to the Pltffs –

Bleakley for Defend. says, that the demand is sufficiently set out, as the pltffs state themselves to be Trustees & sue in that Capacity –

—

№ 2491
Pte Roi. –
Aug. v Kuper

On Report of Arbitrators. –
Mr Mondelet for Pltff moves for Judt on Report with Costs –
Mr Boston for Defend – Does not admit the authenticity of the report –
Mr Rolland – the report was published as being the report of Mr Hatt, without any objection of Defend –

—

№ 2297
McDonald
v
Omara

action on promy Note –
Mr Ryan for Defr – one Roach a trader, who made purchases on credit from Pltff – on 31 Oct he purchd to amt of £11 g. 12. 8 & another £3. 11. 1 on last he pd a sum of £30 – leaving a balce 9th on first purchase makes up the note now sued – this Roach gave an indorsed note of Defrs payable in 4 months after date – Roach made payts – on account from time to time – on March when the Note bec due Roach deposited a quantity of goods in hands of Pltff –

9th

& when sold produced £119. 14. 10 nearly the amt. of first purchase — after the sale Roach called for the delivery of this note as signed by Defdt but it was pretended that there was some balance still due on other accounts to Plff — Roach was obliged to leave the Country, & the Defendt was sued for the whole note — Defendt interrogated Plff on facts & articles — Mr Scott admits that £300 & upwards had been pd. by Roach — but says, that he thinks the note was given for another purchase than that above mentioned — The Plff's do not shew that they had any other claims on the ~~Defts~~ of Roach under the above purchase — & the right of imputation is w.th the Debtor — Poth. Obl. Nos 528 — 529.

Mr Walker for Plff — The payts made on the note have been entered & shown on the open acct in the same manner. —

—

No 1118.

Ratté
vs
Brosseau

Ore Esp.s dilatoire —

Mr Grant for Defdt — The action by pothecary the Defendt claims the discussion of the property of the principal Debtor, the Plff having seized lands of the original Debtor to a greater amount than his demand —

Rolland for Plff — The Defdt does not indicate the property nor pay the money necessary for discussion the property seized has been partly sold & the part remaining is not sold on acct of an opposition which may lead to a longer discussion than he is bound to —

On Report of Experts —

№ 1754
Molsons &al
v
Clarke &al
&
E Contra

action for breach of Contract. —
Mr Badgley for Pltffs prays Judt on report
Mr Buchanan for Defendts the only
damage is stated at £22.10. The report supports
the Incidental demand to amount of £35.9.14.2 —
the balance they now claim wt. interest from date
of demand —

—

№ 9.
Ansell
v
Tidlar
&
Logan & Co

action for goods sold & delivd —
Mr Buchanan for Pltff — the goods sold to
Defts & the Defts Logan became solidairement
bound wt Tidlar for payt —

№ 2161
Cockerworth
vs
Brown

action for ~~broad & two~~ drafts & note of Defts —
Mondelet for Pltff — The only contest can be only
in regard of the amount of one of the drafts. yt
Pltff has proved his verbal testimony —
Mr. McCord for Defendt admits balce of note
& one of the drafts — but that drawn by Logan on Defts
is not proved nor admitted, nor can

№ 1124
Barnard
v
Cameron &al

action of assault — ex parte —
Grant for Defendt — no proof as to time of Defts
& the Pltff was himself a trespasser —

No 87
Lavoie
&
Gravelle
J. D. Lavoie

On rule for expon on Defts
Beaubien for Pltff. the Defendr has ~~admitted~~ pled 4 pleas, 3 of wh Pltff admits — that have been agreed to prove payt of balance — Pltff objects to their testimony & moves to reject it —

Beaubien for Defendr — the work Guerin is not interested, having been discharged by the mis en Cause by having ~~ensaisiné~~ his contract — Du. Droit vo Ensaisinement — Rspe Eo. Vab. —
on bill to answer

No 2441
McKay
&
Rutherford

Action on a draft —
Buchanan for Defdr — the facts proved by Pltff are not suffe to maintain action for the money Counts — the simple fact of paying a bill drawn by Defendr on him or he Pltff paid is not suffe — whoever accepts a draft is presumed to have money of the drawer in his hands to answer it — ~~it is not~~ 1 Pars. Rsp. 187. the Drawee by his acceptce admits himself debr 2 Ph. on Ev. 32. & 86 — 2 T. Rsp. 183. — Veazie vs Starkie Ev. p. 4. vol. 2. p. 276 — Pothr. Chanj No 99. 227. 231. & 97 —
Rolland for Pltff. the evidence sufficient to maintain his action. —

No 258.
Cuvillier
&
Cartier

action of account — Dissolution of Partnership

№ 893.
Beaudreau
&
Lemai &
Delorme —

Adjourn pr money paid on act of Depr

Mondelet pr Plff — the case was referred to Practicens, but their report is not sufficient, as they have rejected verbal testimony of the improvements & issues of an emplacement possessed by Plff — The case must be sent back to Practicens —

Mr Bourri pr Defend — admits the report of the practicens to be wrong —

Wednesday 18th April.

Prest.
Ch. Just. Reid & Justices Pyke & Unsworth

McKenzie
Ritchie
Ritchie &
Ens — Opps

On opposition afin de conserver by Ens —

Boston pr Plff on report of Experts made to ascertain the value of the property at the time of the bail emphyteutique, this value has been estimated by Plff at £59 11. 8 — being the Capital of the annual rent, as by the report of the Experts the party would not be entitled to so much. —

Cherrier pr oppot. Ens — The report cannot be homologated as not being in conformity to the Interlocutory Judgment — The Experts allow nothing for the buildings &c — were on the lot of land when it was leased to Marchands, — this appears by the lease itself —

Mr McCord for counsel for the pltff. the report of the Experts has complied with the Interlocutory as to the house q[ue] was on the property at the time of the lease. there can now be no question about it, as it no longer exists. +

No. 828.
Sobin
vs
Page

action of damages for having withheld the possession of the pltff's house since May last

Mr Detournoux for Pltff. the damages here are founded on three grounds, first because Pltff has not been able to deliver the house to the person he has leased it — 2° the difference of rent — 3° because Defendr has put a tin Smith into the house instead of a groom who used to occupy it — so that another tenant might not be disposed to give the same rent Moves to reject the testimony of Defdr Witr — and also to set aside the answers of Defdt to fait & art

Mr Grant for Defendt — pleads a renewed lease of the house by the Pltff upon terms different from the first. the Defendt has ex[a]d Pltff on faits & art, this answers shews enough to entitle Defdt to complete the proof by verbal testimony John Roach a wit — establishes the fact — & also that in consequence the pltff took off the ticket from the door of the house advertising it for Lease — 2 other wits — also Wm Nelson applied to Pltff for a part of the premises, who said he had leased it to Defendr

Mr Detournoux in reply, denies the declaration of fact alledged by Defdt

№ 1879
Mc Donald
vs
Greenfield

action for wages
Grant for Defdt. the Pltff has failed to establish the agreement – the bad conduct of the pltff during Defendt absence in Europe – & his leaving Defendt service before expiration of the contract –
Boston says he has made out his case

№ 273
Currie
vs
Greenfield

Action for wages
Grant for Defdt the sum demanded is far beyond agreed to, he was to have £85 – & an – but he demands £120 – withheld the furniture pt was lost –
Boston for Pltff – the services to be performed by pltff entitled him to the wages demanded –

—

№ 874
Pluckenet
vs
Bushnet –

action of Revindication for an iron harrow
Mr Vigé for Defendt – The Defendt never had the possession of the harrow, nor of the land on which it was left – he was not the person appointed as Curator to the land abandoned by the Pltff –
The Defendt has moved to reject the testimony of Dufresne, as being a relation – also of Badel & Dufut, on act of his ill-fame – That Dozinais is not a credible Wt as having a law suit wt Defendt – The testimony of the Defendt wit shews that Badel Dufut is a man of bad fame & not to be believed on oath –

Mr Bouton for Pltff – The evidence shews that the Pltff's action is well founded – That the testimony of Badel de Dufost has been supported by other witnesses –

—

No 1390
Ricard
&
St Denis

action for house rent – attachment for security of the rent –

Mr Letourneux for Pltff – The Defendt appears to fall into the acts of this affair disappearing the Defendt leared another store & carried his goods there – The parties having gone to proof – & the Pltff has made out his case – Poth. Louage. No 241 –

Mr Grant for Defendt – This action instituted before the rent was due, but he does not shew sufficient ground for it – There are only two Cases when the property is carried off from the house and in case of bankruptcy – but the mere circumstance of Defendt disposing of his goods does not give room for Saisie Gagerie until rent becomes due – The facts in evidence do not shew any fraudulent intention on the part of the Defendt –

Mr. Letourneux the facts shew fraud & acts of bankruptcy even in the conduct of the Defendant by sending away his good credit in fraud of his Creditors –

№ 2501.
Hitchcock
&
Streeter & al

action on 3 Promy/ Notes. —

Mr McMillan for Defdt — pleads. payt — compensation, & Incidental demand — The parties were in the habit of dealing together for several years past — The Defendt usually gave their Notes for their purchases, & made payts without taking up their Notes — The receipts here filed are dated prior to the date of the Notes —

Mr Driscoll for Plff — The receipt of £300 produced by Defendt is of no avail, as by the answers of the Plff on facts & articles it appears he got no value for it — & must have fallen into the hands of the Defdt by accident. —

—

№ 173
Pothier
&
Montagny

action en exhibition de titres —
hearing on law —

Mr Roi, the exhibition made by Defendt is not such as ought to be made; it ought to be made at the house of the Superior, & not in Court.

—

№ 1257.
Dawes
&
Bain
&
E contra

Action for note of hand & for rent, and also to rescind a lease made to Defendt —

Grant for Plff. The Defendt by lease was bound to stock the farm sufficiently to answer the rent —
Poth. № 204. Louage — Plff. waives action as to note. / The

The evidence adduced shows that the Defdt had not stock on the farm to pay the rent, and as to the rent 5 years past are in arrear — 2d. N°318.

Swezey for Defendt — The only evidence of the Plff's note is the answer of the Defendant; — (The note given up by Plff) — The action is for four years rent — the Defendt was to pay an additional 5/ for every acre cleared after the lease — but there have been only 10 acres cleared since the lease — in satisfaction of the rent the Defendt was allowed to clear part of the land to satisfy the rent, which Defendt has done — the 2d year he cleared 5 acres of heavy timber land worth 4 dollrs an acre besides other clearing of less value — 4t raises the rent to £7. 10 —

The Defendt shows by the P. V. of swezey that he had more than sufficient to pay not only one years rent, but all the arrears of rent —

On the Incidental demand the Plff was bound to clear annually 15 acres of the land for the use of the Defendt — but only 10 appear to have been cleared whereas 75 ought to have been cleared by this time this is a damage to the Plff, being deprived of the best parts of the land for a crop — It is besides in proof that the Defendt has cultivated the farm in a good and sufficient manner the Plff has not erected the buildings he was bound for the benefit of the Defendant —

Spencer in reply — The Defendt agreed to

clear

clear the land which the Plff was bound by the lease to clear — this was done wt a view to facilitate the Defdt & enable to pay his rent — The Plff were assisted Defendant occasionally with horses and oxen to enable him to cultivate the farm, besides several utensils such as plows, harrows &c —

No 510.
Stephens
vs
Knower & al
Thompson —

Action on promy note —
on lease

Mr Grant for Defend — the note is payable to Plff & made by Knower alone — the name of Thompson is on the note, but not as an indorser, as he had not a right. Defend is not sued on his aval, it was a Caution for the note —

No 97
Pothier
vs
Lamontagne

Action for house rent & for damages —
Roi for Plff demands £9 — for balance of wages — & £ damages for having left the house without notice — Pl. Damage — No 29 — 2 Bouvier p 65 — Denizt — & Rep. vo Congé & Bail & concludes to 3 months rent as damages — Denies from using the Defdt answers to facts & articles —

Mr Mondelet, without the facts & articles there is no proof of the lease — at all events Plff is entitled only to £9 for Rent — & as to damages none should be granted, no lease in writing nor proved —

№1312
Dabin
v
Jackson

Action for cutting down wood on Pltff's land

Bourret for Defendt — the trees cut are of small value, and the Defendt purchased them from the husband of the pltff, and were marked at the time. — the whole damage at all events does not amount to more than 5/ each tree

№327
Gamelin
&
Beaubien

Hearing on defenses au fond en droit —

№2010.
Ross et al
v
Drummond

action for sundry groceries & fire wood sold

Walker for Pltff — action of Defendt — as one of the Partners in a Steam boat — for sundries furnished to the mariners of the Steam boat who were allowed to take up certain articles for their use —

Grant for Defendt — one Nelson has been called as a witness in the Cause, was ex amd. by pltff. & Defendant declined cross-ex amg. him, but his deposition is wanting this appears by affidavit — But there is no proof made in the Cause. the only thing stated is that one Nelson was heard to say, that he had got the wood from Pltff

— —

№2025.
Stuart et al
v
Rickner

Case submitted.

№ 1232.
Peter Row
v.
D: Lukin

Action for damages for breach of Covenant.
Defend. did not appear

Thursday 19th April 1827.

Pres.t

Ch. Just. Reid, & Just. Pyke & Uniacke

№ 1840.
Dufresne
v.
Berthelet
&
Perrault

Judg.t on Opposition.—

№ 1954.
Tullock
v.
Chagnon

Inscription en faux maintaines.—

№ 2274
Auge
v.
Pothier

Action dismissed.—

№ 2282.
Colombe
v.
Pothier

Action dismissed

№ 866.
Allen & al.
v.
Armstrong
& Contra

Interlocr. admitting Def.s to further proof.—

No. 1318. St James v. Charbonneau et al' —	Action dismissed.
No. 1055. M. Niderzal v. Bonner —	Judgt for Plffs.
No. 1828. Girard v. Parsillier Garant —	Action dismissed.
No 375. M. Killip et al v. Gendron & Gervais opp. —	Opposition maintained.
No 1694 Lukin v. Casson E contra —	Interlocutor —
No 1182 Cuthbert v. Delanaudiere et al —	Interlocutor —
No 1832 & No 1838. Finchley et ux v. Consigny et ux & E Contra	Report of practicians sent back

№2448.-
Arnoldi v Perrault & Curtis & al } H — action dismissed —

№1993.
Perrin v Pasteur } H — On motion of Bail Motion granted —

№1337.
Evans & Gregory & al mis en Cause } H — action as mis en Cause dismissed —

№1354
Lacroix. v Hogue. & Contra } — Judgt —

№1118.
Ratté & Brosseau } — Dilatory plea dismissed —

№173.
Pothier & Montgny } H — Plea of Exception of Puff dismissed —

№540.
Stephens & Trowers & Thompson } — Thompsons plea of Exceptions dismissed. —

No. 97.
Pothier. —
v.
Lamontagne

Judgt for £13.10. including three months rent for having left the house without notice

No 828
Robin.
v.
Page

Judgt for Plff

No 1312
Dubin
v.
Jackson

Judgt for £11.5

No 1124
Barnard
v.
Cameron &
al

Judgt for £100 — damages —

Friday 20. April 1827.

Prest
The Ch Just. & Justices Pyke & Uniacke

No. 473.
Rolland
v.
Pothier

Motion for new Conclusions granted

No. 1487.
Arnois
v.
Ayot. —

Action dismissed. —

No 1430
Auger
&
Piette —

Rule discharged for rescinding Interlocy

No 2035
Blestein
&
McKenzie

Judgt for Plff

June Term 1827.

Friday 1st June.

Pres.t

Ch. Justice Reed & Justices Fowler & Pyke

№ 2319
Warivoda & c.
v
Raymond

On Plff's mo. that Notary be held to deliver a copy of a certain deed to him.

№ 168.
Gillespie &al
Sprigg &al
&
№ 353 & c.

Continued to 4th

№ 1247.
Hunter
v
Donegany

En Delib

№ 1054 & 170
Deschamps &wife
v
Comm.rs of Lachine Canal

On Report of Experts.
Boston for Plff. demands hom. of Report of the 2 Experts
Mr Sewell for the Defendts. This cause is now to

now to be heard on merits as well as on Report—
this action of the Comrs cannot be maintained—
the property in question belonged to His Majesty
& not to Pltff—

It is a principle of Common Law of France, that
a certain extent of ground should be left as a beach
on all public navigable Rivers 4 Bouvier p. 412
2 Vol. Edit Laws p. 126 — in regard of the distance at
which piers were to be made from the River — The
Crown reserved by the grant to the Co of Merchts of
the Island of Montreal —

Mr Grant for Pltff — The reserve never acted
upon as stated by Defts & it is in evidence
here that a great part of the lot in question
is beyond the present mark & beyond
the limits of the law cited by Defts —

Bolton for Pltff — The Law here is merely a
private agreement between the Crown & Indian
Co — & must be proved —

Saturday 2d June 1827

Present

Ch Just. Reid, & Justices Fowler & Pyke

No 587
Duchenois
v
Roi —

On motion to be allowed to take up the cause in the name of the heirs of the Pltff deceased
Bedard for Defdt — the debt demanded is a debt of the Community between the late Pltff & his wife and the Pltff. ought to take up the cause in the name of the mother as well as of their father —

No 1294
Abbott
v
Lafond
&
Reeves mis en Cause —

Pltff moved that Rule be made absolute the mis en Cause did not appear —

No 257.
Turcotte
v
Elliot
&
Bowie Gart
&
Lacroix —

On rule to renew Exon ac Lgt —
of the widow & heirs of the deceased Elliot
Roi for Pltff. having the annexed Gart. plead that under a power of Attys he received the money from the Sheriff's vendr. of the Pltff —
The Pltff denies that the Garnd was ever authorized by law to receive the money in question, and the power of Attys pleaded by Gart — is not sufft — it is informal and insufficient —
Mr Dr said that the Pltff has been paid by certain proceedings

proceedings had which he states — 1st That parties had settled all their matters together — 2d that Pluff had given a receipt to the Intendant of the money — 3d That Gant had a claim to set up against Pluff — This defence is contradictory & cannot be admitted — as compensation last pleaded would admit the existence of the debt — But the settlement in question does not comprehend the debt now demanded, nor is the receipt in question a receipt of — can apply to the same debt — or to the compensation — The award made between the parties must bind Garant — & by this award the Gant appears to be indebted to Pluff —

Mr Beaubien for Garant —

1. The Gart. was the procurer of Mr Tompson — and the power of Atty although informal, yet being signed by Mr Tompson is sufficiently indicative of the person of Dr. Tompson — That the power has given is general and not limited to any particular case, but to all the intents of the Pluff in Court —

That Lacroix having received the amount of the Pluff's Indgt from Bowne, the Gart of Talbot the money to Lacroix, who thereupon gave him a discharge — this will discharge the Rule —

Lacombe vs Paremont Rep. vo Payment p. 16. — Poth. Mandat No 87. No 88 Dunop. vo Payment No 20. 21 —

The award made 21 Sept 1825, between the parties gave a discharge to Lacroix for all sums he had previously rec'd on account of Pluff & of that no question was included —

By the act of 11 March 1822 the Pluff

acknowledges discharge

discharges the heirs of Wilson from all demands whatever —

The plea of compensation, if it is a payment, is here also made out —

No 701
Raymond
Sword
& Garand

action petitoire —

Blanchard for Defendt contends that action ought to be dismissed, the possession of Defendt is equal with that of Plff and his title also, that he has put Downie his seller in the cause, who has put M Richardson in suit as the arrant Garant — as it appears that 2 Deeds of Concession had been given by his agent for the same land

M Sol Genl for the Garant — Raymond possessed the land before he got a title — Downie knowing this represented to the agent of the Govt that the lot of land so possessed by Raimond was waste land & without improvement — & got a title for it — but on the representation made to the Agent by Raimond of the imposition so practised, the Agent gave a concession on the same day to the Plff — But Downie afterwards gave up the deed so obtained, & acknowledged that it had been wrongfully obtained — & the fact is proved by other witnesses who knew the premises —

Blanchard on another objects to the testimony of McBean and others as not being relevant to the issue of the Govt —

№225.
Window
v
Jos: P Bouchet
De la Brogerie

On plea of Exception — Mis nomer —
evidence heard — & hearing arguments of plea
Bleny for Defendt contends that the true
name is Mary Chte and not Joulte —
Mr Sweeny for Pltff — The Defendt should
have filed her exhibit papers as best proof — Archbold
p. 353 — The Defendt known as well by one
name as another — 6 Taunt. p. 530 —
Bleny in answer — The Pltff by admitting that
Defendt is as well known by name of Joulte as by
name of Marie Charlotte admits the fact that
she is called Marie Charte

№472
Chapman
v
Foucher

On question of law
Heard —

Monday 4th June 1827.

Pres.t

Ch. Justice & Mr Justice Fowler —

Judge Pyke absent from indisposition

& Judge Amaker at Three Rivers —

No 1992
Willard
Dewitt

On Defend.r mo. to dismiss cause for want of security for Costs —
Pltff did not appear —

No
Bradbury & Co
to
Woolrich
&
Woolrich opp.t

On Pltff.s mo. that Opposition be dismissed as being a second oppn. for same Cause - already adjudged upon — 622. 2 Vol. Lit. 35 — Jousse —
Mr Bleury for Oppos.t — The Oppos.n having been discont.d he has a right to renew it, as it has not been adjudged upon —

No 274
Deschamps
&
Leduc

over to 9th —

No 710
Mack
Atkinson —

on Defd.t mo. for alimentary allowance
Pltff says, that Defend.t has admitted he had property to greater amount than £10 —

No 168
Gillespie & al
vs
Spragg & al

Ass Defendts mo. to unite sundry Causes where same Defts are parties —

Bidard for Defts There can be no difficulty in uniting the Causes in wh a Saisie-arret has been sued out in the hands of Mr Lumb —

M Lowell for Plffs It is clear that these actions cannot be united, being brot by different persons for different rights of action

Mr Sol. Genl for Plffs in some of Causes — The Interspatz has pronounced to ye. Clerk & now too late to unite these Causes —

No 319
Jackson
vs
Comrs of Lachine Canal

&

No 340
J. Hunterbire
Comrs. of Lachine Canal

&

No 354
B: Pizzon
vs
Comrs. of Lachine Canal

3 Actions for damages done to Plffs. land by the waters of the Canal —

Beaubien for Plff contends that in estimating the damages the Court ought to have regards to the evidence adduced on the part of the Plffs as being more clear & positive than that given by the Defendts —

M Lowell for Defendts says on the contrary that the evidence on the part of the Defendts being in favor of diminution of damages, ought to be preferred

Tuesday 5th June 1827.

Prest

Ch. Just. Reed & M. Justice Fourchier

Judge Pike indisposed, Miriacke, at this Rum

No 1084

Dagenais
Berthelet

On Plffs. mo. for opening Com. Rogr
M. Vezé for Defendt objected to as the necessary formality has not been complied with —

Ex parte
on Petition of
M. Debartzche
& Soupras dal
oppt

On motion of Pets to set aside the Decret Volontaire had in this Cause — and this owing to the conditions annexed thereto by the Sheriff by error and contrary to law —

M. Vezé for Oppst — This application is a reiteration of a former demand made by Pets & rejected and is wholly irregular — The grounds of the present application are the same — The Court cannot alter the Judgt it has already given —

M. Cassimir Bruneau for Oppt — The motion founded on the error of Pets but this no ground. There is no error.

M. Rolland for Pets. in reply. there was error on the part of the Sheriff by imposing conditions held by the Court to be illegal. — —

No 466

Gowan
Bill

On Plffs mo. to be permitted to file certain Exhibits

M. McDonell for Defend. It appears by the affidavit of the Plff, that at the time of instituting this action the plff was aware that the paper writing

№567
Bouchette
Chevalette
& contra

On Defr mo. to declare Enquête closed —
Mr Sol. Gen. states, that he waits the return of Com. Rogers from the Canadas — asks for a day of delay for return —

№2098. —
Fabrique de
Laprairie
&
Louis Longtin

On question as to right of the Church to enter on poss. of the Bdns occupied by the Defend. on reimbursing to them the money originally paid to the Church —

M. Beaubien for Defend. the law in this report must be considered as they were at the time of 1663 when the Superior Council was vested with the power of making laws for Canada —

№1889;
Beaubien
&
Morjeau
pro
Ayt de Malo
&
Devins. Cur
Gnl

action en decl. d'Hypotheque —
Question touching the right of Defend. of his Garants — on gt. the Court reserved to determine by Jugt of 12 Febry last —
Duchesnel for Defend. states that Defend be relieved from

Mr Sol. Genl for Appt & Malo — says that if he is condemned in anything to the Defendt — he ought to have his recourse aff Morley as his Curator —

Mr Beauchein, as amicus Curiæ for Dr Morlay, states, that the Defendt was not condemned to abandon the property, only on receiving £340 from the Pltff, but until this money be paid he is not bound to abandon, and if he has done so, it is a voluntary act on his part, but it is not an eviction he has suffered, & cannot therefore have any recourse aff the Garants —

Mr Duesnel for the Defendt — The Defendt has a right to dezenpir, as well by the Judgt as by the law, it is a right of which a party whose property is subject to but then a Mortgage, can exercise at all times —

Wednesday 6th June 1827 —

Pres.t

Ch. Just. Reid & Mr Justice Fowler

Debleds vs Bazinet & Bazinet garnt

On Pltffs mo to reject report of Experts — Rolland for Pltff — The estimation here has been made by a particular detail of every object — this is not the general amelioration of the whole — see Pothier Amelioration. N. Dmgt — The valuation made at the time the Defendt entered into possession about 7 years ago, when

whereas the actual amelioration is the objet to be considered — Fr. des Evictions. 1 Vol. p. 460 —

Mr Letourneux for Defr — The Plffs affidavit is not alone sufficient to set aside the Report of the Experts — The estimation of the Experts ought to extend to the genral improvment on the land — the improvements are to be estimated apart from the land, because the possessor is entitled to be remboursed there improvements apart from the fond — the estimation of Experts has been regularly made —

Poth. —
Hyp. ch 2 § 4

No 706
Bentivalo
vs
Spragg —

On Defendrs mo. to set aside the attacht sued out in this Cause —

Rolland for Defr. The affidavit here on of the writ of attacht was granted, is not founded in fact — of this proof ought to be made, as being denied by Defr —

Now the writ of attacht has been sued out at the time of the Judgt rendered in this Cause of. was that no Expon should issue at their moveable, at all events even if there had been found in the Defendr the Plff ought to have brot a special action stating the Circumstances —

Mr Bowlon for Plffs — The Court cannot — allow evidence to investigate the truth of the fact stated in the affidavit — M'Lean Connolly. vs Blackwood.

Thursday 7th June.

Prest.

Ch. Just. Reid & Mr Justice Fowler.

No 596 — Pothier & Dubois } on Defendr mo for delay to plead —

No 2327. Requete of M. Fournier } En destitution de Tutelle — Mr Mondelet for Defd submits case —

No 664 Roi &c vs Richardson } Action for a Constitution de Rente — hears ex parte —

Friday 8th June 1827.

Prest.

Ch. Just. Reid & Mr Justice Fowler.

Dom. Rex Jos. ~~Fisher~~ Ryland } On Stub. Corpus — Mr Grant for the Pr reads the return to the writ, in which the warrant under which the Pr was committed to the charge

of the Officer Bail, to carry him out of the Province on a charge of felony made out from the affidavit of the Pr. recd. stating the circumstances of his arrest —

The affidavit of Wood amount to nothing, & at best charge only a suspicion of the Pr — not sufficient to hold Pr. to bail in this country — The laws of nations not consonant on the power & duty of Govs. to deliver up Criminals — cites Grotius — ~~&~~ lib. 2. ch. 21 — refers to persons convicted but not on suspicion — never used but in case of great enormity —

~~Pufendorff~~ Burlemaqui v. Pufendorff Vattel also says — that only in heinous offences that such authority is allowed —

Martins law of nations. p. 108.

Ward law of Nations. p. 318. 2 Vol —

Coke 3d Inst. p. 180 —

King v. Kimberly 4th. Rep — refers to Lindy's case —

East India Co. v Campbell 1 Vez. 246 — There were cases of Subjects, where the Crown had power over them — but will not apply to case here —

Jay's Treaty refers to cases of Treason & Forgery, but not renewed — There

is

is no demand made here of the Pr by any State nor has there an instance occurred, where a subject has been delivered up by the States except under Jays Treaty —

Dallas Rep. The Rep.r Delongchamps — who was demanded by the French Govt — not customary for the United States to deliver up Criminals —

There is no proof that there is any demand on the part of any State to deliver up Dr but if it were there is not sufft evidence of a charge being made agt the Pr — the affidavit suspects the Pr but he does not state the grounds of suspicion — the warrant should be more explicit, necessary to state the grounds of suspicion — Keeps subjects not otherwise safe —

That in any case the Govr of this Province cannot transfer a person to a foreign Country under any charge — not power of Executive of the Province —

Mr Vegé for Pr

There is no crime here established agt the Pr But then I were, the King of Gr B. could not deliver up the Pr but most certainly not the Govr of a Province — at all events there appears to be no infraction of any law of the States complained of — Cites the case of the Spaniards delivered up at Gibraltar —

ader from Vattels — the cases, when Criminals are given up — in 4th — voleurs are not included —
p. 274 — 2d Sol. p. 96 — as to protection due to strangers

The Treaty of Amiens contained a stipulation to deliver up fraudulent bankrupts, &c — but not thieves — (This however was to give a compulsory right —)

There is no authority of any State here claiming the Pr in an infraction of the laws of that State —

The Case of Napier Tandy when delivered up by the State of Hamburgh. altho' guilty of High Treason, was not executed —

2 Sharp Madrass Rep. — case of the Priests of Goa — held that the Govt had not the power to send them out of the Country —

The Sol. Genl for the Crown — There is nothing in the Hab. Corp. act to contain nothing exp. this proceeding — The Pr is an alien, a Prussian — This not admitted by the Pr but proved by Affidavit — There is no protection for such under the Hab-Corp. act — The Crown has a right to order such out of the Country —

There is nothing in the Civil proceedings had here exp. the Pr to exonerate him from this proceeding —

The crime is specifically alledged to have been committed by the Pr

That

That under the Laws of Nations, q.t. forms part of the Com. Law of England. warrants the proceedings — all the authorities cited warrant Grot. Ch. 25 — The cases cited of the Spaniards at Gibraltar were political offenders — not Civil offenders — We can dissent here —

3 Burlemaqui p. 18 — This authority refers not only to persons convicted of a Crime, but to all persons who have committed a Crime taken refuge in another State —

2 Vattel. refers not merely to crimes, but to Civil damage —

Argue — vs Auburn p. 84 — case of Crimes committed Martens — The previous steps as to demand of the Pr is not to be brot. into consideration here the presumption is that the necessary authority has made the demand —

Fritot — on National Law

Case Mure v Kaye. 4 Taunt. 43 — as in point —

Denizt. vs Droit des Gens — case of Bresford Id — vs Stranger —

1 Chitty on Cr. L. p. 16 — in point —
2 Ste. 828 — Crime committed in Ireland —

M'Kent. Ch. case in matter of Washburn — who was for a larceny committed in Up Canada —

Then

There is no necessity for a treaty to enforce the obligation of the Surrender of the Criminal, as the Sov. himself alone makes the treaty — & he may dispense wt. it, & accede to the demand without a treaty —

The Govt. had a right to send an alien out of the Country — Chitty on Prog. p. 49 —
as to proof. in Colonies p. 32 — —

The People
v.
Delongchamps } a demand for delivery of a person who had committed an assault on a French Ambassador in U. States —

This was refused — rightly as the Law here must govern —

Shaws Case in 1816. or 1817 — was taken up on Warrt for an offence committed in the United States —

The warrant of the Govr — requires no confirmation from the Court — if there existed no case for his authority —

1 Kents Com. on American Law — p. 36 —

In the year 1792 the Engl. Govt proposed certain legal questions to Mr Bill on this point — as to the power of King to send foreigners out of the Country — this no part of the Legislature, but of the Executive authority —

Vigt in reply, there is no law cited or shown to warrant the repatriation of the Pr —

by

by the Warrant of the Govr

The alien is entitled to same protection for his liberty as a subject — the Crown cannot infringe it —

The crime here is not one of those of a nature noticeable by the Laws of Nations — nor is there any treaty on the subject —

Tillmans Jgt.

As to Judge Kents opinion — it had the effect of involving the State in difficulty — as will appear in his work cited — at p. 37 —

It is the duty of those who were carrying the Govt out of the Govt — to shew that the foreign State ~~called~~ made the demand to have him —

See Chalmers Opn

The authorities cited are all case, within the same Sovereignty under the same Govt —

Observes as to Mr Justice Heaths opinion in Taunton — it being a case of piracy —

No 466
Gowan
vs
Bell

On Dispr mo to be allowed to plead de novo — as a new exhibit has been filed —

Mr Ryan notes new is introduced on Record & no necessity for — new plea —

No 694
St James
Charbonneau

action for breach of Contract —
hearing en droit —
Roi for Dispt — action cannot be

be maintained— it is unknown in the law and can be instituted agt three individuals jointly, only by cause of solidity— The Plff does not allege that the Defendts intended to deceive him ~~in~~ or combined to get him to do so, without this joint acting & combination the action cannot be maintained agt them jointly— Pothr. Oblig. Nº. 265. The solidity is never to be presumed 2 Bouy.r— p. 426— Ch. 4. Sec. 1.r Nº 1. 2 & 3 — Rep.r vº Solidité p. 344— Domat. Lw 3. bt. 3. Sec-1-

Mr Bleury for Plff. The decl.r is sufficient. shews that the Defts assuming the character of Churchwardens entered into an agreement w.r Plff. & they afterwards refused to execute— There may be no solidité in this, but the oblig.n of Defend.rs is joint & binding—

Nº 348.
Smith
vs
Reid & al
&
Brown & al

Ds Intervention of Brown, who made over the obligation in question to the Plff—

On Report of arbitrators—

Mr Scott for Interv.g party — only question is as to Costs of Intervention

Mr

M. Pelletier for Defendr the Costs of the Intervention ought to be paid by Pr Brown as he is the Cause of the Costs being incurred the balce of the acte between Brown & the Defr being the real balance the Defdt owed to Pltff

——

Saturday 9th June 1827.

Prest

Ch. Just Reid & Mr Justice Fletcher

——

No 352
Gates et al
&
Aberdein
et al

Ord defendrs an fond en droit. —
noths said

No 152.
Pothier
&
Paliasso

action for extribution of Costs, & on new conclusions for Lods & Ventes —

Bourne for Defdt agrees to pay personally the Lods & Vents on his own purchase & agrees to give up the land for the prior Lods & Vents. —

M. Roi for Pltff the abandonment of the land is made here to Mr Cadieux, & not in such manner as to enable Pltff to proceed of the land.

No 1366.
Evans
& Phillips

On Report of Experts —
Pltff asks for hom. of it
Boston for Defts — only question as
to Costs —
Grant for Pltff. the Defendt — did not render
the ant demanded, tho he was bound to have
given — Defendt has assumed much dissatisfy
delay — & the report now made is same as that
given by former Arbitrators —

—

No 1084
Dagenais
&
Berthelet

On Defts mo. for injuncting the Comr:
Rogue —
Mr Cherrier for the Defendt — there is
no return to the Comn
Mr Boston for Pltff — The return is in
substance sufficient

—

No 1150
Belouin
&
Baron
Austerout

Action for recovery of damages on
a report of Experts —
Mr Bleury for Pltff — the Court allowed
Defendt to go into evidence that he had not
been heard by the arbitrators — this Defendt then
Pltff wishes the Court to decide — this was not
a point in issue — The Parties have made proof

and the arbitrators have been expanded as the Rep^n v^e arbitre - shews power & duty of arbitrators

M^r Rossiter for Defend^r The arbitrators here have condemned the Defend^r without hearing him or calling on her to give her reasons -

N^o 2342
Bedard
&
Chaput

On Defend^rs mo. to be permitted to file two exhibits - wh were not in his poss^n at the time of rendering the act^n - if Defend^r is allowed

M^r Mondelet for Pl^ff. if Defend^r is allowed now to file these papers & to reform his act^n it ought to be on pay^t of Costs -

Per^r for Defend^r these acts were properly the acts of the Pl^ff & the D^r Def^r was not a party -

—

N^o 2336 -
On Requete
de Jos. Doré
et al

To substitute name of M^r Pelton in place of M^r Per^r -

—

N^o 423
Byrne
&
Johnson

On Interv^n
M^r Mondelet for Defend^r objects to certain Interv^n - cites 1. Pigeau. 231 -

No 1294
Boustead
Laforce
&
Reeves

On rule ag Reeves -
over to 12th for proof

Monday 11th June } Enquete days
Tuesday 12th "
Wednesday 13 "
Thursday 14 " — Holy day

Friday 15th June.

Prest
Ch. Just. Reid, & Justices Fournier & Taschereau

No 734
Auclair
&
Boudreau

On Dfendrs mo. that Rule to exp. him vos pats. cant. the same have been granted cost and Can. of Dfendrs —

Mr Geoffrion for Pltff, the proceedings ex parte

No
Ex parte
on Requete of
Chas Côté
&
Routier & al
opps

On opposts motion that Pltr be held to pay the Costs of the oppns in consequence of his appeals to discontinue —

Mr Pelletier for Pltr

№1416
Delonguemil
v
Devins, Cur
&
Stem_mis
en Cause —

Our rule to shew Cause why the Sd
[interlineation] following inclusive ad
be a mis en Cause —

№2100
Malbouf
v
Chevron —

Our Pltff mo. to be allowed to produce
the Inventory of her first Community —

№803.
~~Mallet~~
Power
Smith

Our Defendr mo. that action be dismissed
for want of Security for Costs —

M Rossiter for Pltff, the Pltff lives at a distance
& he cannot have access to him till next Term —

M O'Sullivan for Defdr — all Defdrs Affts are
under Enquête —

№561
Farrane
v
Buchanan

action on Notes —
Cause submitted

№281
Logan
v
Bender

action for goods sold —
Defdt — all that is due is £7.10 — the
acct. is not correct & are contradictory — the
first acct. is full of Errors — particularly in additions

There is no order given for [illegible]

No 96
Dubois
&
Wray

Action for value of goods consigned to Defdt

M Ryan for Defend — There is no ground of action here as Defend has never rec'd the goods nor undertook to forward them —
Ex evidence of Campbell & Mattlebury —

M Rossiter for Plff — produces the order of Defend for the goods to be delivd to Smith —

No 695
Grigg
&
M'Gillivray

Action for ~~goods sold~~ any bill ex parte —
Borton for Defdt the Retainer for charges cannot be allowed —

No 94
Pothier
N. Hall

On Inscription en faux —

Borton for Defdt Action to recover 15 years arrears of a Rente Constituée — The act. here is a Nullity — The copy filed does not correspond with the original — The renvois & obliterations not contained in it — That some of the renvois are not signed by the parties — they are therefore null & void — The circumstances of delay to bring the

action

action — the neglected state of the lot of ground — the Defendt never having taken poss.n of it — The Plff alone exercised acts of property over it — Mar.s of Plff on parts detailed — as to the nature & occasion of passing this deed — but appears that 118 deeds were passed in one day by Mr Chabrillac

It is in evidence that the Notary was present at St Lawrence on the day of the deed — also the Plff —

The deed is in the handwriting of 4 different persons. —

The party's signature was put to the act before being filled up, & act for the want of signature of the party to the Renvois. —

If a part of the act is null & false, the Court must declare the whole null —

There is nothing said of the Renvois, before signing the deed —

Fr. 1 Pothier Nov. p. 69-70 — The instrument is null when the Renvois is not paraphed by the parties — Rep.re Nov. Acte p. 140 — 2 Nouv. Denizt — V.o Faux — p. 109 — p. 338. Poth. Proc. Civ. — 1. Nouv. Pthe de Not. p. 73 —

M.e Roi for Plff — There are 3 moyens de faux alleged by Defend.r on w.h the Court has to adjudge on the different allegations he now makes —

1. The acte was in blank when signed — no proof made of this —

2. That it was signed before being read — no proof —

3 That the deed has been falsified since the making of the act, or is not signed by the parties by the making of a renvoi, or under the act mill—

The Defendt. cannot be heard to allege his own turpitude—

The answers of Pluff to facts & articles, are clear & sufficient—

The adding a renvoi or is not signed, does not annull the whole act according to the terms of the Civil law, it alone is void—

Dict. Dic. de Fav. Vo Apostille — & Repse Eo. verb.
Roger — eo. verb. —
N. Denis. Vo Acte Notarié, §7. No 9—

No 1346
Griffin
Green

Action on a Promy Note—

Defendt in person — the note was an accommodation note, drawn in order to raise money to be discounted — The proof has rested on the answers of Pluff to facts & articles — This known to Pluff & he gave no consideration Kyd. 276 — Chitty p. 9—

Mr. McCord for Pluff — Defendt one of those who signed to the indorsement — This is not an accommodation note on the ab. 4

No 273
Lemaire & Labatut
Lemaire & Labatut
Oppse

Mr Thibaudeau for oppse — prays dismissal — the other parties did not appear —

№ 381
Alsop
Buck

Action Petitoire — on merits —
Grant for Defendt — The Defendts predecessors made considerable improvements on the land previous to the Letters Patent granted to the Plff. & is entitled thereto —

Buchanan for Plff — the Defendt has not possessed in good faith — he had a perfect knowledge that property belonged to Plff — Poth. prop. 343 & 350 — The injuries done to the land & the enjoyment had thereof by the Defendt —

—

№ 588
Tuckerman
Henshaw

Action on a Foreign Judgt —

M'Sullivan for Defendt — When Judgt was rendered in 1811 Defr was resident in Vermont but came into this Country afterwards, after pt all the proceedings were had in that County agt Defr — a Capt & 2d Scire facias issued & land seized & sold over to Plff in satisfaction of his Judgt — But the Plffs. failed to have Sheriffs return as to the title of the Defendt & a new Scire facias issued & notice given in a Newspaper calling on Defendt, who not appearing the Court proceeded to give Judgt agt Defr — cites 1 Camp. p. 62.

A Scire facias is a new proceeding & requires a new notice as in the original action — 2 Tidd. 982 — The notice given to Defendt in the Newspaper shows that the Court thought a new notice necessary — a party may plead to a Scire facias —

There were two lots of land, turned out, of which no meaning can be made — the testimony of Seth Glass is taken upon the interpretation of the deeds — he is in contradiction as to his evidence touching the one half of the lot № 4 — on plot in question, being about 42 acres — all of which appear to have belonged to Defendt — when the Epon issued see answer of Wm. to 7 & 11 quests on Defts Commn — Rogers — this lot of 33 ½ acres Defts purchase of one Rhodes — do. to be contained in a larger quantity of 80 acres —

Vol 2 ser. IV — chap. — p. 286.

That one Wm not sufft. to prove the fact of the subdivision of property —

Sewall for Pltff — The case cited from 1 Camps. will not apply — the Defdt was regularly sumd. & a Judt. against him & his person & property bound for satisfaction of it — as to the ulterior proceedings the usual practice of the Court must hold —

2 Tidd. P. 983. Upon a Recognizance, a Scire facias is an original proceeding — but upon a Judgt. it is only a — continuation of the former suit. —

Saturday 16th June 1827.

Prest

Chf Just. Reed, & Justices Fowler & Pyke.

No 540

Stevens
v.
Knowles
& al

On Defendt mo to reject Intervop

No 1816.

Delonguemil
v.
Devins. Curl
&
Stemm mis
in Cause

On Plffs mo. for a folle enchere —
Mr. Greene for Oppt. the property sold
in this Case did not belong to the Defendt
but to the Crown —

No 463. & 1930

Armour
&
Pickel
&
Jourdain

Mr Rollot & wife ~~claim~~ & Jos. Timothé
Gaudet this wife claim by their opposition
in this Cause a privilege by mortgage on
1813 —

Mrs Rollot claims £50 — bequeathed by Jn
Noel, by will of 18 June 1802, who died 5 Feby
1803 — ~~in consequence~~ 24 Dec 1804, Gunnuncar
named Tula to Mad Rollot to receive this legacy
On 4 Nov. 1813 Mr Noel made her will, died
13 Nov. 1814 — she left £1000 to children of
Sheets makes £250 to each — Mad Rollot

claims

claims a Mortgage up to 10 Janv. 1813 — by reason of his having acted as tutor of Mrs Rollot — he rec. a sum of £2500 from Mad Noel & gave a receipt sous seing privé for the money — In an obligation made 24 Dec 1821, Gunnerman acknowledged this sous seing privé — Mrs Rollot being a Minor is entitled to her Mortgage without any Special act made before a Notary — It is in proof that this acknowledgment was written partly by Mrs Gunnerman & partly by Gunnerman — before Janv 1816 Mrs Gunnerman died in Janv 1816. y^t so far authenticates this writing. y^t. No 18 — the Wit present when writing was drawn also prove it — Murphy also proves the payt of the money to Gunnerman who rec. it as administering the property of Mrs Rollot & Mrs Gaudet —

Digest. liv. 27. tit. 3. l. 25. 4 Hubl. p 57 — Id. tit. 4. l. 1^r. p. 55 — liv. 42. tit. 6. l. 19 — §1. — 6. Hubl. 399 — Id. l. 23. — Battur 282. 283 — to shew that Minor has a Mortgage on property of person administ^g y^r property 1. Soulages. Hyps. p. 76 — without their being at all appointed Tutors — Hericourt. p. 228 — Lacombe v^o Tutelle §. 11. dist. 3^e N^o 1 — Le Vest arrets — p 620 — Rep^e v^o Hypoth. §7. p. 653. — Poth. Coût d'Orleans. Introd. au Tit 20. N^o 18 — Poth Hyps. p. 425 —

These authorities shew the right of Mortgage the Minors acquired on the property of Gunnerman from the day he entered on the administration of their property — that is, 10 Janv 1813 —

That at all events the Opposts have a mortgage from 12 Nov^r. 1814, the day after death of Mad^e — Noel

who

Ordre 1667. tit. 29 art. 1.—

who bequeathed legacies to them— the sum of £250— another sum of £200 was bequeathed to them minors by Made Gunnerman— for this they have a mortgage from the devisee of the Testatrix Fr. de Hypothèques 7e— Renusson. Tr. des Prop. ch 3. Sec. 12. N. 12.—

Mr Rolland for the Defendants— The hypothèque claimed by the minors does not hold in the Pays Coutumier of France & particularly the Custom of Paris— Lacombe vo Hypothèque. sec. 5— the doctrine of Roman law as to mortgage is not admitted in France, except when recognized by the Jurisprudence of the Arrets— the authority cited from Lacombe by Mr Bedard is not applicable Lacombe. vo Tuteur dist, 3. this hypo. does not hold in the Parliament of Paris— 5. Coutel Prat. p 408—

Dig. lib 42. tit. 5. l. 23. only instance when a privilege is granted to the pupil— where a friend has administered the property of the minor Lib. 20. tit. 2.

The only case of mortgage upon the administrator is in the case of a step father, when the mother marries without appointment of a Tutor to the minors—

There is no such rule of law that the Creditors should be punished & deprived of their rights because their Debtor administered the property of minors— of this unknown to the Creditors—

Here there was no gestion nor administration on the part of Gunnerman, he only rec.d a sum of

money from Made Nail, ⅌ the entended for the Minors — this money is gone — the Creditors cannot be injured by this — This is not an — administration of tutelle — not to be presumed as the father & Mother of the Minors were then alive — The administration of a tutelle must be a public thing, done openly and in a manner to show the intention of the parties —

The Receipt in question, is without date — and the deposit if made, does not appear to have been the property of the Minors, nor stipulated as such nor received by G — as the Tutor of the Minors — it can be considered merely as a deposit made by Made Nail in the hands of G — ⅌ the destined benefit for their children — it cannot at the time be considered as a Donation; it has not the form of it —

There is but one wit — Murphy, to the existence of this paper, and the time when it was made, this not auff. to give validity to this paper —

Mr Bedard in reply — contends the law he has cited applies to his case — The fact of administration by G. is sufficiently proved — one act is auff. — the very receipt of the money by him as Curator is enough — payments were made to him from time to time as administering for the Minors —

Poth Hyp. 425 — law applies to Tutors & Comp between Administrators —

Mr Rolland for Mr Jourdain — on oblign
2 Sept 1820 —

Mr Gale for the Bank opposes Mr Jourdain's
claim on the principle of fraud — the oblign
of G. to the Bank is dated 4 Sept. 1820 —
& made jointly with Pozer & another —

The oblign of 2 Sept. 1820 was fraudulent — as
at the time G. was the creditor both the debtor of
Pozer — That by Pozer joining in the oblign w.
G — to the Bank his right agt G. became vested
in the Bank — & on 9th Sept. 1820 — the transfer
made by Pozer to Chas Jourdain — in value rd —
but in order to destroy the rights of the Bank —
& he could not legally do by any subsequent
act of his in favor of Jourdain — In April 1821,
the transfer by Pozer to Jourdain was signified to
G — & was accepted by him —

1. The transaction is null & void from fraud — refers to
testimony — 1. Isaac Jones — conversation between him &
Pozer — 2. Wm Reeves — equally pointed as to the fraud —
3. Lawr Murphy —

1 Pothi. Hyps. p. 212. n 12. ch 3. sec 5. — Pozer by consenting his
oblign to the bank commits what should pass before
his right —

N. Denizt. vo Hyps. p. 796 — Rip. vo Hyps. p. 667. —
1 Gr. Cout. p. 468 — the droit d'Hyps. et meme ayet
à un hypotheque — p. 391. old Denizt vo Hyps. —
Justin. sur la Cout. p. 268. — Hulot
Old Denizt vo Subrogn p. 132. 133 —

Mr. Rolland for Jourdain — The oblign to the bank

was

was made for Notes given by the Debtors, qch they do not chuse to be sued –

There is nothg new alledged as Lousdain in all these transactions – noths can be alledged in the transaction as Lousdain – the authentics do not apply – Vide Pothier. Vbi La remise de l'obligt. etant l'hypothequer – does not apply – The droit d'Hypoth. is not susceptible d'hypotheque

Dr Remusson Ch 2. No. 4.

The circumstances of fraud are mere conversations qch cannot affect the validity of the obligation & even after the Obligation was made by Gonnerman –

Sol. Genl. for Eliz. Benner, a legatee under the will of the late Mrs Noel of qch Mr G– was Executor – as by the Inventory there were assets –

Also a claim of Mr Richardson as Tutor to the Children of Cath Rose, a legatee of the late Mrs Noel – founded on same rights

Toujole. ch. 10. Sec. 4 No 80 – a mortgage on the Estate of the Exor from the day he accepts the Commission – refers to acceptce of will by G– by act before Notary –

2. Bouy. p. 299. & 300 –

Mr Badgley for Ann Dagg claims as Legatee under the will of Mrs. ~~Noel~~ Gonnerman for £50

Mr Rollin, for Chas Desmond claims £50 – under will of Mrs Gonnerman –

M Bedard of Alex Dalgety claims a mortgage from 1813 on same principle as Mrs Rollad & Mrs Gaudet — at all events claims a privilege on the produce of sale of the lot No. 3 — as having an undivided right therein as heir of his mother —

Rolland — contends that Dalgety has not proved his right, nor can he have a right of hypothèque as G — who possessed the property

Dufaut
~~Granville~~
& Dufresne

On question touching right to ex. Mr Vigé was counsel for the Defdt —

Mr Duval for Pltff, moves to ex. Mr Vigé can hear — 9 Octr. 1826.

Mr Duval for Pltff, moves to ex. Mr Vigé cites 1 Pigeau 278. — Degrisson. pr. partie. —

Mr Vigé — cites also 1 Pigeau 278 — attys not bound in any case to give evidence Poth. Obl. No 794. — For. vo Avocat — Dunat — liv. 3. tit. 6. sec. 3 art. 23. Rep. vo avocat. p. 786. — Whatever has come to the knowledge of the advocate after his retainer he cannot be bound to discover. —

794

No 2378
Deschambault
vs
Meyer —

actum for work & labor —
Rossiter for Defdt pleads payt — 9 Octr he says he has proved by Defts counsel

Mr Grant for Pltff — Defts. receipt was fraudulently obtained — the note transferred to Pltff no value — Com Rogers issued impulsively —

№ 2121
Tessier dit Lavigne & Sarrault & Sarrault opp

On opposition of the Defend—

Mr Blenny for Appt. the adjudication hee made was irregularly, as the property was adjudged to the Pltff as the last bidder without saying or crying out the sum at wch it was adjudged—

Mr Greene, for Pltff— The evidence given by the Opposant shews that the sale was regular & the property rightly adjudged to Pltff—

—

№
Tessier & Sarrault & Sarrault opp

On opposition— on saisie of moveables—

Mr Blenny for Oppost the Opposn is well founded— the grounds stated on suppt— and prays that a day for proof may be given him.—

—

№ 101
Paige ? Smith dat

Tenant Cameron

Action on Promy Note

Grant for Defdt The note not regularly transferred— there being no Indorsement in full— the blank filled up before the action brot in order to maintain the suit— this is proved— It is also in proof that Pltff knew that the note was paid before he took a transfer of the note—

Mr

Mr Bourré for Pltff — The endorsement was on the note when the action was brot — which is sufficient — As to the post of the note, it has not been sufficiently proved so as to affect Pltff

Objects to testimony of Defdt Wr —

No 1229. & 1515.

Menecher de Morchound & A Moro & Duplessis —

Der two actions united — on Report of arb.

Mr Bourré for Pltff demands homologation of Report —

Mr Rae for Defdt — objects to the homolgn of Report, as the arbitrators have not entered upon the consideration of the damages which the Defendant claimed from the Pltff — as they have this to be determined by the Court — asks that the can be returned back to the arbitrators to determine on the damages —

Monday 18th June

Prest

M'Kay
v.
Rutherford

on re hearing —

Rolland for Pltff. the Defdt has withdrawn 2 of his pleas, which admitted the Debt but now stands on the general issue —

The Case is for the reimbursement of money paid on a draft drawn by Defendt on Pltff this is not a bill of exchange —

Both. Chancr. No. 30 — not a bill of exch — there being no remise de place en place — on No 97 the action is given by ct the payee can recover back what he has pd — & No 226 this is a kind of assignation — assumption here a friend who advances the money — It would not fall within the Jurisdiction Consulam 2 Roques. p 339 — Pardessus de Consuls. liv 2. ch 4. p 74 — 83 — as to the authority from 1 Vesty. 185 — this is the case of a bill of Exchange — this is the case of an acceptance ct is giving a currency to the bill — but here the Pltff paid the money immediately — this case from Vesty, it appears that it was not founded on any contract, but on the Custom — here there is no such Custom as in England — for by the nature of the transaction the Drawer is the Debtor —

Mr Buchanan for Defendt — The facts stated in the declaration, do not throw the onus

for Landi

probandi on the Defend — The parties in the case appear to be all traders & the transaction must have reference to their trade — The evidence of Gosselin is in favor of Defts —

The principle as laid down by the English law is in favor of Defends also — the general principle is that he who accepts a bill has funds of the drawer in his hands — this a general presumption — & a presumptio Juris — 2. Savary 758. 9 — Poth. Change Nº 226 — Nº 231. 1 Savary. 242. 244 —

A resumption is said to be a revocable instrument even after acceptance — that will not hold in the case before us —

The parties here are traders — & the fact commercial the question whether subject to jurisdiction Consular will not apply here —

The commercial law of the Country & usages & customs prevail —

Chitty on bills — his description of what a bill of Exchange is — Not necessary that it should be payable to order Chitty on bills. p. 85 —

Nº 461

Donegani vs Donegani

Action en Petition d'heredité —

Bedard for Plff — The late Donegani came to Montreal wt 4 Children from a foreign Country — The Plffs are grand children of the late John Donegani & claim their share wt their uncles — The Defends plead a will

made

made by J. Donegan in 1800 and a codicil subsequent thereto — of this testament the Plff's plead the nullity — the Testator being an alien unable to will — but Plff. pleads further that Testator revoqued this testament by a subsequent one made in Italy in 1809 which he legally could do as to the revocation the Plff. being born under the allegiance of the King are entitled to succeed to their Grand father —

The Stranger cannot will, or is incapable of all civil rights as to take by succession —

Dic. Droit — Vo Aubain —

1 Despr. Des contrats. part. 1. tit. 14. Des Donations — ch 12. p. 393. 4. No. 14. Alien cannot make a will —

2 Despr. Des ~~Successions~~ Testamens. Tit. 1. Sec. 1. No 39 — & sec. 4. No. 7 — 5e partie 2 tit. 1 Des Suc. ab intest. No 67. p. 447. & No 68. — Children succeed to the property of an alien parent — Lacombe. Vo Aubain Sec. 4 — Id. Vo Testament. sec. 3 — Stranger cannot make a will — 1 Bouijon. tit. 7. Des Personnes des Ch. 1. Sec. 1. prop 6 — & sec. 2.

Had Donegany died leaving no other Children but the Plff. his Grand-children, they would be his heirs by the law —

Coul d'Orleans tit. 16. Des Testamens. Sec. 3. §1 — ch 33 — Tit. 17. Sec. 1. §1.

Poth. Des Succ. Ch. 1. Sec. 1 p. 2 & 3. No child born

in

in Kings allegiance come to the Succession of the alien, their predecessor — this favor is granted by the law to them as natural born Subjects —
Ld. p. 330 — Des Don: Test.ts Lacombe. vo Enfans
the grand children are included under the word Enfans

Mr Vige of Counsel for the Plffs — The two simple propositions we are 1st The alien cannot alienate — and 2d The child, & under that term the Grand child of the alien being a natural born Subject succeed.
4 Cout. p. 167 — 168. No 45 — The Aliens cannot hold
Poth. Personnes — 580 — 579 —
Repve 722. vo Aubain —
Dic Droit. vo Enfant — applies to all the descendants in direct line —
2 Jour. d'audienc. cont 1666. 19 feb —

Rolland for Defendt The question here, whether any one can in a Court of Justice, demand the Succession of an Aubain — there is no such thing as the Succession of an Aubain, to this the King alone succeeds — Droit d'aubain. voy. par Laplanche. Droit de Domaine p. 3. 2e vol. —
It is a question whether the King a the Subject shall claim — this is a question of public law —
1 Vattel. liv. 2. ch. 8. No 109 & suiv. No 112 — No 114 —
Repve vo. Droit Pub p. 399.
2 Blackst. Com. p. 249. No 6 — 2p. 251 —
1 Evans Stat. tit. Aliens

N. Denyl vs Etrenzer. p. 89. sec. 6. & p. 90—

Mr O'Sullivan of Counsl for Defendt—

This is a question of public Law— But the mother of the ~~aliens~~ Plff was an alien, & they cannot under the law of representation claim more than their mother, & she as an alien could not inherit from her father— The word Enfans is said to include petits Enfans, but this will not apply to a case of this kind—

This a question of public law. 2 Bl. 293 Com. Dig. vs alien—

2 Bl Com. 251— Statutes pass for relief of Children of aliens—

Mr Vigi for Plff in reply

Refers to Domat as to the interpretation of the word Enfans, as extending to petits Enfans— This not a question of public law, but of Civil right under the laws of the Country—

law 2 tit 1. Sec. 8 art. p 396. edit 1777

No 1292

Scriver vs Stanley Cert

action for work & labor done on the road & an obstruction by Plff—

Mr Rossiter for Plff— Mrs Scott the proprietor has been put in the Cause— she pleads that the action cannot be maintained

Stat. 3 Geo. 4. ch 19.

Mr Buchanan for Defts Mrs Scott— The greatest

greatest variance between the declaration & the proof, that action must fail — The late Stat. is an appendage to Stat 36 Geo. 3 — the action is founded on the Stat — ought to have been Debt on Stat. & not assumpsit — But there is nothing proved in nature to support an assumpsit —

The action is not brot by the proper Officer, he is not the person the law authorizes — to find out who is the proper officer we must have recourse to the old road act — who points out the Overseer as that person — & no other person can maintain the action acts Plowd. Com.

Plowd. Com. part 1. No. 206 letter A —

The law authorizes the action of the Curator ad hoc when the prop. has no Agent in the Province the act of Curatelle does not set forth for what purpose the Plff was appointed

Mr Lowell for Mr Scott the Stat of 3 Geo. 4. ch. 19. gives action to the road Officer — the Plff is not the proper Officer, under the Statute the Plff must fail — and on the principle of assumpsit there is no promise made out, as on the contrary the work was done at the will of Desse the Plff was never made the Contract here for making the work, it was one David Manning who made it, and who is now looking to compel Mr Scott to perform this Contract —

The Curator law is a general Curator, and not a special one for the purpose of making this road The Plff here has not done the work, it was

Manning

manning who did it

Mr Rossiter for Plff — The action is given to the road officer, or to any person legally prosecuting under the act —

№ 547
Hayes &al
Gerard

action by Plffs. 2 of Ex'ors of the late D. David agt Defend. the other Ex'tr — for Notes — an Exception —

Mr Ross for Defend. has pleaded an Exception à la forme, that action cannot be maintained by two of the Ex'ors of the third for any thing under the will — The authority here to the Ex'ors is not intended to sue one another, but to sue strangers. On the death of the Testator all the moveable property of the deceased became vested in the Ex'ors, & this per no action will lie. Poth. Mandat. p. 858. 859. the Defend. undertook the charge by proving the will Repse to Execution. p. 159. 1st Col. Po the Dom. Test. p. 364. 366 — The Exor may institute an action en complaint agt those who trouble him in the discharge of his office — The Defd. as Ex'or is bound to under his act — to the universal Legatee — cites also 297 art. of the Custom as to suzzen of the Exor — Gloss 2 № 20 — the Defend therefore has an equal power as Plffs — Rep. p. 160 — to Ex'or —

The

The money here ought to remain in the hands of the Garnd until he was bound to render an acct, and that amount cannot be rendered to the Plffs. — 334 Art. Cod. Dom. 2. p. 146. Nr. 16. 17. When a person holds the capacity of Creditor & Debtor there can be no action — Rispr. vo Confusion 1 Salk. 299.

Mr Buchanan for Plffs This must be listened to contract de Mandat in the French & Civil Law — Tutors & Curators are to be listened to persons under Contract — not liable to act during Office, but yet there is a liability to do so when the interests of Pupils require it — This not an action of one Expr at another, but of Expts of a Debtor of the Testator Dig. lv. 26. tit. 7. l. 26. & Law 16. 31 — lv. 27. tit 3. whole of 16. Law — Code. 2. Law lv. 5. tit. 37. Mornac on this 4. Vol. p. 59. when action is allowed when the debt accrues from tutor Contract — Poth. Pand. lv. 27. tit. 3. sn. 3. §. 64. 3 Bouchaul. vo. Reddition de Compte. p. 111.

lv. 27. tit. 3 sn. 3. §64

It is the will of the Testator, that two Expts shall execute the will, so that the Defr. could not discharge himself — The Expts has merely the corporeal apprehension of the property of the Testator — The debt here could not be collected from the Defr. a Debtor of the Estate, but by this action —

Mr Sol. Genl for Plffs — The Testator does

died 30 Novr 1824 – The money was borrowed 8 Novr 1824. payable on 1 Octr 1825 – w interest at 5 ℔ Cent – The testators will dated 4 Octr. 1815 – in June 1824. New Extrs named and power given to any two of them to call in the monies, and place them out on good security –

It is the Intent of the Estate to recover this money as it is put out at 5 ℔ Cent. whereas 6 ℔ Cent is the legal interest of the Country –

Mr Gale for the Defendt in reply, the action is causeless – without necessity. The Inventory has created a Mortgage on the Estate of Depe for the Debt – There is no action in this Case, the whole authority of Testator is vested in the Extrs – Joint or Extrs. – If there are several Extrs they must all sue & be sued – Bac. Ab. 32. 1st Extrs – one Extr cannot sue another for any thing touching the will – When the Testator died, there were 4 Extrs – but he did not mean to say that 2 Extrs could sue the other 2 – neither could any two sue any third one – 3 T. Rep. Rawlinson vs Shaw – 7 East Rep. 276. Cross exp. vs Smith Cal – The Defendt not safe to pay the money over to Pepp –

Mr Sol. Genl in reply. – The authorities cited do not apply – The Defendt is not here called upon as an Extr, but as Debtor of the Estate.

Tuesday 19th June 1827

Prest

The Ch. Just. & Justices Foucher & Pyke.

№1054 & №170
Deschamps
vs
Leduc –
&
Deschamps
vs
Comrs. L. Canal

This Just was given on 20th

Judgt. confirming report of the Experts. The right set up the reserve by His Majesty of 20 toises on the beach of the river, not having been pleaded, the Court could not take notice of it as the reserve could not be construed into a Law but a right derived out of a title given by the Crown to the Seminary of Montreal –

№2441.
M.Kay. –
vs
Rutherford

X Action dismissed –

№1885
Robillard.
Raby & al
E contra

X Judgt. on the Exceptions pleaded by both parties –

№331
Torrance
vs
Peddie –

X Exceptions dismissed –

№1655.
Dufaux
vs
Dufresne

X Judgt. on question, touchs apt to ex. Mr Vigé
Defends atts – see Mr Pykes note

No 26.
Miriam.
v
Leblanc.
} H

Action on Judgt. in the Inferior Court
founded on a Ca. ad resp. of Defdt—

No 1504
Switzer.
v
Remillard
&
Pinsonneau
T. S.
} H

Judgt. on Writ of attachment of Saisie
Arrêt, on a Judgment in the Inferior Court—

No 1223.
Jerome
v
Robertson
&
Robertson
Opp.t
}

Judgt. setting aside Opposition of Deft.
Lands and tenements.—

Wednesday 20th June 1827.

Pres.t

Ch. J. Reid, & Justices Fournier & Pyke

No 1054 & No 170
Deschamps
vs
Leduc
&
Deschamps
Comrs. L. Canal

Judge Comm. Report of Experts —

No 645.
The King
vs
Ballard —

H

Qu. Hab. Corpus issued out by Js Fisher —
Just.t —

Note. of Deeds filed by the Commissioners of the Lachine Canal, in the above Causes. No 1045, & No 170. —

No 1. Concession de l'Isle de Montreal au Seminaire par la Compagnie de la Nouvelle France du 17 Decr 1640. —
In the office of Enrollments at Quebec in a Book Registre intitulé — Ins: Con: S. Letts A page 27. Recto —

No 2 Concession du restant de l'Isle de Montreal à l'exception de 500 arp.s de terre sur la montagne au Sr De Lauriamps, par la Compagnie de la Nouvelle France — du 21 Avril 1659. —

Extracted from a French Register, entituled
Ins. Con. S. Letter A p. 28 Recto —

No 3. Concession de l'Isle de Montreal aux
Mssrs de St Sulpice par le Roi — en date
du 30me Mars 1665. —
Extracted from a Fr: Register, entituled
Ins. Con. S. Letter A. p. 26 Verso —

October Term.
1827.

Monday 1st October.

Pres.t

Ch. Justice Reid
Mr Justice Fowler.

This day a Commission was produced to the Court appointing Stephen Sewell, Esq. one of the Kings Counsel for this District— the Ch. J. called on him to take his seat within the bar, and his Commission was read—

No. 659.
Lewis.—
vs
Salanne.

On Pltffs motion to reject plea filed by Defend.t this day, as coming in too late and on Defend.ts mo. to reject the depositions taken and filed in the Cause on the part of the Pltff.—

The Cause was returnable the 9th. June last, when an appearance was entered for the Defend.t by Mess.rs Rolland & Mondelet, who had 15 days after the vacation to fyle a plea— On the 6th. July no plea having been filed the Pltff by his Attorney inscribed the

Cause

Cause for evidence ex parte on the Enquete Roll, for the 20th Augt. — and on that day proceeded to the examination of two Witnesses to substantiate his demand — This was opposed by the Defendt — but no decision was had at the Enquete Sittings — On this day the Defendt filed his plea & made the above motion —

Tuesday 2d October. 1827. —

Pres.t

Ch. Justice & Mr Justice Foucher

No 1245
Guertin pour
Cartier

action on note & bon —
Rolland for Defendt — says the Proof is not complete —

No 492
Monjeon
&
Charron &
Cabana —

On Report of arbitrators —
Bleury for Plff — proof made that parties had been heard before the Arbitrators —
Green for Defts. The action of Defts. wife This is wrong, as the wife is no party to the compromis — There is no Sentence arbitral

before

before the Court — the sentence arbit. refers to a compromis of 1 July 1825 — & there is no such compromis before the Court —

The arbitrators charge Defdt with a rente constituée which is rachetable at the option of Defendant & ought to be held to give security for the Principal — they charge him also with Lods & Ventes to the Seignior — & the Seignior is himself one of the arbitrators — there is no proof of the Lods & Ventes being due — nor that the Pltff has paid any money on acct of the Defdt —

M. Bleury for Pltff — The misdate in the award of the compromis is not material —

—

No 376 —
Armour
vs
Armour et al

On Defendt motion to dismiss Pltffs action —

— Walker for Pltff, submits to pay costs & to proceed instanter —

This applies to 2 Cases

Delaire
vs
Talon dit
Lesperance
et
Morin opp

On oppost. motion that Pltff be held to pay Pltff a sum of £4. 9. 3. due to him for rent, by procedes —

Greene for oppt — the Pltff by his proceedings has sold the effects of Defdt & deprived oppt. of his right, & therefore liable to pay this money —

Mr Mondelet — There was never any consent given to preserve to Oppt. his right — The writ of Vend. exp. was issued on condition that the oppt. should be paid in preference out of the proceeds of the sale — The sale was made about 2 by — levied, which was pd. to the oppt. on his motion nearly 6 months ago — but this motion is of a singular nature There is nothing before the Court to maintain it. —

Greene for Oppt. says, he never consented to the issuing of the Vend. exp. — & Plff sued out at his risk —

No 867
Berthelet dus
Morris &

Hearing on law
Bender for Plff — action en partage
Defr. did not appear

Wednesday 3.d October.—

Prest.

The Ch. Justice, & Justices Fowler & Pyke

No 693
Bruce
v
Languedoc

on Plffs mo. that part of ans. be declared confessed —

No 473.
Rolland
v
Pothier
& Laiote Intervt

On mo. for ex. of writ—
Rolland objects — the question is whether the Plffs have disputed their legacy under the will, by having contested the dispositions in the will — this can be proved only by the proceedings had by Plffs & are before the Court & cannot be proved by verbal testimony — The intervention is founded only upon the demand made by Plffs in this cause —

No 465—
Rolland
v
Pothier

mo. to close the Enquete—
Mr Bedard for Defr — prays that Enquete be contd & a Com. Rogr granted to him —

№455
Pillet
by Sons
&
Econha

action on note & gen. acct. —
Pillet for Pltff — says the sale proved
amount to £39. 9. 2 —

Grant for Defts — admits Pltff statement
except some credits pt. are not admitted
by Pltff — The Incidental demand disconted —

№2297
M Nicholas
Omara

action on Promy Note — protested —
value £43. 18. 11 claimed —

Walker for Pltff — puts up various subsequt
dealings & payts. made by Defts since the note
& pt — Defts says ought to be applied to the note
as the heaviest debt & being the debt he had
contracted for on Roach — Pltff. objs on such
& art. & they shew the payts were appointed
at the time to other debts than that of note —

M Ryan for Defts — Defts never had any
dealings w Pltff — owes merely the indorsn of the
note to assist Roach — who made frequent
payts to Pltff on acct of his purchases from
them — payts were made before the note fell
due either in Cash by deposit of goods to be
sold on acct of Defts to the amt of £200 &
upwards — & some of the payts after the protest
& the statement filed by Defts correspond

to

with the facts stated by Defts

№ 2254
Metcalf
Macculloch

action for goods sold & delivd
Boston for Defts. A great many of the items charged in the Plffs. acct are not proved —

Arbitrators named

№ 293
Fontaine
Racine

On Report of Arbitrator — question as to Costs — parties consenting to homologn of the Report —

Thursday 4th October —

Prest.
Ch. Just & Justices Foucher & Pyke.

Warwick dat
Leste
& Leste. opt

On Defendrs mo. to quash inscription on rule d' Enquête from want of suffte notice in vacation —

№ 164
Earle
Cuvillier

On mo. Must facts art. be taken pro confessis — for not answering —

Mr Buchanan for Defendt. Carter —

There are 14 Counts in the declar. none of wch apply to the facts set forth by the Interrogs — except the Count to pay by the Defendt the Debt due to Plff by M. C. Cuvillier & Co — The whole from No 3. to No 27. regard the transactions with M. C. Cuvillier & Co — The Interrogs 29. 30. & 31 — are too vague & uncertain being too general —

Mr Beauvais for Mr Cuvillier — The facts wch by the Interrogs — are different from the statement in the Declaration —

No 599
Walsh —
Tibbetts —
& Thorn Intervs

On motion of — Intervg party for delay to sue out a Com. Rogr —

Walker for Intervg party says Plff has done no diligence to bring the Defendt before the Court, but holds property of — Intervg party without bringing Defdt before the Court —

ordered to morrow

No 1694
Lurkin
Clarson
& Contra

Hearing on merits —

Borton for Defdt — The Defendt has not obtained possn of — above one half of — the land sold him by the Plff

№ 1747
Marlegny
&
Lefevre

On merits—

action to reunite to the Domain of the Seigniory a lot of land poss^d by Defd^r on q^t he has not held fief & lien.

M^r Mondelet for Plff cits arrêt of 6 July 1711— p. 323. Edit. & Ad.—

The plea of Defend^r contains no sufficient justification for not clearing & settling the land being in the Seigniory of Ramzay—

Vigé for Defend^r— The obl^n to establish & clear the land is only commination, and never enforced when there is a legitimate impediment and not a wish to abandon the land.—

№ 87
Lacroix
&
Gravelle
&
Lacroix

On rule to renew Inst. obt^d by late M^r Lacroix—

M^r Bruneau— says. the present plff cannot maintain the action, the name of the orh. bap. is Jac. Damien Lacroix— and not same person as Damien Dompstail— on 19 febr. 1814. the Inst^n was rendered— since that time an arrangement w^th the late Jos. Lacroix was entered into by Defd^r— in prej- -udice of the payts made in consequence

on

are filed and admitted — At the time the Defend^t died his died insolvent, he ow^d up the balance, this paper is lost, but he has proved the same by two wits. — as to the nature of this kind of proof it is suff^t. cites Dunlap p. 745 — & see Sermont Supplement of Dig^t

M^r Beaubien for Plff — The proof made by Defend^t is insuff^t subsequent to the balance shown to be due of 300^{tt} —

Moves to set aside testimony of Benjamin Guerin —

Friday. 5^{th} October. 1827.

Prest.

Ch. Justice & Justices Fowler & Pyke

No 830 — Perrault v Raymond } Plff. reduces his demand & asks Just^s for cost only —

No 966. — Swift v McDonnell } Mo. for delay to plead. to set up a note he has of Plff. on ground a crim. pros^n has been instituted —

№ 1026

Byrne
&
Hannigan
&
Kenny J. S.

On Defend. motion to quash the attachment as having been improvidently sued out upon an insuff. affidavit — founded merely on damages —

Mr. Rossiter for Plff. the affidavit is appreable to law

Grant for Defend. the action sounds in damages and not for a debt —

№ 1038

Cadieux
&
Briand
&
Dubuc

On motion to quash the writ of attach.

Cherrier for Defr. the affidavit is insuff.

The first part of affidavit, is nothing at all and the rest of it is not positive as to any fact on which an attachment can issue — The expression <u>sellé</u>, does not apply to the concealing or putting away his effects —

Mr. Bleury for Plff, the word, <u>celé</u> is a mere clerical error, — but without this word there is enough in the affidavit to maintain the attachment —

Arnoldi
&
Perrault
&
Cuvillier pt

On merits of Oppos.

Beaubien for Appt. Action at Disp. sans lieu Separation de biens with Oppn — but the effects of Oppt have been seized in satisfaction of the debt — The Jugt. of Disp. operates such Separation from its date without any Renunciation by the Defend.

cites 1 Pp. 367. ~~ant~~ Dom. 11. Observ on 234 In — ant —

2 Pepan 197

It is true the parties live together, but in such case the presumption of law is that the effects in his possession are his property. 2 Pepan. 197 —

The effects were formerly claimed by Defdt — on an Issue of Opport — but her claim was dismissed so that the presumption is as the Pltff in this respect — but in fact the effects then seized are not the effects now seized —

Mr Boston for Pltff. The effects seized were in the poss[n] of the Defendt — 2. Pepan 180 — Separation are often practised obtained to cover fraud, & to set honest Creditors at defiance — Defendt is a fem. marr: & the husband liable to her debts — & his property bound to pay the debt —

cites 2 Nov. 254

That notwithstanding Deed of Sep[n] the Oppt is still liable to the Debts of his wife as a married publique — Deed of Sep. dated 20 Oct 1820 — & Ren[n] of 1st Nov[r] after — but was not shewn till Sept 1818 —

O. Dem[t] v[s] Separation — see formalities requisite to render Deed of Sep[n] effectual — the Sep[n] here was obt[d] on the ground of the Insolvency of the Oppt — & the presumption is therefore as to him as being proprietor of the property now claimed — on the contrary the woman is presumed to own the whole The authority cited from Pepan by Oppt will not apply here, as in the case the wife is a merchande publique, the presumption is as the husband so as to prevent abuse and fraud — also Rep.

16

16 Vol. p. 208 - as to the distinction between disp. privée & contractuelle.

That in 1823. Asylum seized the same effects as the property of Oppost - on this occasion the Defr claimed the effects now seized as her property -

Beaubien in reply - the action is brot. ag. the Defendt as a woman legally separated from her husband the opposte and Pltff cannot now be allowed to come ag. his own allegations - the Defdt as a separated woman having contracted the debt and the Pltff looking to her alone, he cannot come ag. the property of Opposte

Hart
Walkins
Walkins
opt

Hears on Oppos.

M. Lowell for Oppost the Proces Verbal of Saisie in this case is in the French language which the opposte does not understand and all the proceedings in this Court ought to be in the English language - There has been no revelement of the effects seized before the Sale -

Sol. Genl. in reply - the law says that the writ of Sumns only shall be in the language of the Defendt - but Stat. 41 of the King makes no distinction - but although Sumns be in the language yet the law does not say that

Chapman vs Harrison

action by both —

Mr Borton for Defend^t — The Pltff has destroyed the very act under which he claims his present mortgage, by rescinding it under a new agreement, with the Creditors of Ruby, and also by releasing all the effects of Ruby and giving them up to his Creditors —

The Pltff ought to have reserved his rights & to have been subrogated in the rights of the Creditors — Rep^rs vo Subrog^n p. 443. Lacombe Dr No 10 Poth. Hyp. p. 468 the extinction of the agreem^t destroys all hypotheques Id. Obl. No 280. — No 429. — Rep. 16 Vol. p. 443. —

Mr Beaubien for Pltff

over to 6

Johnson vs Lagrange & Anderson opp^t

Hearing on law on oppos^n

Bouvé for Pltff contends that the right of opp^t has been determined on a former oppos^n made by Oppt^e to the sale of the moveable property —

Mr Grant for Oppt^e what may have been proved or judged on a former oppos^n has no bearing on the present claim —

Dewitt Hart & Degnard Oppt

On oppos^n

Mr Bluny for Oppe did not attend

Mr Bouneau, stated that the transaction on which the oppe is founded is fraudulent

№29.
Day & al'
vs
Morin

Arguments —

Walker for Plff — action to recover damages
refers to evidence in the Cause —
The Defend'r attorney did not appear —
There is an Incidental demand, but not substantiated

№2304
Pominville
vs
Lavoie —

on Report of Experts —

Objected — 1. Experts have not been sworn —
their report not authentic — proceeded without notice
to the parties —

Plff. agrees to set aside report —

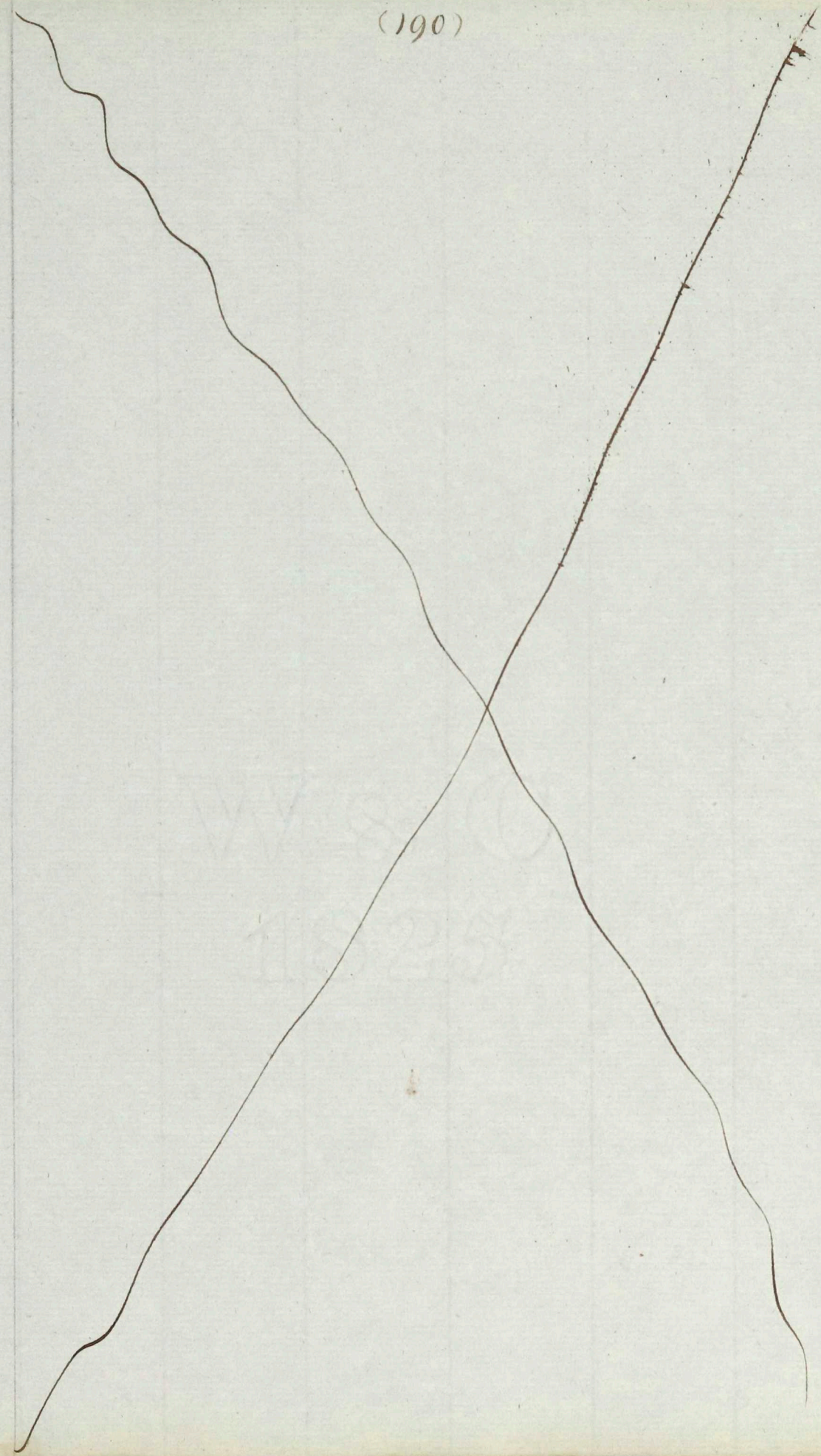
№723.
Robertson
vs
Cameron

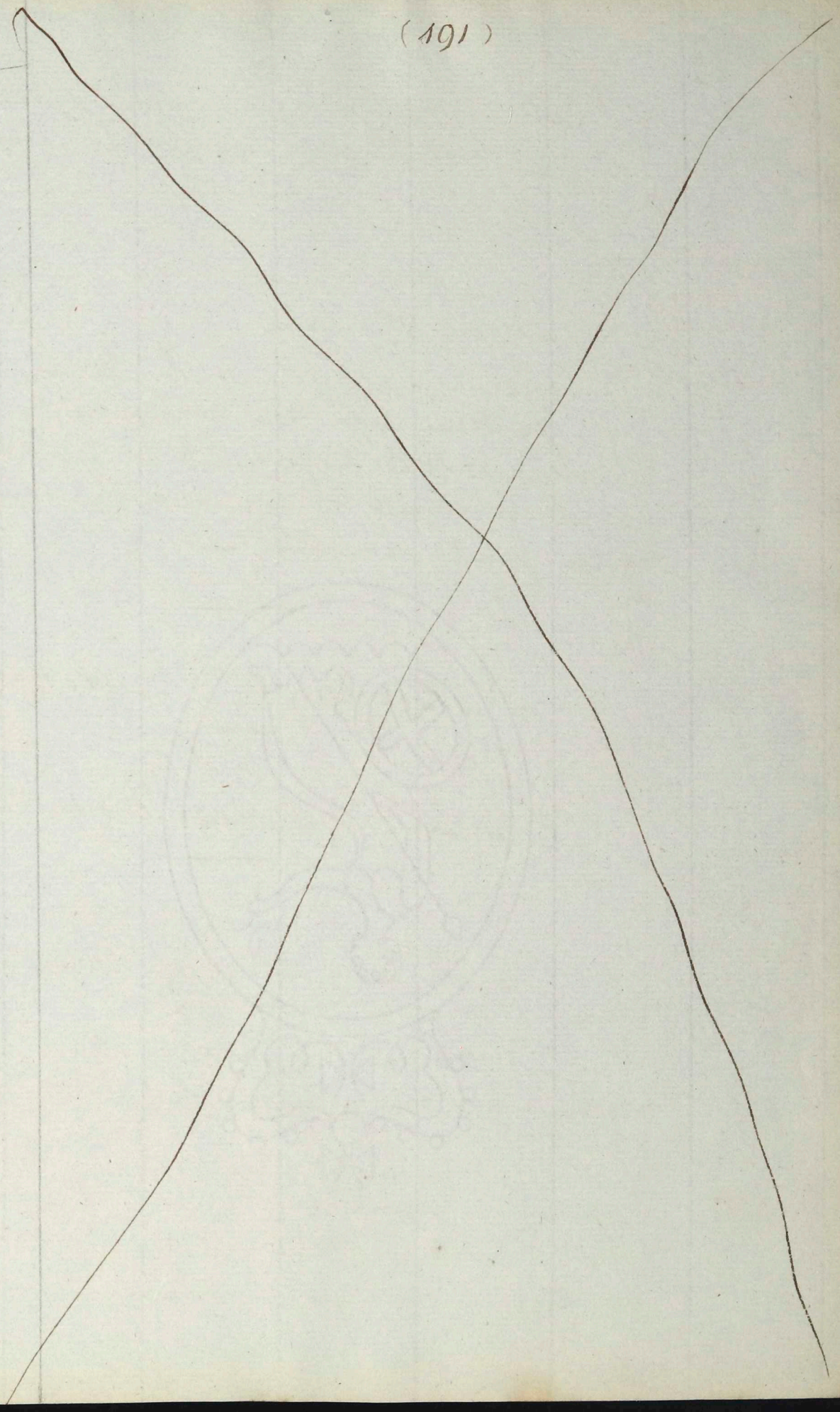
action on Oblig'n —

Plea — was a minor, altho' authorized
by her husband oblig'n not binding on her —
Fr. de la pass'e mentale. № ~~35~~ 76 — the authority in
such case is to enable her to contract as if she had not
been married — The minor may be relieved of an
oblig'n contracted by him as injurious to him —

Grant for Plff. — It is here demanded, that
because the defend'r was a minor the act was null
this not enough; she ought to shew the grounds
for which such nullity was demanded — refers to
239e art. of Custom. 3. Vol. Fr. Cust. pp 508. № 2
Rep're v° Minors — cites an arret — p. 524 —
Lacombe v° Autorisation — when woman becomes
bound to relieve her husband from prison —

su 3 Vol. Fr. Com'rs
p. 145. № 19.





№ 599
Walsh
Tibbs

M.r Peck was heard, who stated that he never entered appr.e for Defft

№ 362
Chartier
Bullock

action Replevin
Grant for Defd.r submits case on the evidence before it, which he however thinks not to be sufficient — but that Appts should be named to ascertain the amount of the points in issue —

Saturday 6.th October. . .

Pres.t
Ch. Just. & Justices Fowler & Pyke. —

№ 2306
Rutherford
M.cKay

On objection to verbal testimony to prove a partnership —
M.r Rolland for Defend.r objects to verbal testimony to prove partnership — Rep. 539 N.o 2 Consul
Buchanan for Pl.ff. contends, that verbal testimony is admissible — Gow on Part.p. p. 4 — Starkie Ev. p. 4. p 1082 — 3.d Vol — The fact here to be proved is touching a Commercial matter —

The

the matters cognizable by the Consular Jurisdiction in France is not the true test of what is Commercial or not — the laws of England must determine this still Commercial matters regarding partnership was within this Jurisdiction — Vide 2 Salk 444 Ord 1673 where verbal partnerships were entered into verbally —

Pol. Genl — Cites case of Hurlaw vs Hoft in 1818 — where verbal testimony was admitted of a partnership. —

Rollaud for Defend —

№1278
Vegiard
&
Privé —

On Defts mo. to quash the writ of Attachment —

Charrier for Plff — The affidavit here is conformable to what the law requires. —

Mr Grey in answer contends that he ought to be admitted to ~~prove~~ disprove the facts alledged in the affidavit —

№1042. & №155
Bullis
vs
Douglass
&
Douglass
vs
Kennedy

On motion of Douglass to unite these Causes —

№ 692.
Shuter dal
vs
Leslie —

On Defts motion to set aside certain proceedings in the Cause —

Mr Boston for Pltff. In this Cause just was ordered on the 20 June last — and this motion cannot now be granted — If there is error Defendt must go to appeal — but all was regular and must be now so presumed —

Blamy for Defts — if the proceedings have been irregular, and the Court surprised into a Judgt it will set aside the Judgt and hear the parties anew —

№ 1452.
Mc Nidordal
vs
Stevenson dal
&
Porteous Exrs

In 4 Cases. —

On Pltffs motion that certain Interrogs be declared to be admitted & confessed

Mr Buchanan for Defts resists this and moves for the rejection of the Interrogatories as tending to shew that the Debtor became insolvent before the end of the transitus — were this even the Law, yet the action in that Case is wrong, as it ought to have been an action to rescind the Contract — for when there existed a Contract which vested the Debtor wd the property, while that exists the parties must be bound thereby —

Walker for Pltffs the action is regular, & it is of little matter whether this or the action stated by Defendt cannot had been brought —

№ 694
Racine.
v.
Garden.

action of Enticement — on merits —
Grant for Defendt The Debt does not
specify what the goods were — The
Pltff was indebted to Spragg & Co & placed the goods
in their hands to apply the proceeds to pay the debt
the goods yt belonged to Spragg & Co came to posst of
Deft as his assignee, & he is entitled to retain them
till Pltff pay the amount of what he owed —
There is no evidence to shew that the goods claimed
belong to the Pltff

Borton for Pltff, states that the Deft was
possessed of certain goods of Pltff in certain trunks
& has enumerated them sufficiently — Contends
that the goods are proved to belong to Pltff, & trunks
were found by Sheriff, under same marks as
stated —

№ 657
Jones. —
v.
Maguire

action on bill of Exch. — on law —
M'Mahon for Defendt contends that
Defendt ought to be admitted to prove certain
facts under which the bill was given
Walsh for Pltff — motion unanswerable —

No 74

Warwick dal
v.
Frost & al

Boston for Plff demands Dept. on evidence adduced. for goods sold &c

Scott for Defts The goods furnished to a Boy but not proved that Defts are the owners of the vessel — The action not maintainable agt the Defendts as partners, no proof of the partnership as to one of Defendts Then was no partnership in existence at time of the transaction —

242. 16. Vesey

2. J. Rep. 220. Smith v Robertson

1 East. Rep. 48.55
12 do — 89 —
6 Vez. J. — 602.

Moves to reject deposition of one of Wits. it being contradictory —

Boston for Plff, contends that the evidence is sufficient, as well as to the persons composing the partnership of R. Frost & Co — at the time of the Contract, as of the debt in question —

—

No 215
Brown
v.
Grenfield

action for work & labor as a Clerk —

Grant for Defdt. This action must be dismissed, no suffr proof of services performed — The Plff was wrong to detain the books. what Defdt — paid him any sum he might ask — he had no privilege on these books There is an Incidental demand for the Books — Now has Plff accounted for the

monies

monies he has rec^d on acc^t of the Defend^t.

No 350
Moore
vs
Appleton

action for boards & wood sold to Defd^t

M^c Millan for Pltff — Defd^t files an acc^t in which he admits a balance due to the pltff, which would prove Pltff's demand — asks Judg^t for bal^ce

M^r Stanley for Defend^t — Defd^t admits to logs under of your demande, but the measurement of them is different from that demanded

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No 1058
Gales & Co
vs
Sawyer
&
Robertson
T. S

On mo. by the Fieri Saisi that he be permitted to enter appearance by his Atts. M^r Walker the T. S. being an Absentee living in Upper Canada — & to make his declaration by the ministry of the said Attorney —

M^r Walker for the Fieri Saisi moves as above — cites. 1 Pro. Civ. 656. 657. — Rep^re v^o Saisie-arret —

The Sol. Gen^l for Pltff, contends that the motion cannot be granted — there must be a personal attendance of the T. S. and he must answer on oath — the Fieri S. him has not given power to the Attorney to swear, but merely to declare — now Pltff's are entitled to the oath of the T. Saisi — the very form of the power is fixed to them the form of the affirmation, or oath, given with the power of Attorney —

M^r Walker in reply — the T. S. was not liable to the jurisdiction of this Court, for the demand in question — he must be considered as a Writ and a tender of his expenses ought to

have

have been made to him —

Monday 8th October 1827

Present

Ch. Just. & Justices Fournier & Pyke

No 1360
No 911
Hart
Lathrop

On Defend. mo. for delay to plead
Walker for Defr. action ag. a Carrier
Defend. master of a Steam boat Congress
Sol. Gen. for Plff. the Ca. was sued
out & served on 27 July last — & no further delay
can be allowed —

No 911
On Petition
of Jas. Holt
& M'Neider

Mr O'Sullivan of counsel for Petitr
Holt — an attach. issued out & Saisie
arrêt, in nature of an opposition to retain
Debts of M'Neider & Scott to pay over the monies
to them M'Neider & Scott, & on a Petition presented
by M'Neider & Scott to obtain main levée of
this oppos. on giving Security, & the order of
the Judge granting such main levée
Present application is to revise the order of the
Judge & set aside the main levée granted, —

Repss to 1. Pigeau 645 – and 651 – state manner of making this oppos^n – Poth. Proc. Civ. 201 – Same principle held in the Custom of Toulouse – under form of bannissment – Soulatges. Brat. – Old Denz^t holds same doctrine – This came to be law in this Country with the general body of the French law and has never been repealed – The Ord^ce of 1667 does not affect it, – as this Ord^ce refers to writs sued out & proceedings had thereon This is an arrêt simple, but not a Saisie – and well distinguished by Poth. in Proc. Civ. – 1 Pigeau 622 – Arrêts de Not: de Denz^t – see Ord^ce 1629 by Neron – 15^e art. p. 426. 1^r Vol. – There is no instance in this Case – no assignation see art. 91. of above Ord^ce There being no analogy therefore in the kind of remedy & effect given by the simple arrêt & the Saisie – arrêt, there could be no main-levée granted here, as in the case of Saisie arrêt, revendication or other proceedings founded on process sued out – see art. 441 Cout. d'Orleans Rodier p. 619 – mentions what the Debtor is to do in case of this kind of arrêt – Poth. Proc 204 – The simple arrêt may be converted into a Saisie-exécution There is no instance to be found in which the Judge is authorised to interfere in altering the effect of the simple arrêt by giving a different or less security than this simple arrêt gave him

M^r Walker for Pet^r M^c Nider – The proceedings here is at variance with the ordinary Jurisprudence

of

of the Country and illegal — Holt but an action ap Wynda. to get a plea of this Involuntary has been set up, this action still pending — The present proceeding taken without notice to McNairn This even if a Ministerial proceeding ought to have been deposited in this Court that the parties might have recourse thereto —

The ord^e of 1787 — has abrogated this kind of proceeding — the only exception to this being that of the Landlord for his rent — That simple arrêt, opposition en main tierce & Saisie arrêt an Exprest terms. Cout d'Orleans. p 769 N° 107 where Creditor is not ready to establish his debt there shall be main levée of the attach^t Id. p 779 N. 108 — Auber de Molinch p. 459 — when the debt is contested, there may be main-levée without security —

1. Prov. Cout p 119. Pigeau — & p 120 — to shew that this kind of arrêt is to be considered in the same light as Saisie arrêt — p 121. — Id. p. 645 — called some proceeding — under a different name p. 657. & 662 — & 654 — Poth. Prov. Cv. p. 195 — The proceeding is considered of the same nature as Saisie-arrêt — p. 202. Id. shews what a simple arrêt is — The ord^e of 1787 was general, and modified all the existing law of the Country as to attachments of every kind —

Ou have we Huissiers a Sujeant connected with this Court — as under the Law in France all acts of this Court are to be executed by the Sheriff —

№1042
Bullis
vs
Douglass

On Defts mo. for delay to plead.—

№127
Holt
vs
Walker

Action to recover damages—
Pltffs mo. to be admitted to adduce testimony to rebut that of Defdt.

Grant for Defendt— the Plea here was special and the Pltff has closed his Evidence, & also that of Defendt—

Walker for Pltff— the plea is the general issue, were it special, yet the testimony adduced by the Defendt. being of an affirmative nature & respecting facts of which Pltff could have no knowledge it would be hard to conclude Pltff on that acct

№762
Forbes et al
vs
Grayet al

On Pltffs mo. for trial by Jury—

Sol. Genl— The case not of a nature to be tried by a Jury— This is not a transaction of an Commercial nature— a Note of hand not negotiable— the persons parties to suit not much to be tried at all events by a Special Jury the matter in content being under £5 C.—

№1994
Ratté
vs
Morin
&
Moreau
&
Lefrancois

On Rule on the Prothy— why Cause should not be rescinded for hearing an Ex parte proceeding— certain fees—

Boston for Defendt— says he ought not to be held to pay costs of Pltff who brings an ill founded action—

Dewitt & Thiot & Dejean oppt

Con hearing on the opposition M^r Bleury for the oppt. the claim is founded on an authentic act made subsequent to the Lis en Mis. cause, this the Plff says is a prima facie evidence of fraud — yet proof ought to be made of the fraud —

M^r Bruneau — contends that the fact of the date of the act is alone sufficient

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N^o 1994 Ratté & Morin Morin oppt & Lefrançois Intd

On opposition —

Boston for Deft^d — The land seized and advertised subject to a droit de chemin. Deft^d opposes this, & called in Lefrançois to support him as his Garant in this respect — The Deft^d contends that the non-usage for 30 years has liberated the land from that Servitude The Oppos^n ought to be dismissed —

N^o 850 Leplon & Crawford

Hearing on law — submitted —

No. 1237.
Davis
vs.
Bean
&
Contra

On award of arbitrators
Mr Sweeny for Defendt moves
to set aside the award of the
Arbitrators on several grounds -

Saturday 13th October. 1827

Pres.t

Ch. Just. & Mr Justice Fletcher

Judge Pyke absent from indisposition

No 344.
St James
Quevillon
&
Amiot T.S.

On motion of Mr Vigé for Mr Amiot to put in cause Mr Lacroix —

granted

No 84
M'Gill ad
n
Burton —
&
The Thing

On Plff. mo. to put in force the Jugt of this Court of — & to name a Surveyor for this purpose —

Bramwell for Plff the plan & p. Verbal are wanting in the Cause —

No 925.
On Petition of
Allen Clarke
Chs Silas Green

On mo. for attachment par Defendt for monies rec.d from his client —

over to Monday —

No 733
Hebert
Pilotte
V.

On mo. to revive Interlocutory Declaring Enquete closed. —

Kerr and for Plff. no diligence shewn to bring Witness, the Enquete had in Vacation, cont.d to Term when Defr. had neither Clerk nor Client — The motion is Irregular & no sufficient grounds to support it —

№249

M^c Cord
v.
Huntoon

action for 2 years arrears of rent
Mr. Charles for Defend. no proof of the death of the late Mr M^c Cord to entitle the Plff to maintain the action — That Defr can be bound to pay rent while he was in possession, & was only for 17 months — Pothi. Rents. № 20 — №36.

Mr. M^c Cord for Plff — there is proof of the death of late Mr. M^c Cord — as to 2d principle the Court has held that by the 99. 100 & 101st art. of Custom that the possession is held — can refer to M^c Cord. vs. Lafleur. Feby 1824 same principle held —

№ №968

Allerisondal
v.
Pattersondal
&
Bellamy T.S

action for goods. Hearing on merits on both demands
Stanley for Defr — The ~~action~~ demand is not proved
There is a settlement of act between the parties
& a note given by Plff to Defr for which an Incidental demand is made — As to the proof for Insurance — there is no demand in declar for it
no proof of sporting deaths —

Huntoon for Plff. admits that the whole demand is not proved, but to extent of about £15 — There is no proof of the Incidental demand —

№1740

Martigny
v.
Dubois —

action en revision —
Brunian for Defend — contends that the action is not founded. —
Mr. Mondelet for Plff contends that proof is sufficient —

№2379
Turner
" Brown

action for services as a comedian
Mc Cord for Defdt. The case not made out, fact is proved, but it will be impossible to ascertain the amount without a reference to an accountant. —
Mondelet for Plff refers to testimony of one Gale who proves the admission of Defdt for £57.5 pounds what was due to Plff for his wife & children

№1045
Delisle
Neville

action on Penal Statt. ne Exeat
Grant for Defdt — Exception dismissed

№1228
Roe
Tracy

similar Case —
En délibré —

№2312
Warwick & al
" Raymond

Action for damages —
Bolton for Plff — Plff & Defdt & several others associated to build a boat to navigate on Steamboat between Lapraire & Montreal — the Shares of £ amounted to 20 pounds one which Plff held were purchased by Defdt this with a view to injure the Plff — he united a new boat, & sold the boat in qn Plff had an interest — & continued the Commerce of navigating with his new boat between Lapraire & Montreal —

cdes Domat. liv 1. tit. 8. sec. 1. art. 12 – honesty & fair dealing ought to regulate the proceedings of partners & they ought to be unjust & diligent, & do nothing to the injury of his associates –

A Partner cannot break up a partnership so as to injure 2 Poth. N. 140. Soci – Domat. liv. tit. 8 sec. 5. – a dissolution ought to be made at a convenient time – Rep. de Journ. p. 334 –

As to the damages, refers to the testimony of Mr Reid & others who say, that the profits might amount of £1000 a £1200 ℔ an –

Rolland for Defend. considers this action to be without name & unknown – it is not an action pro Socio, to have an account of the profits & produce of the boat, but an action to have a £1000 damages for his maladministration –

The fact of maladministration complained of constitute no ground to maintain this action – the purchase of the 10/11 of the boat – the constructing another boat – But it is on this proof that this new boat, the Canadien, was built to sail between Montreal & Quebec – The Montreal was incapable of being navigated in 1825 between Laprairie & Montreal – In 1826. the Defend. engaged not to navigate the Canadien between Montreal & Laprairie, but this did not affect the Montreal, for which Defd. was to get £80 ℔ an. – When the Montreal was converted into a ferry boat between Longueuil & Montreal, the Plff. were silent although they knew the fact – but this vessel is not yet in a State to navigate between Laprairie & Montreal not worth landing all the repairs made to her –

M. Boston in reply — although the waters were low in Augt. 1825. yet they have not continued so since, & the boat Montreal ought to have been reinstated in the usual trade when it became practicable — This boat is now, & has long been in a State of performing the navigation between Lapraire & Montreal —

McRider
Payne for
Cadieux opt

on opposn for privilege for homologation —
Guy for appellt question whether Plff shall be suspended for payt of certain costs to the claim of Appellt 1 Pig. 682 — There is a Inf. of Distribn —
Walker for Plff — the difficulty here is in regard of the costs of the Guardien

No 173
Pothier
Montigny

action en opposition de titres —
M. Roi for Plff. — the Defendt has not opposed all his titles, nor appealed the Exn of 1/4 Tiers but only his costs & Rentes — enters suit for costs —

No 1297
Bowstead
Laforce
Alexr Reeves

on mo. to compel Defendt to pay amt of Plffs demand by not having represented the effects seized — value of effects is made —

No 1727
Finlay
vs
Bedard

on Defts mo. that Defendr be held to answer over to the facts & articles —

M Beaubien for Defendr the Defendr has answered sufficiently —

Beards
vs
Todd.
&
E contra.

On Defts mo. to dismiss the oppsn as no securities have been filed —

M Sel. Genl states that he has no securities to file & that he refers to the oppn as filed

M Ryan for Plff states, that the party is too late as the notice was given on the 3d — besides the oppn here is addressed to the Sheriff, but lays no claim to give this Court to be adjudged upon —

No 921.
Ex Parte
On Petition of
Jas Millar

On Petition claiming that the Provtl Pts be ordered to pay over the monies deposited in their hands to the Petr —

Bedard
&
Durand

On Defendr mo. why the Enquete shd not be declard closed —

M Bruneau — the Record not at office —

No 1369
Campbell
&
Seaver

on mo. declare enquete closed —

Walker for Plff — the rule for Enquete was discharged last term — this mo. irregular — the Case may be inscribed anew —

Burton for Defendr — On the English day the Plff produced no writ —

No 2399
Kuper
vs
Masse –

action for house rent & damages

Bowdre for Defend. The house was
in a bad state – was rented for 20 $ p
month. & afterwards the Defend. was to remain
in the house to take care of it until the Pltff
should find an opportunity of selling it

There is no proof of the value of the rent
nor on what principle the Defend occupied
the house –

No 2165
Chapman
vs
Harrison

on merits –

Beauben for Pltff contends that he
has a right of mortgage from 7 Jany
1825 when Pltff became security for the said
Riley – the pltff fulfilled Riley's obligation
& obtained a discharge 9 Aug. 1825 of the agreemt made
between Riley & the commissrs – The Defend
became proprietor of the lot of ground which
he purchased from Riley in June 1825 –
Remission. Sub. ch. 9. Sect. 1. 2. 3. 4. 5 & 6 –
The act of indemnification contains a tacit order
from the Debtor to pay for him, & also a promise
to reimburse the indemnifier

The authorities cited by Defend do not apply,
there are certain cases where the party must
obtain the subrogation of the Creditor –
Id ch. 7. Sect. 61. 62.

The

The plea here is limited to two points, the sufficiency of the action in point of law and in point of fact — the Party cannot now avail himself of any special grounds, such as that Pltff is unable to give Defend^r — a subrogation of his right of action — he cannot say, that Pltff had the Pltff sold the property of Riley without specially pleading it —

Defend^r has cited Lacombe vs Subrogation — but the case referred to does not apply — also Rapelet the case referred to does not apply — also Rapelet vs Subrogation — it the same principle unapplied

Barlow in reply — when the contract creating the mortgage is destroyed, the hypothec as an accessory thereto must be destroyed also — even the Pltff annulled the contract, which should have been specially reserved so as to subrogate the Defend^r under the same in case he was bound to pay —

No 891
Perceval
vs
Perrault

Action for Penalty, 6 Geo. 4. ch 114. Sec. 51
Ex parte —

No 42
Tetro
vs
Jodoin
et al

Action to oblige Defend^r to make an Inventory —

Roi for Pltff. The Pltff complains of an act of Donation made by her husband made during the Community, of^t was ratified by her, but she was compelled to do so, and besides the act was made by a prohibited person & in fraud of the Community

The husband has made over the whole of the Community reserving to himself only a certain rente or pension viagere — her consent to this act must be considered as constrained as being under coverture —

The Dones here were the children of a former marriage of the Plff's husband see art. 282. 283 — This ought to hold whether both parties have children or not, the reason of the law applying as to case of a pupill making a donation to the child of his Tutor

There are contradictory arrets on the subject

The more modern are in favor of Plff

4 Journ. d'Audr 125
2 de
E. p. 880

Rolland for Defendt refers to the authority cited on the hearing on law as decisive of the question in favor of Defdt — The donation here was ratified by the Plff — it was legal and must bind the Plff —

6 Poth. p. 448. — decides the question & tells that the opinion of Lauriere is erroneous —

The action here is not for an Inventory, but en nullité of a deed — and only in case this deed were set aside, that an Inventory should be granted — The Defdt hold no property of the deceased, nor have the Plffs been able to prove it — cites Allard v. Greenbrad

Monday 15th. October.

Pres.

Ch. Justice & Mr. Justice Pyke.
Mr. Foucher absent at Mr. Lusignan's wedding.

No 792.

Marier
vs.
Roi —

Action of damages for malicious prosecution
Trial by Special Jury. —
Verdict for Plff £25 - damages & Costs

No 2100

Malbœuf
vs.
Charron & Cabana —

On action en Separation de biens —
On Report of Practicians as to the rights of the Plff. Rolette for Plff demands homologation of Report. —

L. N. Vigé for Defendt. The last Interlocutory directs proof to be made before the Court of the Plff's rights, but she has joined that proof with the report of Mr Baron and asks that both should be confirmed and Judgt given thereon — The Rule has taken at Defendt is irregular and cannot be granted, and the Inscription here is wrong, as the parties are now on the merits —
over till to morrow

No. 1199. 1200. 1201

Jos. Bte. Parenteau
vs.
Normandin
M. A. Peters
Jos. Tremblay

On Plff's motion to unite these Causes —

No 1175

Stansfield
vs.
O'Donovan
&
Delony —

On Interv. party's motion to discharge the Inscription, for hearg. the Enquête not being yet closed —
Walker for Dfts. the only order in the Enquête book

book, that the party has no writ to produce
this is not closing the Enquete —

Gillespie val
&
Sprague val
&
M'Gillival
T. I

On motion of the Pltfs Saisi to be
allowed to sell certain effects seized

—

№ 1156
Hebert
&
Toupin
&
Garants

On motion of Garants for delay to
plead, as his garants have not yet
pleaded — and
On motion of Deffendr for a similar delay

—

Tuesday 16th October.

Pres.t

Ch. Just. & Mr Justice Pyke

No. 1177
Smith
vs
Birchon

On Defend.s mo. to reject the inscription of the Cause as irregular — ovr to 17th inst.

No. 2481
Holt
vs
Carr

On Defend.s mo. to discharge the Inscription for Enquete without notice as Enquete has been long closed —

No. 905.
The King
vs
Kean

On Hab. Corp.s rule for an attachment

Mr Sol. Gen.l states that on service of the writ of Hab: Corp. for refusing obedience to that writ — Defend.s has been ex. on Interrog.s her answers are in general immaterial, and the reason why she has made no return she says she cannot make any as the child in question has since been taken from her —

Mr Vigor for the Defend.s The Defend.s was ignorant of the nature of the writ, considered it as a common proceeding and sent the writ to her counsel, she explains in her answer to Interrogatories the circumstances

Ordered that Defend.s make her return to the writ —

№1067
Desrivieres
vs
Martindale

Pltff
On ~~Defend~~ Dr motion to reject plea as combining matter of law & fact in same conclusion. —

Mr Beaubien for Pltff cites case of Earle vs Cuvillier —

Champoux
&
McDonnell
&
McDonnell opt

Question as to Costs, the opport having proved his opposition —
Blenny for opport — the costs can be allowed only to the time of making the opposition —

№1309.
Filteau
Roi —
&
Mercier et al

On motion of Mercier avis that Etienne Maynard & others be obliged to take up the instance in the Cause —

Mr Mondelet for the Party on whom the rule has been served, says, that he has not had time to communicate with the party, & that as the matter in consequence a delay be given to the first day of next Term —

№397.
Chamard dit
vs
Mercier —

On action by Defend as Exr to render an act. —

Roi for Pltff — the delays granted to Exr by law having expired; action to account — the Defdt has filed an act & deposited the balance with

the

Proth'y— to this act there have been debats & Sontenemens — Practicians were named to examine the act who have made a report of w^h the Pl^ff demand the homologation —

M^r L. Vigé for Defend^t — the practicians allow three times more what than the Pl^ff's demand —

The widow after Testator & her children renounced to the succession, & the Pl^ff appointed Curator. — The debats de compte consist of 5 items — in the Sontenemens the Defend^t produced a statement of debts due to the succession, for which the praticians hold the Def^t responsible — altho' this was no part of the debats de compte — and therefore cannot be allowed to Pl^ff in this Cause — The difficulty as to the tassine of grain is of no moment, it was sold for the best advantage The Defend^t charges 900^t p^d the notary, the Praticians deduct 300^t as so much overpaid — but the Defend^t cannot be held liable for this, the Pl^ff ought to have his action ag^t the notary to reimburse what he has over charged. — same objection is made to a charge made for money paid to an Advocate, on a suit bro^t ag^t him —

Roi for Pl^ff — The Defend^t has left a sum of money in the hands of the widow, which he ought to have recovered — There is a quantity of Peas sold by Def^t Defend^t renders no act — (Vigé says, that it is contained in the act of the sale of the grain) — The grain has not been sold according to the general custom — & Def^t liable for the loss in consequence — No proof that the sum p^d to the Advocate Vigé was on act of the Succession — There is a sum of 900^t p^d in block

to

to Mr Lemai — this is extravagant, and cannot be allowed, & the Notaries, practicians, have found it so —

№ 594
Maynard
&
Sewell —

action on obligation —

Salmon for Plff. Question here whether the Defend. is bound as Caution to pay the interest which the original debtors were bound by just to pay — Rapoz vo Cautionnement. p. 765 — p. 466. vo Interets Judiciaires — to shew that the Caution is bound for same interest as the principal Poth. obl. № 405 —

Mr Sewell in person — question is whether Plff is entitled to interest for a sum of £20 — for costs — the oblgn is payable without interest & for this the Defend. became bound as Caution in manner aforesaid — now the sums acd. on this oblgn must be imputed to the principal debt the interest has amounts to £210 — wh. Defdt never undertook nor is bound to pay —

The Caution cannot be bound beyond his undertaking — Poth. obl. № 402 — Dig. 46 lv. 6 & law 21 — Instit. lib. lv. p. 289 — Hubert Du. Droit Rom. Dig. p. 432. vo Interets — Interest here stipulated that it should not be paid — as to interest ex mora — 1 Dr. Poth. 53 1 vol. 375. 375. the interest in this case allowed is in nature of a damage to the Creditor for wh Caution is not bound —

The

The interest on the Debt. is of this kind, as a damage not arising out of the obligation — the interest in this case is a distinct debt from the principal — the imputation of what is pd on this case goes on the principal, as going to the discharge of the Caution as whom there can be no interest until he is en demeure to pay — as to the sum of £20 — he consented should be applied to the Costs, this not binding on Defd to prevent his having this sum deducted from the principal, because the proceedings of the Cessio were never legally notified to the Defend — 2 Ev. Poth. p. 436. the money if paid when not due may be recovered back —

Mr Dris coll in reply, the imputation of the £20 must be to the Costs — this must be taken out of the £136. recd from Debtor — the balance only goes on the principal, to get Pltff's appn —

That Defd is liable to same interest as the principal he was bound conditionally — the condition has happened, he is now bound as principal Debtor. Cobb. No. 220, Rapn pa 405. the Condition — e.g. the principal Debtor being liable for the interest, so must the Caution from the moment condition happens — he becomes a principal debtor — bound for interest — Rapn vo Interests Judiciaires —

No 823
Fitzgibbon
v
Molson et al

action for loss of goods — demurrer to Plea — Bolton for Pltff. plea insufficient — the Defts admit that they rec the articles & that they landed them — but they do not say that they delivered them — 2 Esp. N.P. p. 623. — This is an action of tort

1 Com. Dg. 290
2 Chitty 120—

and the plea ought to be not guilty — & not non assumpsit

M^r Buchanan — for Defd^t — Defd^t admit a part of contract as stated — but a special condition is set out under which the Engagement was made — the responsibility of the parties was limited. Act. 54. G. 3. 144 23 Sec — 10 East. 513 — 5 Pedersdorff. p. 92. 1 Sha. 145 — 3 Taunt. 271 — Abbot on Ships. 229. 230 —

Boston for reply — the Defend^t does not shew that he was complied with the agreement as he himself has set it out — it does not shew any delivery of the goods, according to agreement — ats can 5 Barn & Ald. p. 58 —

M^r 2284
Edwards q. t.
v^s
Adams —

Action on penal Statute for having taken goods in his poss^n —

Ross for Pltff. action on St. 6 Geo. 4. ch 114 — sec. 57 —

Rossiter for Defend^t — The evidence is insufficient — the action is in the name of the seizing officer whereas it ought to have been in the name of the principal officer of the Customs by 54. Sec. — when the penalty is sued for — here Pltff not a principal officer of the Customs —

Ross for Pltff. the 54. Sec. refers to 68^th — to shew that the seizing officer may bring the action — the evidence here is of the clearest nature — the Defend^t own admission —

№ 759.
Percevals
vs
Melzter

On similar case —
Defendt states, that the costs must be deducted out of the value of the property —
The Sol. Genl admits case —

On Petition of A. Clarke vs Greece —

On Petition of A Clarke aft. Deptn for monies recd by him

Greece states that whatever the balance may be, after deduction of certain sums due to him he is willing to pay. —

№ 1449
Beaubien
vs
Monjeau
&
Malo. Gal

Counsel for Defendt states, that he has filed new conclusions agreeable to the order of the Court —

Mr Sol. Genl for Gal — says, he ought to have had communication of the new conclusions & an opportunity of answering thereto. —

Mr Beaubien for Plff says he has a right also to have communication of the proceedings —

№ 1109
Sol. Genl
vs
Lambe

Action on forfeited Recognizance. on Law

Sol. Genl states Pratts Ev. p. 29 — 4th Edn. this is a Record & cannot be disturbed nor any allegation received aft. it —

Grant for Defendt — There is not enough set out in the declaration to support the action — The Recog

was to appear before the Justices at the Police office and the Recog. could not be declared forfeited by the Court, as there was no charge stated to exist ags Spragg so as to give the Justices authority to bind over the parties to appear before him —

The Justices had no authority to bind, as it is not stated that he had any power to hear and determine crimes & offences —

That Spragg was not bound to appear before any Criminal Court —

Sol. Genl the Condition of the Recog. was that Spragg should appear before the Justices of K. B. & answer — & when Spragg was called there to appear, the Defts ought to have stated their grounds why the forfeiture should not declared —

—

No 1143
Sol. Genl
Dixon —

on action on forfeited Recognizance

Blaney for Defendt — The party Verdun was at the time confined in the Gaol & in the power of the Court, and the Recognizance could not thereby be considered as forfeited —

Sol. Genl — there is no identity of person in this case —

No. 1136

No 106
Pothier
& Eager

action for arrears of rent & cens & rents & for damages in not performing a part of the contract in the Deed of Concession

Roi for Pltff. The act here was not passed as an acte authentique — but is an acte sous seing privé & has been proved accordingly —
Poth. obl. No 733. & 808 — 1 Bouy. 470 — No 3 — Repe. vo Acte. p 139 —
The apostille on the margin of the Acte altho' not signed by the parties are set aside, but do not vitiate the Acte — Repe. vo Apostille —
Borton for Defdt — This act not regularly passed before a public notary, therefore Pothier cannot have the legal possession of it — it does not appear to have been in the possn of the pltff & of Defdt — and how it came into the hands of the notary is unknown
This paper gives no right of action to the Pltff it speaks a falsehood, purports to be an agreement before a notary, but is not signed by any notary, the copy produced is not conformable to the original.
It was no doubt the intention of the parties to pass an act before a notary, but this not having been done, it can be binding on neither of them, the law presumes they changed their opinion and withdrew — There are two modes to make an acte of this kind, one by a notary, the other by a double ecrit, for the security of an executory agreement otherwise there is no security for the contracting parties

1 Bourg. 471 act must be double — when sous
seing privé — 1. Pigeau. 10. — Poth. Obl. N°
4 Rep^re p. 47. v^o com. de preuve — 1 Poth. Ob. N° 11 —
Nouv. Dict. de Not. p. 34. Rep^re p. 207. v^o Acte
Instrum. sous la Cons. p. 41 — when there is an apostille
& the parties refuse to sign it renders the act null
it is a proof that the parties had disagreed —
Rep^re v^o Double Ecrit. p. 354. 60. 61
2 Pigeau 260 — 2 N: Dens. v^o Faux. p. 109 —

There has been no exécution of the Contract,
no tradition of the property, which has remained
in the poss^n of Plff. —

Roi Ja Plff. Had it been agreed that the
act should not be perfect till signed by the
Notary, this act might be considered as null —
but this act altho' imparfect is not null —
nor was it necessary here to be made double
it being of a description to be executed without
that form, but in point of proof the act is a
sous seing privé — but it cannot depend
upon the neglect of a Notary to render Null
what the parties considered as valide — The
act is regularly before the Court — Nor is
there any fraud in passing the act —

Wednesday 17th October. 1838

Prest.

№1939.
Dumont
vs
Marcotte
& opposant

On Mr Beaubien's motion for Dépt. of a part of money levied on gts. there is no claim
Noth'd s. en opposn

Jacobs
vs
Bender

On Defendr's mo. to rescind rule for hearg ex parte - & to be permitted to file a plea - on grounds stated in the affidavit -

Bleury for Plff. cause returnable last Term - motion to proceed ex parte - Record missing - Noth. exd - Defendr consent asked to make up a new Record - The Enquete is closed - the Cause inscribed for hearing -

Namur
vs
Fournier

on Plff's mo. to file Report of one of the Experts & on rule as to the other Experts - The Report of Mr Delorme is now made, but it is not of a nature to be adopted not being sufficiently explicit & he ought to be held to appear & explain the value of the repairs he alludes to -

Ross for Defendt. By both reports it appears that the property has been deteriorated, & this is enough to dismiss the action -

Millar
Halloweell

action on bill of Exp – protested
Mr Ryan for Defdt – bill drawn in Montreal in June 1827 & protested on 10 of same month – There is a variance between the Declⁿ & bill – the bill is drawn on some at Tower in London – notice of this in declⁿ 30 days after sight – the bill says at 30 days sight. – to be paid to Mr Thos Annes in Declⁿ – the bill says to order of Mr Thos Annes – There is no bill protested filed for non-acceptance – as to variance in name Chitty 6 Edit 352 As to amt of costs & charges – as only £47 – whereas £50 – is noted –

No 433
Byrne
v.
Johnson

action of Indeb. assumpt –
Walker for Plff. action for Goods as agst the parties appear to have accounted together & the sum demanded acknowledged to be due – the only difficulty as to the mode of payt – the Defendt has signed the acknowledgt payable after his demise – The answers of Defendt on facts & art. shews the expiration of the debt
Rolland for Defdt – The confession of the Defendt cannot be divided – Ralph vs Confession – Poth. Ob. No 832 – As to the answers

of

of the Defendt on facts dark. they refer to this paper as the only debt he owes —

No 1868
Robinson
~
Watson

action for wages — & for work done —

Mansfield for Pltff — question as to the quantum to be allowed to Defdt for the board of Pltff — Pltff contends that 10/ p week is the usual allowance —

Buchanan for Defdt — the Pltff has not made out his demand beyond what Defdt has proved to have paid except a balance of £6. 17. 6 & has been tendered — The board & lodging of the Pltff is charged at the usual allowance of 15/ —

No 1276
Gay
~
Bingham

action for wages. Hears on law —

Bearcroft for Defdt. does not admit the contract declared on — Pltff does not shew he was sent away — the contract here was made by one Wright who was not — authorised to bind Defdt Dist. v. Double Exit Repr. vo Double Exit. — The Defendt shews that the Pltff was paid the whole of the wages due to him

Scarlett for Pltff — this is a hearing on the law & yet on the Defdts plea refers to an act not stated in the Declaration —

№ 252
Martigny
v
Beauchamp

ments —

action hypoth: for Cens & Rents —
Buchanan for Pltff — The Defend — is
in poss^n of a land on w^ch arrears of
rent are due — the land is in the enclos of the
Pltffs Seigniory, surrounded by lands paying
cens & rents — 1. Dumoulin. 64 G. 2 Stor upon
67: art. of the Custom — Rep^n v^o Enclave Seig^y
p 698 — N. Dens. v^o Ench. p. 582 —

The pretension of the Defend^r is not founded
because although the original title in 1742
conveyed it free of Cens & rents, yet Defr does
not shew he holds under that title — there
is no connection in the chain with the Defdt
& the original concession — the exhib. Def. 1785
shews Defr. held en pays de cens & rents — the
sup^l is a Sale by Bailly to the Grantor of
Defr. in 1785 — charged with Seig^r rents
the contract of mar. of father of Defr. in
1786. which shews the title under w^ch
the party held the land —

The authors cited all agree that if the
Vassal sets up an independent title he must
shew title to prove it —

The presumption is that the Defend^r holds
subject to Cens — N. Dens^t. v^o Enclave — 585 —
the title being of Defr. his possession cannot
avail him — the poss^n com of Defr has been
rebutted by the titles he has produced — and
all the evidence shews that the poss^n was that
of a Vassal —

N. Dens^t. v^o
Enclave.

But

But by the 123 art. of Custom we have the rule when the Seigneur prescribes against another all the Defendrs titles ought to be held à la charge des Cens — By the 124 art. it would seem that the Seigr should be held to produce titles of his Censitaire to prevent the prescription of the Cens — but the authors; Auzanet & Duplessis appear to say that these last words in the article are wholly superfluous & contrary to the general principle not to run dans Seigr Auzt. on the 123e art. — Poth. prescrip. Nº 285 — p. 688 vol. 4. Arrets de Lamet Lettre (C.) vol. 1. p. 208. —

Pltff entitled to 29 years arrears Henrion de Pensey. Vº Cens 1 vol. 295 —

Viger for Defendt admits the general principles cited of Custom & nulle terre sans Seigneur — In 1742 the land in question was held as holding of his Majesty, this is a strong presumption against the claim of the Pltff — the Pltff shews no proof to contradict the proof of this being a Fief, no acknowledgment on the part of the Defdt or his predecessors of the Pltff or his auteurs being his Seigneur — the possession of the Defdt under the above titles is a sufft presumption against Pltff — That the Crown could not claim against this title, neither can a Seigneur — That the Pltff cannot avail himself of the clauses in the private Contracts between the predecessors of Defdt — these clauses may have been inserted by error — In the Contract of 1786 — two lands were sold — one of which paid really Cens, but the other not — & the Notary may

may be expected for inserting the words as to the proof of Cens &c

The proof made by Defts is strong & formal as well by written titles as by verbal testimony

The long silence of the Seigr is against him —

The Pltf's title shews there were other Fiefs in the Pltffs Seigniory of which no rents to Pltff & his title says there are several Fiefs of Cens issue from the Seigniory of Michel, which pay no rent to the Seigr and the general opinion of the parish that if the party had a clear fee the land, yet he was clear of all rents & lods & shews the animus w of Defts possessed

Cherrier for Defts. The title rept to the title of 1742 acknowledges the same rights, the third title in 1785, a Mr Bailly sells this land with another land in Belœil which held of that Seigniory & pays rents to it & therefore the words used as to the lands sold being à la charge des droits Seigrs must apply to the land in Belœil, — the last title of 1786 the marriage contract, the land is sold, but there is no mention of the Seigr rights —

Bethune in reply — the action of Pltff is en possn. alone & he could file any titles at the Enquête — The title of 1742 would not convey a chain of right to Defts — The sale of 1742 is not even a title of Pltff

who

who may have title from the Crown of the very land, but the poss.n of the Pltff as Lessee is alone sufficient — The Lessee is entitled to take notice of all transactions between his Vassals respecting lands in his Lordship — The title of Defendrs are formed upon his present fraudulent Intention — This not mere matter of form but matter of title & must be remedied at once —.

—

№ 99.
Lamoureux
Sabois

Action on deed of Sale —
Mr Grant — Pltff bound to deliver up title
of they have done since the plea —

Rolland, the Pltff was never en demeure to deliver up deeds, & when demanded were delivered to Defr

—

№ 1750
Wilson
&
Seaver
&
French

Ds opposn

Grant pr Pltff — the cattle in question
were seized, & Defrs held under a lease
from the Opport — the lease was on this rescinded
and all the Cattle delivd up to Oppt under an
agreemt between them — this agreemt was argued
as fraudulent — the Oppt was exam.d on
oath by order of the Court —

Stanley pr Opport — the Opposn must be
maintained from the evidence & the answers of
the Opporant. —

No 2234
Jamieson
Desrivieres

Action on promy Note by Indorsee agt Indorser

Beaubien for Defendt action is irregular, the Defendt has excepted to the declr by a special plea — the declr states a note given by Moran to Defdt & by him indorsed to Plff — the demand & protest for non-payt & pros. agt Defdt — but the Defendt was never legally notified of the delegence done & dishonor of the Note — by law a Note made by a man not a Merch. can be transfered only by full indorsement, here the Note has not been thus indorsed to the Plff —

The parties cannot ask payt. without being the legal owner of the bill — Savary. p. 42; Therefore protest made by the Bank was irregular —

The transfer of the Note was made by the Defendt to Lamieux without consideration This is proved by the answers of the Plff on Interrogatories —

Scott for Plff — Chitty — it is of no consequence who gives the notice — It is in proof that Plff gave full value for the Note —

No 1705
Frostidal
Cuvillier

action on Note —

Beaubien for Defendt — When this action was instituted the Defendt owed nothg to Plff as they retained the Note & they ought to have

delivd

delivd. up to the Defendt – which has not yet been done
The Defendt has pleaded that the note on wch action is
brought was brot. without consideration as they returned
in the pass[n] another note in giving up which only
the second note was given –

№ 314
McKenzie
McGillivd

action on Obligation
Gale for Defendt – ~~then~~ contd

№ 637.
Riccard
St Denis
Oppost

Mr Letourneux for Plff. contests opposition of
one Marion – Marion pretends a preference
to Plff, as bailleur, Marion sues for wages
Rep[n] to Privilege – Loyer[s] preferable –
Id. vo Bail – Dir. vo privilege – Dumf. ev. verbo,
says he has put in a claim en sous-ordre of Plff
Pothr. Mandat. pl. 137.

Mr Peltier for Marion claims a balance
of £10 – for wages – refers to vo Bail en Rep[n]
the Commis has same privilege as a Servant

Mr Driscoll for oppost en sous-ordre of the
Plff. says the privilege is due to the Plff own wages
objects to claim of Mr Letourneux, there was no
distraction de frais but on one of the bills –

№ 543
Smith
Barnett

action for wages
Grant for Defendt. balance due is £5 – Plff on
own last acct. admits £46 – balance about £13 – Plff
ought to pay difference of costs –

Charles for Pluff. says. Pluff has admitted only £14 — —

N° 1210
Rolland
Paquin

Action for Lods & Ventes —

Pluff. action on a Deed of Sale for £200 for qt. he has constituted a rente foncier non rachetable — had this been a rente reservée, but this being a Sale the Lods are due on the amount — The law says, when there is retrait then are Lods due — had there been a reserve of a rent as the consideration, there would have been no lods due — no mutation — Poth. Bail a rente. 2 Vol. 461 — N° 184 but when there is a price then are Lods. Poth. Vol Retrait. N°. 743. Rep^se v° Rente — p. 162. 3 1 Bourg. p. 306 — 1 Dum. p. 456 — tit. 1. Sup. sec 33 gloss 2. N°74. 75. 81 82. 87 — Tournaur N° 324 — 535. 537 — V. Denis. v° Bail a Rente. N°. 5 — Lauren. art. 83 Cout. Old Denis. v° Rente. N° 14. — v° Lods. N° 15 —

Bedard for Defe — It is a principle that the Bail a rente foncier creates no Lods & Vents. 3 Desp. N° 6. p. 42 — when constituted at time of alienation — if the intention of the parties has was to reserve a rente as the only consideration, the form words will be so interpreted by the Court — the intention

f

of the parties is to be considered, and it is evident their intention was that the latter alienated his land in consideration of the rents only — the latter rec'd nothing —

No 1425
Bowman
vs
Drummond

Action for Slaves Sold & delivd
Boston for Defendr. The evidence in this case shews that has been fully paid for all he delivd — see evidence of McKay —

Thursday 18th. October

Present
Ch. Just & Justices Fowler & Ryan

On Hab. Corp
The King
vs
B. Reander

Mr Vigé for the Defendant, states that the Defendt. is entitled to have the child, as being its mother —

McBuchanan for the Prosr — the case never decided 4 Taunt. 498 — in England the father may claim the child, if he has the means to support it — In this case the Defendt. has not denied that the Prosr. is the father of the child — & he being now of an age of 7 years the father is the proper person to have charge of him N. Dem. p. 288. Vo Batard. Vol. 7. p. 431. Vo Education —

p. 183

Vigé for Defendr — contends, that even were any uncertainty

in

in the law the preponderance ought to be in favor of the Defendt

—

No 840
Miller —
vs
Hallowell

On Plff's mo. to discharge the delibert & to amend declaration —

M Ryan for Defendt Plff has no longer any control over the record — & it is now too late — to amend —

—

No 990
Bell
vs
Stuart

On Plff's mo. to name Experts to estimate the work done by Plff for Defdt —

Old Denzf. Vo Expert. Nolt — N. Denzf 13 vol. Vo Expert — 1. Cowhol. Prac. Unw. 1 Pigeau 291. 292 290

O Sullivan for the Defendt the Plff has not proved the work, & therefore there can be no estimation made of it — refers to disposn of Seybold —

M. Mondelet

No 1149.
Filsh
vs
Filsh

On Plff's mo. to reject the acct. filed

Walker for Plff — The account is irregular and there are no vouchers in support of the expenditures made — the sums charged are in round numbers —

M. Grant, says the Defend. may contest the account & compel the Plff to prove his acct —

№ 52
McCord
vs
Pierce
&
Sweetman
et al —

On Pltff mo. for a Rend. Exp. for effects not claimed —
Peck for Oppt says he has a right to security for his rent opposed & to oppose —
Poth. Louag. p. 283 — Repre Vo Oppt p. 443 —
1 Pycan. p. 633 Repre Vo Bail. p. 24 —

№ 273
Currie —
vs
Greenfield
&
Dows Oppts

On Pltff's mo. to dismiss the Oppositions
M Boston for Pltff. the oppositions filed with the Sheriff, is wholly informal & is only a warning to the Sheriff not to sell the property —
Grant for opposts the Oppositions are sufficient particularly on this that the debt has been paid

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№ 2100
Malbouf
vs
Charron et al

On the report of Practicens —
M Rollin for Pltff prays hom. of the report of M Baron, but 2 or 3 articles remained to be proved — has proved the 1st Item — 2d Item for costs pd to M Rollin for Provs in separation — the whole rent not pd — but 610 — Pltff demands that Defdt be held to pay the rents to her alone —

M De Vigé for Defendt — he apprd last the parties were heard on this report & the Court ordered Pltff to make proof of her reprises matrimoniales the hom. of this report cannot therefore be now an object, but the proof the Pltff shall have made of her demand — That it does not appear that Baron heard any witness, but proceeded on the papers laid

before

before him — He says he did not see the ~~first~~ Inventary of the present Community of Pluff — but relies on a note of Mr Piccard for this, but Defdt says, that the P. Verb. of Vente ought to be produced & by it it would appear to whom the effets were sold — But at the request the Pluff has produced a P. Verb. of Sale of these effets — & Defdt finds that there has been sold to Strangers to the amount of £1546.14 of these effets, & for qch Defdt cannot be held liable — This sum therefore did not fall into the Community, we Defdt the other effets to the amt of £2251 may be considered as having fallen into that Community — but there is no proof that this sum was in the hands of the Pluff when she married the Defendt in July 1818 — In looking at the Marriage Contract no sum is named as brot by Pltff to her future husband — The Inventory was made in the month of march preceding, the Pluff had many children & many charges on her hands & the presumption is that this money or a part of it may or must have been expended by her before her marriage — on this ant proof was ordered to shew what she had brot to her husband The testimony in the Cause goes to say that the woman had effets of her first Comty qch she had purchased when she married the Defendt to the amt of 3000£ — but the a great part of the articles on qch the Defendt & her children & the cattle lived upon, must be deducted —

£598.18

£2251

The

The 2d item is a sum of 480# which Defendt does not dispute —

3d Item 133#. 10s. does not owe it — for sundry grain thrashed after the Inventory — there is no proof that the Defendt. red or sold this grain — In the Inventory of the first Comts — mention is made of this grain. — by act of partage of 3d June 1818 — reference is made to this grain as already sold. 6 muids wheat. 26 muids oats. & 6 m. d'orge — but the presumption is that this was consumed in the family before Marriage, there is certainly no proof that this money came to the hands of the Defdt —

4 Item 20# admitted —

5 do 18# — do

6 do The Pltff was entitled to 1/2 the profits of first Comts. this came to 2 Comts in 1821 the Defendt — authorized Pltff to make a Donation to the Children of her first marriage of this real property in consideration of a rente viagere — the Defdt is not accountable to Pltff for any part of this alienation, as it was the proper fait of the Pltff —

The act of 26 feby 1821 Donation by Pltff to one of her children — by act before Benjamin bound herself to pay to Pltff & defdt a sum of 2000 by terms — by a subsequent act 24 Sep. 1821, the Defdt in order to favor the Pltff. consents that the rente be diminished as Pltff's son was unable to pay what he had agreed, & it was agreed that Pltff should pay the 2000# to his brothers & sisters minors — yet the Rapt charges the Defendt to pay the deduction of the rente viagere — it was given up to the Pltff's son to accommodate him, but nowise to favor the Defendt — the received

words

nothing on this art— whereon he could be charged also a sum 821ᵗ. 10ˢ & other sums are charged to the Defendt although all these sums were never rec'd by him — as to the sum of 280ᵗ. for damages done by Defᵈ. to a part of the Immoveable property of one of the Minors — there is some right but there is nothing to shew the amt of this damage as to 350ᵗ — o'd to be pᵈ. to Mrs. Carter for a debt due to the Laparre — this sum was included in the modification of the 2000 or 2500 ℔ Mr Bt Bergeron was bound to pay by the Deed of Donation & he was bound to pay this debt to the Laparre — In the apprais of the debts of the first community will be found that this sum is included 3288. 16. 3 — deducts the above sum, which it ought to have been 3638. 16 — so as to include the whole of the debts passives of the first community & thereby include the above sum of 350ᵗ — if was a debt of the first Comty

The Item 298ᵗ — for costs of suit — of this there is no proof, but by our Art.

The Defᵈ. agrees to take the apprais as allowed to him by Barron a 4996. 16. 3 deducting this from the total amount leaves a balance of 1669. 4. 9 in favor of Plff —

11

№ 408

Bourgoing
vs
Courvette

On Pltff mo. for adjournment any allowance
Cherrier for Defendt — the Pltff has allowed
much delay to elapse — since Febr last — only
2 Writs exd — The proof made in the Cause is far
from shewing that Pltff is entitled to this allowance
3' Has produced affidavits to shew character of the
Pltff — & the poverty of the Defendt —

Bleury for Pltff contends that pltff is entitled
to obtain her demand —

—

№ 1084

Dagenais
vs
Birthelet

action for a trespass committed by Defts —

Bowen for Pltff moves to reject ~~evidence~~ all the ~~testimony~~ testimony
adduced by the Defendant — the plea here
is not Guilty — but at trial he adduced evidence
to justify his conduct, & that one of Defendts had
an authority to use violent measures as Pltff
this ought to have been specially pleaded, and no
evidence ought to be admitted — 1 Pig. p. 161 shews
when the exceptions ought to be pleaded, and the
order of pleading to be observed — Id. p. 197 — 201 —
when Defts pleads to the merits these exceptions are
presumed to have been waived —
17 Rep. p. 599. v. Voie de fait. —
2 Bouy. 509 — the Curator cannot maintain an
action to enter on the property, a proprietor only can
have this action +

Mr Vigé for the Defendt + the Pltff here has no
right to have instituted this action he not being the
proprietor

proprietor nor any right in the land in question — on the contrary if the Defendr are the Proprietors the action cannot be maintained

The testimony adduced by the Defendr under their plea, is perfectly regular, & the Plff was apprized of it by the act of Curatorship filed by Defdt to shew he was the legal proprietor of the land he had a right to order Plff out of the house, and to turn him out if he refused — and the evidence shews that no violence was committed in turning the plff out of the house — The principal wit of Plff. is Badel & Defdt whose character is proved to be that of a man not worthy of Credit. see Nos 10. 11. 12. 13 —

Borton for Plff. The Defendr ought to have stated that he had a title & right in the property such as to warrant him to enter the possession. This he omitted to do & must be presumed to have admitted to the capacity of the Plff by pleading to the merits — The Plff says hers possides quia possideo, we have no plea alledging a contrary right to that of Plff —

In cases of violence all persons are competent witnesses — Badel her is a good wit — & is corroborated by other witnesses — The Curator to a delaissement is not entitled to enter upon the owner of the property. 1 Pg. 596 — a Curator is only a man of straw — & cannot have a right to hold the property — 1 Pyau 140. la Maxim de la Jurisprudence desaisit personne — and

notwithstanding

notwithstanding the delaissement Plaintiff was the Proprietor — N. Deniz. p. 134. 6th Vol. vo Delaissement — The Debtor is the proprietor till the actual sale by the Sheriff

Tit 18. art. 3. ordre 1667. possession contraire should have been alledged, the Curator here should have shewn that he had by law a possn giving him a right to take possible possn from Plff

The Curator had no more right than Plff — but the right of Plff was the strongest being in the actual possn of the property —

—

No 1174
Smith
vs
Berichon

Action hypothecaire —
Boulon for Plff. action for Lods & Ventes on a sale by Berichon to Thibault —
cites. Repr vo Lods. p 603 — Poth. Tusp. p. 140. 141. 2. 1. Bourg. 272. 288. 289 —

Beaubien for Defendt There was no sale here, it was only a promise to sell

over

Friday 19th Oct. 1827.

Prest

The Ch. Justice Justices Fowler & Pyke

No 547.
Hayes & al
v
Gerrard
H Action dismissed

No 94
Pothier
v
Hall
H Judgt. on Inscript. en faux

No 461.
Donegany
v
Donegany
& al
H Exceptions dismissed

No 1292
Scriver
v
Stanley & al
&
Scott Intervs
H Action dismissed

No 1694
Lukin
v
Casson
&
E contra
H Judgt

№ 723
Gates qal
v
Sayer
&
Robertson
T. S

H

Motion of the Fiers Saisie dismissed

№ 723.
Robertson
v
Cairns &c

H

Exceptions dismissed & Just

№ 911 –
Ex parte
On Petition
of Jas. Holt.
&
McNider &c

H

Judgt on the Petitions. –

№ 2297
McNider &c
v
O'Meara

H

Judgt – action dismissed
see J. Pyke's note –

№ 925
On Petition
of Alice Clarke
Ch. T.
v
Greece

Judgt

№ 840.
Millar
v
Halliwell

H

Plffs motion to amend, allowed
see case Carter v. Dundass. 7 June 1823.

Saturday 20th October 1827.

Present
Ch. Just. & Justices Fowler & Pyke.

No 921.
Ex parte
On Petition of
Jas. Millar } Judgt as the Prothy

No 2234
Jamieson
v
Desrivieres } * Judgt — see J. Pyke's note

No 1881
Holmes
v
Charpentier } Plffs motion to amend granted

No 74
Warwick
v
Frostegal } Judgt

W & C
1825

WMSC
18215

JUILLET. Le Soleil entre au Lion,

Pr. Quartier le 2, à 2h. 14m. Matin. | D. Quar. le 15, à 3
Pleine Lune, le 8, à 5h. 36m. Soir. | N Lune, le 23, à 7

Lev.	Cou.	Cl.	MOIS.	Sems.	FÊTES
H. M.	H. M.				
4 13	7 47	b	1	DIM.	4. *Octave* de s. Jean
4 14	7 46	b	2	Lundi	Visitation de la B. V.
4 14	7 46	r†	3	Mardi	De l'Octave des Apôt
4 15	7 45	r†	4	Mercre	De l'Octave.
4 15	7 45	r†	5	Jeudi	De l'Octave.
4 16	7 44	r	6	Vendre	Octave des Apôtres.
4 16	7 44	b†	7	Samedi	ste. Marguerite, rein
4 17	7 43	b	8	DIM.	5. DEDICACE.
4 17	7 43	b†	9	Lundi	ste. Elizabeth, reine,
4 18	7 42	r†	10	Mardi	ss. Sept Frères Mart
4 19	7 41	b†	11	Mercre	De l'Octave. M
4 20	7 40	b	12	Jeudi	s. Jean Gualbert, abb
4 21	7 39	r†	13	Vendre	s. Anaclet, pape, ma
4 21	7 39	b	14	Samedi	s. Bonaventure, évêq
4 22	7 38	b	15	DIM.	6. Octave de la Déd
4 23	7 37	b	16	Lundi	N. D. du Mont Carm
4 24	7 36	b†	17	Mardi	s. Alexis.
4 25	7 35	b	18	Mercre	s. Camille de Lellis.
4 26	7 34	b	19	Jeudi	s. Vincent de Paule.
4 27	7 33	b	20	Vendre	s. Jérôme Emilien.
4 28	7 32	b†	21	Samedi	s. Henri II. empereu
4 29	7 31	r	22	DIM.	7. ste. Magdeleine,
4 30	7 30	r	23	Lundi	s. Apollinaire, év. m
4 31	7 29	vl†	24	Mardi	De la Vigile, *Resp. D*
4 32	7 28	r	25	Mercre	s. Jacques, apôtre.
4 33	7 27	b	26	Jeudi	ste. Anne.
4 34	7 26	r†	27	Vendre	s. Pantaléon, mart.
4 36	7 24	r†	28	Samedi	ss. Nazaire, &c. mar
4 37	7 23	b	29	DIM.	8. Sl. ste. Anne, M
4 38	7 22	b†	30	Lundi	ste. Marthe, vierge,

AOUT. Le Soleil entre à la Vierge, le

Pleine Lune, le 7, à Minuit 46m. | Nouvelle Lu
Dernier Quartier, le 14, à 6h. 54m. Matin. | Premier Qu

Lev.	Cou.	Cl.	MOIS.	Sems.	FÊTES
H. M.	H. M.				
4 40	7 20	b	1	Mercre	s. Pierre aux Liens,
4 41	7 19	r†	2	Jeudi	s. Etienne, pape, mar
4 42	7 18	r†	3	Vendre	Invention de s. Etien
4 43	7 17	b	4	Samedi	s. Dominique.
4 45	7 15	b	5	DIM.	9. N. D. des Neiges.
4 46	7 14	b	6	Lundi	Transfiguration de N.
4 47	7 13	b	7	Mardi	s. Cajétan, *Incipit*
4 48	7 12	r†	8	Mercre	ss. Cyriaque, Large,
4 50	7 10	vl†	9	Jeudi	De la Vigile, M
4 51	7 9	r	10	Vendre	s. Laurent, diacre, M
4 52	7 8	r†	11	Samedi	*Jeûne.* De l'Octave,
4 54	7 6	r	12	DIM.	10. ste. Claire, v. sl.
4 55	7 5	r†	13	Lundi	De l'Octave, M
4 58	7 3	vl†	14	Mardi	De l'Oct. M *Messe d*
4 59	7 2	b	15	Mercre	Assomption.
5 0	7 0	b	16	Jeudi	s. Hyacinthe.
5 1	6 59	r	17	Vendre	Octave de s. Laurent
5 3	6 57	vl†	18	Samedi	*Jeûne* de la Vigile.
5 4	6 56	b	19	DIM.	11. s. Joachim, Sl. Bar
5 6	6 54	b	20	Lundi	s. Bernard, abbé, *In*
5 7	6 53	b	21	Mardi	ste. Jeanne de Chan
5 8	6 52	b	22	Mercre	Octave de l'Assomp
5 10	6 50	b	23	Jeudi	s. Philippe de Béniti
5 11	6 49	r	24	Vendre	s. Barthélemi, apôtr
5 13	6 47	b	25	Samedi	s. Louis, roi.
5 14	6 46	b	26	DIM.	12. Sol. s. Louis.
5 16	6 44	b	27	Lundi	s. Joseph Calaz.
5 17	6 43	b	28	Mardi	s. Augustin, év. doc
5 19	6 41	r	29	Mercre	Décollation de s. Je
5 20	6 40	b	30	Jeudi	ste. Rose de Lima,

SEPTEMBRE. Le Soleil entre à la Balance, le 2

Pleine Lune, le 5, à 9h. 42m. Matin. | Nouvelle Lune, le 20,
Dernier Quartier, le 13, à Minuit 50m. | Premier Quartier, le 2

Lev.	Cou.	Cl.	MOIS.	Sems.	FÊTES.
H. M.	H. M.				
5 23	6 37	b†	1	Samedi	s. Gilles, abbé. M
5 25	6 35	vr	2	DIM.	13. *Dom. 1 Septembris.*
5 26	6 34	b†	3	Lundi	s. Etienne, roi, (hier)
5 28	6 32	vr†	4	Mardi	*Oratio Fidelium.*
5 29	6 31	b†	5	Mercre	s. Laurent Justinien.
5 31	6 29	vr†	6	Jeudi	
5 32	6 28	vr†	7	Vendre	
5 34	6 26	b	8	Samedi	Nativité de la B. V. M.
5 35	6 25	b	9	DIM.	14. s. N. de Marie, Sl. Nat.
5 37	6 23	b	10	Lundi	s. Nicolas de Tolentin, évêq
5 38	6 22	b†	11	Mardi	De l'Octave, M
5 40	6 20	b†	12	Mercre	De l'Octave.
5 42	6 18	b†	13	Jeudi	De l'Octave.
5 43	6 17	r	14	Vendre	Exaltation de la Ste. Croix.
5 45	6 15	b	15	Samedi	Octave de la Nativité.
5 47	6 13	vr*	16	DIM.	15. M *Dom. 3.*
5 48	6 12	b	17	Lundi	Stigmates de s. François.
5 50	6 10	b	18	Mardi	s. Joseph de Cupertino.
5 51	6 9	r	19	Mercre	*Jeûne 4 Temps.* ss. Janvier, &
5 53	6 7	r	20	Jeudi	ss. Eustache, &c. mart. M
5 55	6 5	r	21	Vendre	*Jeûne 4 Temps.* s. Matthieu,
5 56	6 4	b†	22	Samedi	*Jeûne 4 T.* s. Thom. de Vill.
5 58	6 2	r	23	DIM.	16. Sol. s. Matthieu, M *Dom.*
6 0	6 0	b	24	Lundi	N. D. de la Merci.
6 1	5 59	r†	25	Mardi	ss. Corneille, &c. mart. (16)
6 3	5 57	r†	26	Mercre	ss. Cyprien, &c. mart.
6 4	5 56	r†	27	Jeudi	ss. Côme et Damien, mart. *In*
6 6	5 54	r†	28	Vendre	s. Venceslas, [
6 7	5 53	b	29	Samedi	s. Michel, archange.
6 9	5 51	b	30	DIM.	17. s. Jérôme, Sol. s. Mic. D

OCTOBRE. LeSoleil entre au Scorpion,

Pleine Lune, le 4, à 9h. 25m. Soir. | Nouvelle Lune
Dernier Quartier, le 12, à 8h. 23m. Soir. | Premier Quart

Lev.	Cou.	Cl.	MOIS.	Sems.	FÊTES
H. M.	H. M.				
6 10	5 50	b	1	Lundi	s. Rémi, évêque, *Inc*
6 12	5 48	b	2	Mardi	ss. Anges Gardiens,
6 13	5 47	vr†	3	Mercre	*Resp. Dom.* 1
6 15	5 45	b	4	Jeudi	s. François d'Assise,
6 16	5 44	r†	5	Vendre	ss. Placide, &c. marty
6 18	5 42	b	6	Samedi	s. Bruno.
6 19	5 41	b	7	DIM.	18. Sol. du Rosaire,
6 21	5 39	b	8	Lundi	ste. Brigite, veuve,
6 23	5 37	r†	9	Mardi	ss. Denis, &c. martyr
6 24	5 36	b†	10	Mercre	s. François de Borgia,
6 26	5 34	vr†	11	Jeudi	
6 27	5 33	vr†	12	Vendre	
6 29	5 31	b†	13	Samedi	s. Edouard III. roi,
6 30	5 30	r	14	DIM.	19. Callixte, p. et m.
6 32	5 28	b	15	Lundi	ste. Thérèse, vierge,
6 33	5 27	vr†	16	Mardi	
6 35	5 25	b†	17	Mercre	s. Hedwidge, veuve,
6 37	5 23	r	18	Jeudi	s. Luc, évang.
6 38	5 22	b	19	Vendre	s. Pierre d'Alcantara,
6 40	5 20	b	20	Samedi	s. Jean de Canti,
6 41	5 19	b	21	DIM.	20. N. D. Victoire,
6 43	5 17	vr†	22	Lundi	*Incipit. Oratio Fide*
6 44	5 16	vr†	23	Mardi	
6 46	5 14	vr†	24	Mercre	
6 48	5 12	r†	25	Jeudi	ss. Chrysante et Dari
6 49	5 11	r†	26	Vendre	s. Evariste, pape et m
6 51	5 9	vl†	27	Samedi	*Jeûne.* De la Vigile,
6 52	5 8	r	28	DIM.	21. ss. Simon et Jude
6 54	5 6	vr†	29	Lundi	*Lect. D. 5. Resp. Fer.*
6 55	5 5	vr†	30	Mardi	*Lect. Fer. 2. Resp. Fe*
6 57	5 3	vl†	31	Mercre	*Jeûne.* De la Vigile.

NOVEMBRE. Le Soleil entre au Sagittair

Pleine Lune, le 3, à Midi 20m. | Nouvelle Lune, le
Dernier Quartier, le 11, à 4h. 5m. Soir. | Premier Quartier,

Lev.	Cou.	Cl.	MOIS.	Sems.	FÊTES.
H. M.	H. M.				
6 58	5 2	b	1	Jeudi	TOUSSAINT, (*d'Obli*
6 59	5 1	noir	2	Vendre	Trépassés, *Lect. Fer. 3.*
7 1	4 59	b†	3	Samedi	De l'Octave,
7 2	4 58	b	4	DIM.	22. s. Charles, év. 1 *N*
7 4	4 56	b†	5	Lundi	De l'Octave,
7 5	4 55	b†	6	Mardi	De l'Octave,
7 7	4 53	b†	7	Mercre	De l'Octave,
7 8	4 52	b	8	Jeudi	Octave de la Toussaint,
7 10	4 50	b	9	Vendre	Dédicace de la Basiliq.
7 11	4 49	b†	10	Samedi	s. André Avellin, M
7 12	4 48	b	11	DIM.	23. s. Martin, év. 2M *D*
7 14	4 46	r†	12	Lundi	s Martin, pape, *Incipit*
7 15	4 45	b†	13	Mardi	s. Didace,
7 16	4 44	vr†	14	Mercre	*Resp. Dom. 2. Oratio*
7 17	4 43	b	15	Jeudi	ste. Gertrude, vierge,
7 18	4 42	vr†	16	Vendre	
7 19	4 41	b†	17	Samedi	s. Grégoire Thaumatur.
7 20	4 40	b	18	DIM.	24. Dédic. Basili, s. Pie
7 21	4 39	b	19	Lundi	ste. Elizabeth, ve. M *I*
7 23	4 37	b	20	Mardi	s. Félix de Valois, prêt
7 24	4 36	b	21	Mercre	Présentation de la B. V
7 25	4 35	r	22	Jeudi	ste. Cécile, vierge, mar
7 26	4 34	r	23	Vendre	s. Clément, pape, mart
7 27	4 33	b	24	Samedi	*Jeûne.* s. Jean de la Crx
7 28	4 32	r	25	DIM.	25. ste. Cather. Sl. s. *A*
7 29	4 31	r†	26	Lundi	s. Pierre Alex. év. mar
7 30	4 30	vr†	27	Mardi	
7 31	4 29	vr†	28	Mercre	*3a Lect. Incip. Fer. 5.*
7 31	4 29	vl†	29	Jeudi	De la Vigile,
7 32	4 28	r	30	Vendre	s. André, apôtre,

DECEMBRE. Le Soleil entre au Bouc, le

Pleine Lune, le 3. à 5h. 56m. Matin. | Nouvelle Lun
Dernier Quartier, le 11, à 10h. 29m. Matin. | Premier Quar

Lev.	Cou.	Cl.	MOIS.	Sems.	FÊTES.
H. M.	H. M.				
7 33	4 27	b†	1	Samedi	De la ste. Vierge, *Inc, fe*
7 34	4 26	vl*	2	DIM.	1. de l'Avent, Sl. s. Fra
7 34	4 26	b	3	Lundi	s. François Xavier,
7 35	4 25	b	4	Mardi	s. Pierre Chrysologue,
7 36	4 24	r†	5	Mercre	ste. Bibiane, vierge, ma
7 37	4 23	b	6	Jeudi	s. Nicolas, évêque,
7 37	4 23	b	7	Vendre	s. Ambroise, évêque,
7 38	4 22	b	8	Samedi	CONCEPTION, (*d'Ob*
7 38	4 22	vl	9	DIM.	2. de l'Avent,
7 39	4 21	b†	10	Lundi	De l'Octave, 2M
7 39	4 21	b†	11	Mardi	s. Damase, pape,
7 39	4 21	b†	12	Mercre	De l'Octave, M
7 40	4 20	r	13	Jeudi	ste. Luce, vierge et mar
7 40	4 20	b†	14	Vendre	De l'Octave, M
7 40	4 20	b	15	Samedi	Octave de la Conception
7 40	4 20	vl	16	DIM.	3. de l'Avent,
7 41	4 19	r†	17	Lundi	s. Eusèbe, év. mart. (hier
7 41	4 19	vl†	18	Mardi	*Missa sine All. et Vers s*
7 41	4 19	vl†	19	Mercre	*Jeûne 4 Temps,* [et *H*
7 41	4 19	vl†	20	Jeudi	Messe de la Vigile,
7 41	4 19	r	21	Vendre	*Jeûne 4 Temps,* s. Thom
7 41	4 19	vl†	22	Samedi	*Jeûne 4 Temps,*
7 41	4 19	vl	23	DIM.	4. Sol. s. Thomas,
7 41	4 19	vl	24	Lundi	*Jeûne* de la Vigile,
7 41	4 19	b	25	Mardi	NOEL, (*Fête d'Obliga*
7 40	4 20	r	26	Mercre	s. ETIENNE, 1er mart. (*d*
7 40	4 20	b	27	Jeudi	s. JEAN, ap. et év. (*de D*
7 40	4 20	vl	28	Vendre	ss. Innocens, martyrs,
7 40	4 20	r	29	Samedi	s. Thomas, évêque et ma
7 39	4 21	b	30	DIM.	Du Dim. dans l'Octave,
7 39	4 21	b	31	Lundi	s. Silvestre, pape.