J.

Kings Bench. Montreal.

Civil Pleas.

February Term 1828.

April Term. " "

June Term. " "

October Term. " "

1828.

JANVIER. Le ☉ entre au ♒ le 20, à

☉ le 2, à 1h 2m mt. | ● le 16 à 7h 30m sr.
☾ le 10 à 2h 21m mt. | ☽ le 23 à 3h 51m sr.

L.	J.	Sems.	FETES.
b	1	Mardi	CIRCONCISION, *d'obligation.*
r	2	Mercre	Octave de s. Etienne. 2M
b	3	Jeudi	Octave de st. Jean, M
r	4	Vendre	Octave des ss. Innocens,
b	5	Samedi	De la Vigile, M
b	6	DIM.	EPIPHANIE,
b	7	Lundi	du 2d jour
b	8	Mardi	du 3e jour
b	9	Mercre	du 4e jour } dans l'Octave,
b	10	Jeudi	du 5e jour
b	11	Vendre	du 6e jour } mémoire de st Hygin
b	12	Samedi	Office du Dim. dans l'Oct. M
b	13	DIM.	1 Oct. de l'Epiphanie, *Inc.* 1 *Cor.*
b†	14	Lundi	s Hilaire, év. M *Suffragia. Incip.*
b	15	Mardi	s. Paul, hermite, M
r†	16	Mercre	s. Marcel, pape, mart.
b	17	Jeudi	s. Antoine, abbé,
b	18	Vendre	Chaire de St. Pierre à Rome,
r†	19	Samedi	s. Canut, roi, mart.
b	20	DIM.	2. S. Nom de Jesus. M
r	21	Lundi	ste. Agnès, vierge, mart.
r†	22	Mardi	ss. Vincent &c. marts. *Inc.* 2 *Cor.*
b†	23	Mercre	s. Raimond de Pennafort.
r†	24	Jeudi	s. Timothée, Evêque, mart.
b	25	Vendre	Conv. de s. Paul.
r†	26	Samedi	s. Polycarpe, évêq. mart.
b	27	DIM.	3 s. Jean Chrysostôme, évêq. M
r	28	Lundi	ss. Fabien et Sébastien, m. [20] M
b	29	Mardi	s. François de Sales, évêq.
r†	30	Mercre	ste. Martine, vierge, mart.
b	31	Jeudi	s. Pierre Nolasque.

FEVRIER. Le ☉ entre aux ♓, le 19, à

☾ le 8 à 3h 1m soir, | ☽ le 22 à 9h 44
● le 15 à 5h 51m matin,

L.	J.	Sems.	FETES.
b	1	Vendre	s. Ignace, évêq. mart.
b	2	Samedi	Purification de Marie,
*	3	DIM.	Septuagesime, Sol. Purific. M
b	4	Lundi	s. André Corsin, év.
r	5	Mardi	ste. Agathe, vier. et mart.
r†	6	Mercre	ste. Dorothée, vier. mart. *Or. Fid.*
b	7	Jeudi	s. Romuald, abbé,
b	8	Vendre	s. Jean de Matha,
†	9	Samedi	De la Ste. Vierge, M
*	10	DIM.	Sexagesime, M
b	11	Lundi	ste. Scholastique, vierge,
†	12	Mardi	
†	13	Mercre	
†	14	Jeudi	s Valentin, prêtre, M
†	15	Vendre	
†	16	Samedi	De la Ste. Vierge, M
b	17	DIM.	Quinquagesime,
†	18	Lundi	s Siméon, martyr, *Or. Fid.*
†	19	Mardi	
b	20	Mercre	Les Cendres.
†	21	Jeudi	
†	22	Vendre	Chaire de s Pierre à Antioche,
†	23	Samedi	De la Vigile, à la Messe,
*	24	DIM.	1 du Carême. sol. Mathias,
r	25	Lundi	s. Mathias, apôtre. M
†	26	Mardi	
†	27	Mercre	*Jeûne des 4 Tems,*
†	28	Jeudi	
†	29	Vendre	*Jeûne des 4 Tems,*

MARS. Le ☉ entre au ♈ le 20, à 9h 53m m

☉ le 1 à 1h 59m soir, | ● le 15 à 4h 44m sr. | ☉ le
☾ le 9 à minui 24m. | ☽ le 23 à 5h 8m mt. | 5h 2

L.	J.	Sems.	FETES.	Jours
†l	1	Samedi	*Jeûne des 4 Tems,*	Invent
vl	2	DIM.	2 du Carême,	poudr
†l	3	Lundi		non, 1
†l	4	Mardi	s. Casimir, prince,	
†l	5	Mercre		
l†	6	Jeudi		
b	7	Vendre	S. Thomas d'Aquin, doc. M	
b	8	Samedi	s. Jean de Dieu, M	
vl	9	DIM.	3 du Carême,	
r†	10	Lundi	ss. Quarante Martyrs,	
b	11	Mardi	ste. Françoise, veuve, (9)	
b	12	Mercre	s. Grégoire, pape, doct. M	
vl†	13	Jeudi		
vl†	14	Vendre		
†l†	15	Samedi		Naiss
vl	16	DIM.	4 du Carême, Sol. s. Joseph,	Napo
b†	17	Lundi	s. Patrice,	le 20.
vl†	18	Mardi		Equi
b	19	Mercre	s. Joseph,	
vl†	20	Jeudi		Com
b	21	Vendre	s. Benoît, abbé,	ment
vl†	22	Samedi	*Croix couvertes. Cessant suffragia,*	Print
vl	23	DIM.	De la Passion,	le 20,
vl†	24	Lundi		53m.
b	25	Mardi	ANNONCIATION, *d'oblig.* M	
vl†	26	Mercre		
vl†	27	Jeudi		
b	28	Vendre	N. D. de la Pitié,	Entri
vl†	29	Samedi		Alliés
vl	30	DIM.	Des Rameaux,	Paris
vl	31	Lundi		1814

AVRIL. Le ☉ entre au ♉ le 19, à 1

☾ le 7 à 7h 12m matin, | ☽ le 22 à minui
● le 14 à 4 24m matin. | ☉ le 29 à 5h 5

L.	J.	Sems.	FETES.
vl	1	Mardi	
vl	2	Mercre	
b	3	Jeudi	Jeudi Saint,
bir	4	Vendre	Vendredi Saint,
b	5	Samedi	Samedi Saint,
b	6	DIM.	PAQUES.
b	7	Lundi	Seconde Fête, } de dévotion,
b	8	Mardi	Troisième Fête, }
b	9	Mercre	}
b	10	Jeudi	} De l'Octave,
b	11	Vendre	}
b	12	Samedi	
b	13	DIM.	1. Quasimodo,
b	14	Lundi	s. François de Paule, (2) M
b	15	Mardi	s. Isidore, évêque, (4)
b	16	Mercre	s. Vincent Férier, (5)
b	17	Jeudi	s Léon I, pape, (11)
†	18	Vendre	s. Hermenégilde, mart. (13) M
†	19	Samedi	De la Ste. Vierge,
b	20	DIM.	2. après Pâques,
b	21	Lundi	s. Anselme, évêque,
†	22	Mardi	ss Soter et Caïus, martyrs,
†	23	Mercre	s. George, mart.
†	24	Jeudi	s. Fidèle de Sigmaringa, mart.
†	25	Vendre	s. Marc. *Abstinence Procession*
†	26	Samedi	ss. Clet & Marcellin, papes,
†	27	DIM.	3. Ste. Famille, M
†	28	Lundi	s. Vital, martyr,
†	29	Mardi	s. Pierre de Véronne,
†	30	Mercre	ste. Catherine de Sienne, vierge,

MAI. Le ☉ entre aux ♊ le 20, à 10h 40

☾ le 6 à midi 38m | ☽ le 21 à 6h 17
● le 13 à 4h 56m soir. | ☉ le 29 à 3h 23

L.	J.	Sems.	FETES.
r	1	Jeudi	ss. Philippe et Jacques, ap.
b	2	Vendre	s. Athanase, évêq. doct.
r	3	Samedi	Invention de la Ste. Croix, M
b	4	DIM.	4. ste. Monique, veuve,
b	5	Lundi	s. Pie V. pape,
r	6	Mardi	s. Jean Porte Latine,
r	7	Mercre	s. Stanislas, év. mart.
b	8	Jeudi	Apparition de s. Michel,
b	9	Vendre	s. Grégoire de Nazianze, év.
b†	10	Samedi	s. Antonin, M
b	11	DIM.	5. Après Pâques,
r†	12	Lundi	*Rogat.* ss. Nérée &c. mart.
l†	13	Mardi	*Rogations,*
b†	14	Mercre	*Rogations,* M
b	15	Jeudi	ASCENSION, (*d'Obligation.*)
b†	16	Vendre	s. Ubald, évêque, M
b	17	Samedi	s. Paschal Baylon, M
r	18	DIM.	s. Venant, mart. M
b	19	Lundi	Pierre Célestin, pape, M
b†	20	Mardi	st. Bernardin,
b†	21	Mercre	De l'Octave,
b	22	Jeudi	Octave de l'Ascension,
b†	23	Vendre	
r	24	Samedi	*Jeûne* Vigile de la Pentecôte,
r	25	DIM.	PENTECOTE.
r	26	Lundi	Seconde Fete } de Dévotion,
r	27	Mardi	Troisième Fete }
r	28	Mercre	*Jeûne,* 4 Temps.
r	29	Jeudi	De l'Octave.
		endre	*Jeûne* 4 Temps.

JUIN. Le ☉ entre à ♋ le 21, à 7h 14m matin.

☾ le 4 à 6h 8m soir, | ☽ le 20 à 9h 50m ma
● le 12 à 6h 18m matin, | ☉ le 27 à 10h 49 a m

L.	J.	Sems.	FETES.	Jours
	1	DIM.	1. Ste. Trinité. M	Naissa
	2	Lundi	s. Gregoire VII, (25 Mai) M	George
	3	Mardi	s. Phillippe de Néri, (26 mai)	le 4,
	4	Mercre	ste. Magd. de Pazzi, (27 mai)	Nais
	5	Jeudi	FETE-DIEU, (*d'Obligation.*)	du D
	6	Vendre	s Norbert, év.	Cumber
	7	Samedi	De l'Octave,	le 5.
	8	DIM.	2. Après la Pent. *Procession.* M	
	9	Lundi	De l'Octave,	
	10	Mardi	De l'Octave,	
	11	Mercre	s. Barnabé, apôtre, M	
	12	Jeudi	Octave de la Fete-Dieu.	
	13	Vendre	s. Antoine de Padoue,	
	14	Samedi	s. Bazile, év. doct.	
*	15	DIM.	3 après la Pentecôte, M	
	16	Lundi	s. Jean de Facondo, (12)	Bataille
†	17	Mardi	ste. Marguerite, reine, (10)	Waterlo
†	18	Mercre	ss. Marc, &c. marts.	18, 18
	19	Jeudi	ste. Julienne, vierge,	Déclar
	20	Vendre	s Silvère, pape, mart.	le la g
		Samedi	De la Ste. Vierge, *Jeûne,*	par les
r	22	DIM.	4 après la Pent, Sol s Jean Bap	Unis, 1
†	23	Lundi	De la Vigile,	Jours
	24	Mardi	s. Jean-Baptiste,	longs.
†	25	Mercre	De l'Octave,	Comm
	26	Jeudi	ss. Jean et Paul, marts.	ment de
	27	Vendre	De l'Octave.	le 21,
†	28	Samedi	*Jeûne.* s. Léon II. pape,	14m. A
	29	DIM.	5 ss. PIERRE et PAUL,	

Anderson — & M'Gibbon 13
Armour — & Rickner — 16
Arnoldi — & Perrault & op^{t} 50
Armour — & Pickle & al — 51
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I.J.

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Solomon	&	Dorge.	254			
Solquin	&	Solicour & opt.	260			
Sutherland	&	Duvernay.	265			
Smith & al	&	McGill & al	268			
Selby Gw & al	&	Moffat & al opt	270			

Talon.	&	Baron	46		
Tetro & Duchesne	&	Todouin	50		
Thompson	&	Try & al'	89	172	
Tuckerman	&	Henshaw	145		
Trim.	&	Clarke	148		
Todd	&	Drummond	188		
Trinder.	&	Bistodeau	210		
Tessier & Lavigne	&	Sarrault	215		
Thain.	&	Robertson.	216		
Tessier & Lavigne	&	Lacombe	217		
Terrien & al'	&	Dupuis & al	235		

Vincent — & Voyr — 27 143
Vaughan & Capron — 70
Vannier — & Lasher — 110
Vaughan — & Haynes — 195

Wilkie — & Kimbert — 45 98
Window — & Labroguerie 47
Warwick — & Raysmond 50
Wilson — & Spencer — 72 127 146 202
Walkinson — & Pearl — 90
Wright — & Bingham 127 188
Wisely — & Jones — 128
White — & Metzler — 151 188 209
Warwick — & Freeland — 199

Young & al & Delisle — 41

February Term 1828. &c

Friday 1st Febry.

Pres.t
Ch. Justice Reid
Justices Pyke & Uniacke

Mr Justice Foucher was absent from indisposition during the Term. &c

№ 127.-
Holt, Cur
Walker

On Defend.ts mo.n for publication of Com. Rog.rs
Walker for Pltff - the Com. was executed ~~bef~~ after the return had expired & bro.t in after he was allowed ~~about~~ the facts proved by Defend.t
Mr Grant for Defend.t - the Com. was returnable without delay, & the Pltff added his Cross-interrogatories

Also on the pltffs motion for publication of two Commissions Rog. issued by the Pltff, one to Quebec and one to Three Rivers -

Mr Grant for Defend.t consents to the publication of the Commission coming from Three Rivers as having been sent by Post, but reserves his further objections when publication thereof shall have been made - But in regard of the Com. S to have been executed at Quebec it does not appear how it came here, as it neither came by post nor is there any affidavit to shew by what other conveyance it might have been sent -

Mr Walker for Pltff - both Com. were executed before the Judges, & by the Rules of Prac. it is unnecessary to state in what manner the Conveyance of them was made, being under the Seal of the Court. -

№178.
U. States Bank
Pearl. vs. —

On the Defendt's mo. to be liberated from his confinement in Gaol under the writ of Ca. Sa. issued out by the Plffs on his giving bail as required by law that he will not leave the City of Montreal without payment of their Judgt—

And also on plaintiffs motion to be permitted to prove that the Defendt. did alienate secret and make away with his estate and effects with an intent to deprive his Creditors and particularly the Plffs— to an extent more than adequate to satisfy the claim and demand of the Plffs in consequence whereof the said Defendt— is not entitled to the benefits of the act of the 7th of the King, to be considered as an insolvent Debtor in the contemplation of that law

8 East. 480.
C.J. Rep. 76 —
1 Bos. & P. 143.

№886.
Phonix Bank
F. Peare — } Similar motions —

Saturday 2d Febr. 1828.

Pres.t
As before.-

No 519
Anderson
& M.Gibbon } On Defds mo. to quash the process from variance between writ & process. — Mo. to amend allowed —

No 587
Duchenois
Roi. — } On Plffs mo. to name another arbit. in place
& Contra of Mr Lukin. — Granted.

No 119.
Cowan
Provost } On Plffs motion that the oppn be dismissed
& Corp.ns of with Costs — 1. No suffr moyens — 2 No conclusion
3 It is vague & uncertain — the nature of the
privilege not set out. — Curry v. Grenfield &
Bean v. Todd. to oppt similar points decided
M.r Roi for oppt. Plff has pleaded to oppn & on oppts
mo. this plea was dismissed — parties are now at issue
on the pleadings — a similar motion as that now made
has already been dismissed. —

No 1157
Johnson
& Barr — } On Defds mo. to dismiss action
Mondelet for Defds — parties have settled &
files an act to this effect —

No 155
Douglass
& Kennedy } On Defdrs mo. to set aside a Deed of
Sale of Stock —

№1424
Lawson
vs
Robert

action on obligation

O'Sullivan for Defendt This is not an obligation is merely a promesse de Vente under certain conditions particularly that Defendt has the right to keep the land or not as he pleases — but the action not brought to meet the case proved —

Mondelet for Pltff The obligation is perfect and the action well founded

№1441
Flaherty
vs
Fisher

action d'injure — on Law —

Ogden for Defendt has pleaded a demurrer — in this case there is no place mentioned where the words were used —

№1504
Raymond
vs
Polonceau
&
Starnes pt

on oppn & right of collocation —

№1336
Goudrie
vs
Allan

action to have land sold cleared of mortgages

~~Defendt does not appear~~

Bibaud for Defendt This action will not lie, as it is to compel Defendt to pay the rights due to a third person — The ~~Dft~~ Pltff may have an action en garantie if he is troubled, but not the present action that the Pltff has not been troubled, nor does he shew it. — That the Seigniors cannot have a hypothecary action beyond the two years as the Pltff — Wherefore the Pltff cannot suffer injury. —

1. Bouy. 293.

Sewell for Pltff. The presumption set up by the Defendt is not pleaded, the plea is to the merits — The action is direct ag^t the Defendt as there is a trouble existing by the Mortgage claim made ag^t him. —

No 1329.
M^c Cuming
vs
M^c Tierval

action for arrears of rents wages — on Law —

Sewell for Defendt has pleaded a plea of exception — The proper parties are not before the Court — the Exors of the late M^r Pongman should be parties — the action of the Defendt as Widow & Tutrix to her Children — the Exors have had their power expended beyond the year & day. —

Lovat 382. 3

M^r Bleakley for Pltff. Executors are not bound to pay Debts without calling in the heirs, etc. Dic. de Jer. 1^re Executeurs — the action is well brought ag^t the heirs of M^r Pongman — the property of the Succ^n is vested in Defts Pothier Don Test. ch. 5 art. 2 sec. p. 360. 361 — by the act of Intelle & Curatelle the Exors were divested of all the Estate of M^r Pongman — That Suits have been brot by M^r Monk as Cur^r & Legal Usufruct granted —

—

No 579
Prowdx
vs
Bagg
&
Bank of

on oppos^n of the Bank —

M^r Duesnel for Pltff — It ought to have been alledged by Oppt that all the three persons who have joined in the obligation were insolvent to entitle them to the present oppos^n — Rep^se — vs Discussion — as Oppt has other Securities the presumption is that they are sufficient & Reason that Oppt has no right to prevent Pltff as plus diligent to recover the money lended. —

Mr Sewell for Oppos— It is sufficient to shew that the Debtor of the Oppts is a bankrupt— This is stated—

No 404
Hubbel
vs
Sanz —

on mo. to dismiss action for want of Security for Costs—
Walker for Defft says, the rule on him not absolute but will give the Security during the Term.

No 781
Armour
vs
Rickner

on similar motion —

No 960
Dr Fisher
Joseph
vs
Joseph opt

On merits of oppn: after 2 annulled—
Mr. McCord for the oppt— says the evidence sufficient to shew the irregularity of the return made by the bailiff —

Monday 4th Febr.—

Dresh

As above

No 366
Donnezamy
vs
Fraser—

On rule on the Wtz to shew cause why he should not appear & be cross-examined by the Plff.— as his deposition is not yet closed
Mr Roi for Dfend— the motion is irregular the Cause is not on the Role d'Enquete — & besides the legal course is by Subpona—

No 373
Gibson
vs
Moss—

On Dfend: mo. that Plff change his Arbitrator as having an interest in the Cause—
Mr Boston for Plff resists the application as not founded.—

No 108.
Haven
vs
Lussier

On Plffs mo: for an attachment
Dfend. did not appear—

No 314
McKenzie
vs
McGillivray

action on Obligation—
Notls said— Defts.—

Nr. Fraser Stephenson & Brown oppt

On the merits of oppos. of Brown —

Mr Beaubien for Oppt. claims a Mortgage on the property of the Defend. from 7 Nov. 1821 — The Pltff contended that the oppos. obligation is null — the Exceptn in law of Pltff have been set aside & the merits now heard — it appears that the balce due to the Oppos. is £1064 — balce of acct as stated by the report of the Arbitrators — This report is filed and the Arbitrators heard as Witness — This appears to be the balce due on 7 Nov. 1821 — except a subsequent sum of about £10 —

Mr Rolland for the Pltff, the Pltff has a Mortgage of the 8 Nov. 1821 for a specific sum, while the Oppos. debt was not ascertained — The act of 7 Nov. is not an act qt can carry a mortgage — it is for an uncertain debt qt has not yet been ascertained — If there be doubt as to the mortgage on a compromis before a Not any, this doubt will apply more strongly in this case, where there is a mutual promise of Mortgage to be ascertained at any future period, at the will of the parties, and to the prejudice of third persons — The oppos. brot his action & in it he states a debt due on 21 Nov. 1822 — Arbitrs named, they report in favr of oppt. but do not ascertain when the debt became due — The Report homologated & Exc. of Defend — The Report not being clear as to the time the Debt was due the oppos. brings up the arbitrators to prove when the debt was due by their testimony & Wesley to amend their report after it has been homologated in Court —

By this means the appt. means to establish his mortgage — but a mortgage cannot be established by the deposition of 2 witnesses — this is not sufficient, & cannot give authenticity to the appt. mortgage —

That the arbitrators in their proceedings on the suits between the parties, annexed the admissions of the parties qt. could not operate as a mortgage as a third person —

The obligation here is not to pay a debt, — but to name arbitrators to ascertain a debt —

Mr Beaubien in reply — Lacombe. Vo Hyp. Sec 2. No 1 Domat. Dr Co liv. 3. tit. 1. Sec. 1. & Somm. 2. — p. 170 — Domat. Sec. 3. Somm 26. — the undertaking here created a mortgage the accessary was the establishment of the quantum of the debt to be ascertained by arbitrators. ——

Shuter & Miller vs Thayer & appt } 2 Bouy. tit. 6. liv. 6. Sec. 3. No 23. p. 535 — is a strong authority in the case — it being acknowledged that a balance was due to appt — this balance will carry a mortgage under the stipulation up to the date — but there even been no stipulation of a mortgage — Poth. obl. No 131. — Not necessary that the debt should be liquidated at the time, it is sufft. if it can be liquidated. — That if this act is to be considered only as a compromis, it will give a mortgage from its date —

The costume adduced by the appos — is in conformity to the act of 7 Nov. 1820, qt. contemplated a further proceeding for the establishment of the debt. — This debt, being commercial has been regularly proved by a wit: of whom there is no objection, the clerk of the appt. —

The declaration, it is true says. that in 1822 the debt was due, but due before that time, which has a reference to the former transactions between the parties — and it is in evidence that there were no transactions between the parties subsequent to y Nov 1821, espabas to a sum of £70. —

No 350
Eager
&
St Germain
&
St Germain

On Oppn afin d'annuller —
Mr Letourneux for Oppt — he is Defendr — and cannot legally be appointed guardian to the curatrix qt. is therefore null — ordr. 1667 tit. 19. art. 13 — Poth. Proc. Civ. the curatrix is null ch. 2. §. 2.

Mr Peck for Plff. cites. Jousse on same article — the Defendr having the charge of his own affairs cannot be supposed to suffer from it. 1. Pigeau. p. 626 the law made only in favor of the Plff & Creditors —

No 1118.
Ratté
&
Brosseau
&
Morin Gar

on Law — on Plea of Garant —
Rolland for Plff — the Garant pleads the plea of discussion, qt Defendr has already been rejected on being pleaded by Defendr the plea of discussion cannot be set up by the Garant he is called to warrant the Defendr of the right of mortgage claimed by the Plff — the allegations that he has sufficient property to pay the debt, requires a discussion for which no money is offered to pay the expense —

Mr

M^r Borron for the Garant—

The Garant is called to take the fait & cause of the Defend^t — & can plead anything w^h the Defend^t could have plead^d — The Garant here pleads that the Pl^ff has enough in his hands already under the Saizure already made to pay the debt —

That on the Saizure of the effects, there was an oppos^n made, but the Pl^ff ought to have discussed this oppos^n before he can saize the real Estate — That there is besides a lot of ground still under Saizure to the sale of w^h an oppos^n was made, but which has not yet been discussed, and still remains — under Saizure — Rep^re v^o Discussion — p. 716 —

Rolland for Pl^ff. the Contraints prevent the cumulés and this action may be compared to a Saisie-arrest in the hands of a third person, to w^h the plea here made would be no answer — The plea here cannot of true be admitted to destroy the action, it can be merely dilatory, & ought to have been accompanied with a tender of monies — and this plea cannot be in the mouth of the Garant, who is himself the principal debtor —

N^o 1243
Lambe
vs
Rodier

On Law
Rolland for Defend^r — Debt transferred by one Brown to Pl^ff, on a sale of a house made to the Defend^r — on condition of a Decret Volontaire — on this Decret, an oppos^n was made by Brown & by Pl^ff also — who claims the sum of £500. which is not yet due — & there is besides a debt claimed by Mr Gebb of £400 —

Mr Grant for Pltff – it was stipulated in the deed of sale that the Defendr at his own expense should effect the sale – this was for his own security – the Pltff made an opposn to preserve his right of he was bound to do –

№ 1341.

Bedard v Durand } on question whether Pltff shall be allowed to sue out a Com. Rogre to ex. Wts at Quebec –

Mr Bruneau contends that he is entitled to this Com. not having caused any delay in obtaining it nor to cause further delay – That altho' this motion has already been refused this was owing to the absence of Defendrs attys –

Mr Grant says, the Pltff is not better founded in his application now than he was on the last

Boucher & v Pothier. } W action dismissed

№ 1119
Cowan v Provost – Coiteux opps } Pltff motion rejected as irregularly made

№ 1157
Johnson v Bar. – } Defendrs mo granted –

№1441.
Flaherty
vs
Fisher.

Defendt exception maintained - but Plff allowed to amend.-

№1329.
McCuming
vs
Madier -

Defendt exception dismissed w Costs.-

№579.
Proulx
vs
Bagg
et
Bank of Mt

Plaintiffs Plea of exception dismissed -

Tuesday 5th February

Pres!

As above

№183.
Miller
vs
Pierce et al

On Plffs mo. that facts & art. be taken as confessed, the Defendt refusing to answer -

Walker for the Defendt the Plff not entitled to the motion, the Plff not entitled to ex. Defendt upon any facts, but as to the payt. of the note - & offers motion to reject the Interrogatories -

Henshaw. the Plff asks the Defendt to answer on oath whether she has a set. that the note was seen

№350
Eager.-
St Germain
vs
St Germain et al

The opposition dismissed - the Court holding that Defendt could not thus come of his own act, for he had become answerable - see Rules -

№ 1449.
Beaubien
v.
Monjeau
& Ayl & de Malo gds
Delphose —

On action en Garantie —
Mr Quesnel for the Defend — The Garant is in default — The Defend — now claims his right over as this garant for the indemnity given him by the Def — rendered in the Course of the suit of the Pltff,
In support of Conclusions № 131. Poth. Vente —

№ 114
Symes
v.
Cartier

action on promy Note — merits —
Walker for Pltff — only question is as to the proof of the payt. pleaded by Defend — This rests on evidence of a Clerk in the Bank, who states in what manner the note was taken up when due — but this will not operate a bar to the Pltff, who held the note that notice of this payt — The note was withdrawn from the Montreal Bank & taken up by Cuvillier the drawer on the Pltff agreeing to accept a draft in favr of Defend — for £ 200 — and for the amount whereof this note was given to the Pltff to recover the amount —
Mr Sollr Genl — The bill was taken up 2 days by Mr Cuvillier at the Bank before it was protested, & he gave it over to Pltff & directed him to call on Defend & to protest of him — & also of him the 1st Cuvillier — cites Case 1 Hen. Bl. 89 — on note — Bank v. Robley — 4. Esp. 7 — The Case rests on the note alone & Pltff cannot have recourse to the circumstances of the accommodation as no particulars have been furnished Poth. Change

№

N. the drawer paying the note discharges the Indorsers.

Walker for Pltff. the evidence shews that the note was taken up by Pltff & by his means & whose right thereon still remains. — the evidence of Henry Dawson shews the consideration of the note as closing a series of transactions between Com. & Cont. —

N° 2.485
Dawson
v
Ansell

Action for amt of goods sent to Defendt to be sold on Commission —

Sol. Genl for Pltffs Decln contains several Counts. as well on protested bills as other counts — to this a plea of Non-assumpt. & want of diligence — On the bill for £71 the Defendt has not indorsed it & contends that he is not liable for it, as he did not guarantee it — but the Comn recd by Defendt lets him answerable for the amt 2 Bur. 1077 Bland v Bland — the payt to be made in England, must be governed by the laws of England — The Defendt by charging a Del. Cred. Commission made himself liable for the payt. thus made — by bill Sales, it appears that in Dec 1824 the goods were sold, and nearly 18 months after the Defendt made this remittance In England the Commission is only 4/p for guaranty debt Com. on Cont. p. 546 —. Paley Pr. & Agt — 39. 40 - 41 — as to plea of want of diligence — the bill was duly presented & accepted, & afterwards protested & returned in april 1826. the protests did not accompany the bills, to this the Defd objected on the score of the want of diligence — the protests were afterwards sent and are

now

now filed – but the bills protested & noted were a sufficient notice to Defendt & diligence on part of Pltff Chitty on bills. 323. Chalters v. Bell – 1 Selw. N.P. 312 – Peake Ev. p. 80. – 3 Camp. 334 – Robbins. v Gibson. – 313-315.

Mr Scott for Defendts Defence rests here on the want of evidence by Pltff – the bills were merely shewn to Defendt – but no protest, not even said that the bills had been protested – the protests were afterwards sent out after having been written for – There is no proof of the presentment or acceptance of the bills – refers also to the Case of Chalters. v Bell – to shew that a protest was necessary – a point not yet settled in England & even here can it is said where the party is abroad the only notice a party can have is the protest – The Pltff were bound to enable Defendt to make his demand of the Drawers by supplying him with the protests – Had the protests been given when notice was given the bills would have been paid, but soon afterwards the Drawers failed –

As to one of the bills the Defendt never undertook to answer for it – There is no proof of any agreement between the parties as to the sale of the goods & the law here must therefor govern – & according to the Custom here Merchts. are entitled to 5 ℔ Ct on sales for Com. & when a guarantee of sales is given 2½ more but this does not include the guarantee of returns – The Defendt acted as the agent of the Pltff in sending the bill to the Pltff, but was in bound himself for the honor of it, unless he had charged an additional 2½ ℔ Ct which he did not charge – refers to dep. of

Anderson

Anderson – he states the rate of percentage

№ 594.

M.Gillivray dat & Stanley Cur & Tunzeon acq^re & McKenzie

On opposition of Jos. Tunzeon, claiming a diminution on the amount of the purchase as have been sold w^t a house & buildings thereon erected, whereas no such buildings are found to exist thereon. –

Roi for oppt – Hericourt. 302. № 12. – Rep^se v^o adjudicataire. p. 568. –

Rolland for Pltff – this is not an oppn afin de conserver, he having no claim on the fonds – the oppost ought to have refused to pay the amount of his purchase – because on such refusal, the land would have been sold for the same amount without buildings – This is not a case of diminution of the thing sold – the whole land has been sold, but in regard of the accessaries belonging thereto, it is for the parties to see the State of the land sold – it is impossible to value the house which no longer exists, a to say what kind of house existed.

№ 2028

Vincent. & Voyer –

Action for recovery of a legitime reserved by a marriage Contract of Defend^r

M^r Rolland for Pltff – a donation is made by the marriage Contract of Defend^r – in consideration whereof the Defend^r was held to account to his brothers & sisters the sum of £200, of his part of q^s this action is brot by Pltff – The Defend^r contends that the Defend^r was to account only in the general succession

of

of the father & mother not to pay this sum to the other Children — but the father & mother are dead 30 years ago & it does not appear they left any property nor any division thereof was made, nor acceptation by the Children — The parties were ordered to go to proof, and at the enquete verbal testimony has been adduced to shew that all the children were established equally & equal provision made for them — this cannot annul the stipulation in the Contract in question, such testimony is inadmissible, nor does it go the length to shew upon what conditions these arrangements were made — Moves to reject the verbal testimony — The Defend^r has alledged that all the Children were charged to account to their brothers & Sisters for 1200^tt — This has been proved only in the Case of one of them — but in it there appears a different stipulation, that this Child should bring this sum into partage of the parents succession — The Pltff produces the Mar. Contract of P^re Vincent, where there is no such stipulation & who never received any thing from his parents —

M^r Poltier for Defend^r — The Pltff have waited for 28 years before bringing their action — The only action the pltff can have is an action en partage ag^t the Defend^r — It is evident from the evidence before the Court, that the intention of the father & mother in marrying the Defend^r was to put all their children in the same situation — this is

evident

evident from the Contracts produced by the Defts. The term used in this Contract is, tenir compte which is a very different thing from payer. to his brothers & sisters, particularly as this was to be done after the death of the father and mother.— the intention was to equalize the shares & fortunes of the children as far as possible.—

At all events the Pltff is entitled only to his share of the principal sum, but not of 25 years interest

№ 357.

M.Nider
v
Stevenson
& Porteous

action to arrest the property sold to Defts before coming into his hands & in transitu on act of the Insolvency of the purchasers.

Walker for Pltff. action brot. by the assignees of the Bankrupt Porteous, & Stevenson the Master of the Ship in wh. the goods were shipped— on 24 Feby 1825 P— gave an order for 28 cases of hats of a particular description to amo. of £741. 10 St at credit of 7 months— this property was shipped from Glasgow in May 1825— before the hats arrived in Canada Porteous became insolvent & on 30 June made an assignmt of his property to assignees— this has no particular reference to the goods in question not then arrived— In July after the Warner arrived in Montreal— when the goods on board were ~~arrested~~ demanded by Pltff but the Master delivered them to the order of the assignees, and next day the property was attached at the instance of Pltff The Defendts have separated in their plea— 1st the Capt says he rec. the goods to be delivered to the order of Porteous & that he had followed his order — 2d the other Defts

the

assignees that the property having passed into Posteons by the Shipment, they became intitled under the assignment to claim & receive them — & also under a subsequent assgt of the particular goods in question.

The evidence adduced in support of the action under the Com. Rogr will shew that the Plffs reserved a certain right over the property shipped, particularly over the Insurance made at the expence and risk of the Shippers

The assignees here stand in the same situation as the bankrupt himself & can have no better defence than he could have — the vendee in case of insolvency cannot under the Fr. Law compel the vendor to deliver the goods without part a Security. Rejon vo Vente pa. 480. — The Plffs never manifest any consent to the delivery of the property to this Debtor — until delivery both parties may be considered as having a property in the goods so as to exercise their respective rights thereon — That the constructive delivery by shipps does not divest the right of the vendor to ~~exercise~~ attach this property while in transitu, until it comes into the actual possession of the Vendee. 1 Alk. Rep. 245 — Snee Val. v Prescott Val — the doctrine here is agreeable to what is laid down here by the 176e art. of the Custom of Paris — Lickbarrow v Masson. 1 Hy. Bl. 357 — 7 Taunt. 169. — 2 Bos. & Pa. 257 —

Mr Buchanan for Defendts Either by the law of Canada or England the Plff cannot recover here by the present action — the nature of Stoppage in transitu is not known here, — in England the attacht is not known, they proceed there by notice to the party only. This we do not recognize here — The action here is an action of Trover to recover property belonging to the Plffs —

The pltffs ought to have stated the real state of the transaction & not put it on the footing they have by this action — But had the insolvency of the Debtor re-vested the property in the Pltffs yet they do not allege that the Contract of Sale was thereby annulled — 2 Holt. p. 204 — to shew the contract is not rescinded Abbot. 357. Laws on Ch. Parties 405 & 543 — as the consent of both parties is required in this rescision not so as to stoppage in transitu —

The Pltff had no right to stop the goods — and he is not the vendee nor his agent — & they alone are the persons who can do so —

The Law of Scotland here ought to regulate the rights of the parties — there the Contract was made — but it is not proved — not alledged as the ground of the action — the only notice of this law is under the general & last Interrogatory — to this the Defendts had no means of cross-examn the wits do not say they are acquainted with the law of Scotland nor are they professors of it — it was necessary to have shewn if this was written law an authentic Copy of such law should have been produced — 3 Stark. Ev. 1st Foreign Law appendix —

But if this law were proved, the facts here do not shew that the proceeding under that law is by notice as in England, the property is revested in the Vendor — There is a protest here by a Notary, of a demand on the Master of the Ship but this is merely a copy, & nothing said about the original — This would not hold in England such

4 Camp. Rep. 129. Chitty on Bills. 405 note (g)
In England that the moment the transitus is at an end the right of stoppage ends. this was the case here — The protest was made on 2 July & on the 8 July. the greater part of the goods had been delivered into the Store of the vendee & his agents — 3 T. Rep. 468 — 2 Holt. 211. 227. Abbot. 364 — 4 East. 211. — Laws 498. 507. —

The law of this Country is equally unfavourable to the Pltff — The goods here were sold at a Credit of 7 months — By Rom. law right of Vendors not so favourable as under Custom — 14 Lw. Dig. tit. 4. 5. Law 8 18 — when credit is given to Vendee — Poth Vente n° 18. & 323 — the credit transfers the property — The 176 & 177 art. of the Custom admits that the property was in the Vendee — a sale sans Jour & sans terme — & in the 77th art. where the Creditor can proceed only for the recovery of the price, not for the thing itself — There was no seizure in the hands of third persons as stated in the 177. art — see 2 Jur. Gr. Com. p. 1329 — & obsrv. p. 1344 — 2 Bourg. 689 — n° 75 — 1 Pigeau 465 — to shew the property cannot be revendiqué on a sale on Credit — Poth. Cout. Orleans art 458. note 2. p. 785. the party can have a privilege on the monies arising from the Sale —

Walker in reply — The contract here was made in Scotland & the laws then as proved must have effect — and a notice to the Carriers is sufficient to preserve the right of the Vendor, this commercial principle holds in all parts of Gr. Britain — the opinion of the Lords J.

The

the Vendor is an equitable right and notice is sufficient to preserve it — refers to opinion of Mr Justice Buller in the Case of Lickbarrow v Mason 2 T. Reps. —

The law of Scotland is sufficiently proved, it appears sufficiently under the general Interrogatory — this the general jurisprudence, without perhaps any particular law in existence on the Subject — before 1690 the principle was unknown in England, and arose from equitable circumstances not from any law made on the subject —

The copy of the protest is sufficient proof of the fact it states under the laws of Canada —

That under the laws of this Country this action is founded, — 2 Gr. Com.ᵗᵉ Fer. Som.ᵉ 176 & 177 art. Cout.ᵐᵉ Mes art. refer to cases when the property has actually passed into the hands of the Vendee as the more general case — but here the property never passed into his hands & may still be considered in the hands of the Vendor — Despeisses tit. 1. N.ᵒ 19 — the Cout law principles were much modified by the Fr. law. Poth. Vente. N.ᵒ 475 — on default of payt of the price the Vendor might resume the property —

By the 177.ᵉ art. the Vendor was entitled to prevent the sale of the goods until pd or until he had obt.ᵈ the consent of the other Creditors to have a preference on the sale — this amounts in substance to the right of stoppage in England as noted by Mr Justice Buller — But where the goods are still in the hands of the Vendee the Vendor has the same right of revendication under the 177. as under the 176 art. the object of credit makes no difference as to the right of

1317

of lien in this case. Gr. Com. p 7317.— In the Summary to this art. p. 1339. N° 4 —

The subsequent insolvency of the Debtor alters the conditions of the Sale as to the Credit given & puts the Case as if the Vendor had never made such a Contract see Poth. Obl. N° 230. 1. 2 as to difference between condition & terms of payt — & N° 234 — which brings this case to one of a Sale for prompt payt — Repse vo achat —

An action to rescind the Sale in this case became unnecessary — not applicable, as it refers to Sales of real Estate or of — are reduced into writing, but in Commercial & verbal Sales, this would be too tedious & ineffectual —

That it is a principle in equity and holds also in law, that he who seeks Justice should do Justice but the Defendants here seeks to avoid it, by demands that the goods in question be delivered up to them without any thing having been paid for them, and without the hope or intention of ever paying for them beyond that dividend which the Pltf shall receive in common with the other Creditors — This would be the most manifest injustice — for the Defds and a few others who are Creditors of Mr Porteous in this Country to a small extent of 3 or 4 ?th pounds would thus carry off an unjust proportion of the property of the Scotch & English Creditors whose debts amount to about £60,000. & out of whose property alone the means must arise to pay those debts — The case is not only hard but extraordinary — the bankrupt without means in this Country goes to England & Scotland in fall 1824 — returns to Canada in Spring 1825. with Cargoes & goods on credit to the amount of £60,000 sterl upwards, & he scarcely arrives here, before he is declared a bankrupt, to the surprise of all & without the most distant intimation given to the English Creditors, who are thus duped.

Wednesday 6th Febry.

Pres.t

as above

No 1654
Gravelle
&
Roulleau
&
Leblanc
&
Poliquin

On Plff's mo. for a contraint as the Guardian Ross for Gardien states that there has been no diligence in following up the seizure that upwards of a year had elapsed.—

Boston for Plff, if the delay has accrued since the last proceedings in Court this might be allowed

over to 11

No 1419
Robert
&
Fournier

On Defend.rs mo to ~~dismiss~~ discharge Rule to Expunge the Cause for want of proceeding—

Bleury for Plff. says that all necessary diligence

No 1840
Dufresne
&
Berthelet
Can.l
&
Mathieu
Opp.t

On the motion of the opposts counsel that M.r Plucknett give security for costs — he having raisld a contest on the opposts claim.—

M.r Boston for Plucknett — the application even had there been a right, is too late, this being the D.r Term since the matters are in contest & they are now at issue—

Bleury for Oppt. The delay counts only from the

time

time the moyens are filed – this was on the 19th. of last Term, & the 2d of this Term he made the present application

No 1206
Boston
vs
Pinsonnault
&
Bourke
opp

On Pltff's mo. to dismiss oppos'n as there is no election of domicile & being made by a married woman not authorised for that purpose. –

No 2306
Rutherford
vs
McKay –

action of aut pro Socio – on objection to evidence
Mr Rolland for Defend'r – The Defend'r has answered on the faits & articles that no partnership ever existed – No written document ~~accompanying~~ has been adduced to prove this partnership. – The question now proposed and to which the Defend'r objects, is, If the Defend'r did not tell the Ice that the Pltff was in partnership with him the Defend'r? – But such testimony cannot be admitted to establish a partnership – altho' acts of partnership, may be allowed – This is not a Commercial transaction – Even in England such evidence would not be admitted – Watson. p. 60. – 2 Ev. Poth. 193. – The Pltff here states himself a trader & the Defend'r a Master Mason, & the object the making a Canal – this not a Commercial matter – & as to third persons this kind of proof as the parties as partners might be admitted – but as between the parties themselves, there is nothing Commercial, it is the mere object of labor in digging the Canal

Mr Sol'r General for the Pltff – the objection has already been made, & the opinion of the Court taken upon it. – But the admission of the party is the best evidence of him – Gow on P. p. 4. – 2 Stark. on Ev. p. 1083

2 Stark. 28. — 1 Starkie p. 50 · sec 31. — 2 Starkie 37. — Peake's Ev. p. 19. —

M^r Rolland in reply — Words accidentally dropt in conversation is very suspicious evidence, and ought not to be admitted in matters of this kind. The proof of a Partnership is not a fact of a commercial nature & can be proved by Witnesses. —

№ 2366.
Ferrie
v.
Turner —

On Pltff's mo. that Sheriff amend his return on account of a prior seizure having been made at the suit of another person. —

№ 169
Stansfield
v.
Stansfield

Over —

№ 604
St James
v.
Charbonneau
& al' ——

Action for recovery of damages for not performing their contract with the Pltff.

M^r Bleury for Pltff — the Defend^rs calling themselves Marguilliers in charge entered into a Contract with Pltff. & — in such capacity they were not entitled to make — the Pltff has proved his demands & demands Judg^t —

Roi for Defend^rs — The facts are denied — the Contract was conditional, it depending upon a plan to be approved of — which was never presented — That Pltff knew the Defend^rs were not authorised to enter into an agreement with him, & therefore

then

therefore there were no damages accrued. —
That the evidence here states the separate conversations of the Defendants, but nothing ag^t unites them together there is only one W^s to this, one Jn^o B^te Baret but he is an interested W^s. and Def^ts. move to reject his testimony this W^s speaks of a plan he was then making, w^h was to be presented the next evening, gives reason to believe that this plan was a condition of the Contract —
As to the damages, two W^s are produced, estimate them one, Repin at £110 — Rollin at £100 — but this is — extravagant —
The testimony on the part of the Defend^s shew that the Pl^ff was at the time in insolvent circumstances and unable to perform the work. —
Bluny for the Pl^ff — The proof in this case is very ample on all the points alledged — That besides the testimony of Paré is confirmed also by that of Simpson — That Barret has no interest in this cause

No. 1258
Barnet dat
Harrison

action hypoth^e — on Exceptions —

an. Dem^t v^s Privilege

Boston for Def^d. The decl^n states an agreem^t with one Riley — work was done on 10 Dec^r 1823 — on 25 June 1825 Riley sold the property to Def^d the Ind^t was obt^d by Pl^ff of Riley in Feb^y 1826 — The workman has a privilege q^t — must be exercised within a certain time. 5 Poth. p. 453 — Rep^se v^s Ouvrier —
Grant for the Pl^ff. altho' the action was not brought within the year, yet their hypothèque subsists, that the Def^d should have pleaded the plea of prescription of the privilege —

№1177.
Smith
vs
Berichon

action by hypothecaire — for Seigneurial rights
Boston for Plff. The Defendt sold the
land in question to one Thibault — who
was unable to pay the Lods & Ventes, but with the
Seigr Dumont agreed to transfer the right of lods &
ventes to Plff on 2d May 1825 — Judgt was given
in favor of Plff & Thibault for the amount of
the lods & ventes on 20 Feby 1826 — this Thibault
not having pd the debt the present action is brot
& the Defendt — who purchased back the
property from Thibault on 8 July 1826 —

Beaubien for Defendt — The lette from Berichon
to Thibault of 26 Novr 1824 — was not a perfect
sale, but a promise to sell, and no lods & Ventes
could be due thereon — there was in it a promise
to pass a lette, but the lette was never passed
Repx vs Lods & Ventes S. 3. promesse de vendre —

ovn to evidence

№1663
McKenzie
vs
Ritchie.
& Erno oppt

On the oppn of Erno.

McVicar for oppt — there are 2 reports before
the Court qr — are suffte to enable Court to
do justice between the parties — contends
that Judgt should be entered for Oppt for £180. —
Boston for Plff — The charge of the bail Emplt
was £2 ℔ an — this the Plff is willing to allow by
paying a Capital to him equal to produce that rent
& to be abandoned to him for ever instead of taking
back the land at the end of the bail —

№ 2354
Metcalf
vs
M'Culloch

on report of arbitrators —

M^r Boston for Defend^t — Defend^t tenders £26 — the arbitrator has established a sum of £33 —

№ 963.
Lanaudiere
vs
Digman —

On action of damages for a trespass —
Pleas on Law

Sol. Gen^l — The decl^n is insufficient & contradictory there is enough on the face of the declaration to shew the authority under which he acted & consequently his acts could not be maliciously —

M^r Rolland for Pl^ff contends that the act of the Defend^t is stated in a way to shew the action is right

№ 2292
Kendal
vs
Lambe

Action by the Indorsee as the Indorser on a bill of Exchange —

Buchanan for the Pl^ff — The evidence taken before the L^d Mayor — the Defend^t was noticed to produce the protest, but refused — consequently the letter sworn to before L^d Mayor must be admitted as the next best evidence — There may be an objection ~~between~~ as to the delay between the date of the protest & the time of sending the letter from England — but it appears to have been sent by the first Ship —

Grant for the Defend^t — a lapse of 27 days happened between the protest & the sending the letter of notice — and it is not proved that the Packet Ships sailed on the

the first Wednesday in every week — on the Contrary vessels sailed daily from Liverpool to America

Buchanan in reply — Chitty. p. 315 — Holt. N. P. Rep. 476 — 3 Esp. p 54. Cooke. v Weston. — The letter was put into the Post Office at Birmingham & could not be sent off to America till 6 days after —

No 557
Lee
vs
Dunn

Action for wages. —

Grant for the Defend — The Pltff has received more wages than he was entitled to — But this is an Incidental demand for damages for inattention to his duty & injury arising therefrom. — The Pltff was addicted to liquor, & he was often absent from his duty, by which occasioned great risk & damage in the duty he had to perform as Maltster — and a considerable damage ensued for by Defend demands Judgt. —

No. 2084
Young &c
vs
Delisle —

action of damages for an assault & battery

Mr Grant for Defend — There is no evidence to support the action — it appears that there is subornation of the wit adduced by Pltff — The Defend has justified under a warrant from a Justice to bring Pltff — wife before that Justice

Mr Blamy says that evidence is very strong in favor of the Pltff — & he considers Pltff entitled to large damages ——

№ 14
Eno & Colas
vs
Piette —

action for recovery of certain rights promised to her children by their grand father. —

On report of Experts. —

M. Rolland for Plff — the report is for a very small sum — on this act the Plff exam^d the Defr on faits & art. by gr. it appears there was a sum of £3 — more given to one of the Children not noticed by the Expert & for gr — & the other articles not included in the report, Plff asks for Judgt —

Vigé for Defend^r — By a clause in the marriage Contract of Plff w^h her first husband the father gives her a menage telle qu'il se trouvera donné aux autres enfans — there are other Contracts 8 Oct 1810 — one in 1817 gr — are both anterior to the one in question in each of these Contracts 6000^t is given, w^h would leave but a small menage would remain to the old people — & in the first Contract there is a menage stipulated in the 2^d there is none — & in the the 3^d the one on gr the action is founded — is added — avec un menage tels que les autres filles ont eu — now in one of the Contracts, there is no menage given, & in the third, the word menage is used, but without saying what it shall consist of — & it is difficult to say what is meant to be given & to what extent by the word — and according to the proper & strict interpretation of the word menage, it can consist only of such articles as serve to furnish the house — But when the Inventory was made on 29 March 1823, there was an arrangement made by the family on this subject

which

which precludes all right of action in the Pltff—
Rolland in reply, the Tutrix was not authorized
to give up the right of her Minor in regard of
the menage as stated in the Inventory — this
stipulation cannot bind the Minor —

Thursday 7th Febry
Friday 8th — "
Saturday 9th — "
} Enguête days

Monday 11th Febry. 1828.—
Prst
As before.

№183
Miller
Pltff
vs
Defdt
} on mo for security for costs —
Beckham for Pltff — affidavit not sufft

№366.
Donegany
vs
Fraser
} on Pltffs mo. that the enquête Cause be declared closed.—

№383
McKeenon
vs
McCambridge
} On Defendrs mo to be permitted to fyle an exhib. not in his possessn when plea was filed —
Mr Ryan — Defendt should have an affidavit to shew that paper was not in his power at time of filing plea —

No 344
St James
Duvillon
Amot T. S.

over till to morrow

No 409
Rowand
Keith, Curr
&
Perrillon
Intd

On Petition of the Intervt party to be admitted to file an opposn on the principle that since the purchase made of the lot of land he has discovered there is a Power due on it to the wife of the original proprietor —

Mr Scott for the Pltff the party had every opportunity of making the necessary enquiries before the Sale & he cannot now be allowed to come in. —

No 1994
Rotte
Morin
&
No 1175
Stansfield
O Donovan
&
Bagg &
Delony opps

On mots & Intervention of Delony —

Walker for Interv party has he has established his claim to the wood sold — this is denied by Pltff

No 2476
Lester
&
Scarborough
&
Gurney T. S.

as Interv party has been proved his property Pltff says Defendt ought to pay costs & not the Pltff

Walker for Interv party says the Pltff ought to pay costs from the contest raised by him —

№267
Wilkie
v.
Kimber

Action on note —
Mr Ph. Brunicau — for Defdt has pleaded payt and has proved it — the note was lodged in the Bank and another note taken in lieu of it which was done in discharge of the former note Pltff agreed to take up the note at his own risk from the Bank —

№150
Bilouin
v.
Barron
&
Co

On Report of arbitrators & merits —
Blenny for Pltff — asks for hom. of the Report
Mr. M'Millan — there was no notice ~~was~~ given to the parties at least to Defdt —
Blenny's parties were heard

№510
Stephens
v.
Knower
& al

Action on note & on an aval —
M'Henshaw — the Pltffs evidence complete asks that fact dart. be declared confessed —
Mr Grant for Defdt — the Pltff should have done diligence as Thompson by notifying the protest made on the note — Phillips v. Aiken. 2 Taunton
Ogden v. Gray —
Henshaw says. the party was sold a moment bound & not entitled to notice. Rapp. v. aval. p. 709. — 2 Sutherland v. Stem — Pardessus on notes — Conf. de Bonnier

№ 442
Talon
vs
Barron

action for doubte drawer on an exchange of horses.—
Mr Green for Pltff, action is founded from evidence adduced—
Mr Bleury for Defndt says the cause is without foundation—

№ 868
Rolland
vs
Carmel

Action on Note—
Bleury for Defndt has pleaded want of consideration — if this the note a consideration he has a discharge — cites can. Blackwood. v. Chinic — where a note of this kind was held discd — Here the note was taken for the interest & arrears of rents of which Pltff gave him a discharge —

№ 1069
Macon
vs
St James

Action for balance of obligation £27. 4. 2—
Bleury for Defndt The only balance due is that stated in his plea—

№ 2057
Lovis
vs
Beaubien

Action to recover amount of a Note & security given to Pltff by Defndt—
Bouton for Pltff the Pltff on the security given to Pltff became by said [illegible] Galusha on a suit ag. one Richmer — The Defndt says, that he is not bound for more than one half of the note. & half he has paid — Domat. p. 550. Eng. law both oblgs may submit — Rules de Poquet de Liv. p. 400 —
Rips vs novation 230 — Oblg. 550. 406—

Lamoyroux. art. 13. Lacombe. vs Caution. —
claims now the amount of Dep. rendered & Seen
by Galusha —

Defend. in person — when Pluff gave his security
to Galusha he was possessed of 2 clocks & the Security
he required was to indemnify him only in case these
clocks were not sufficient — he is still in poss.
of these clocks & could not bring his action till their
value was ascertained —

No 225
Window
Labroquerie
vs

action for monies advanced by Pluff to the
the late M Stubenzer —

M Sweeney for Pluff the Pluff has adduced
in evidence a bill of exch. drawn by Stubenzer &
an act of the monies pd — w. protest —

M Beaubien for Defend. the bill was drawn
by Stubenzer on Pluff & accepted by him, which is
a proof he had funds to pay it — the army agent
never pays without the affidavit of the Officer who
draws to enable him to get the money from Govmt —
Stark Ev. 2 vol p. 276 — 2 Ph. 32. 86 — 3 Rep. 183.
2 Camp. 439 — Savary 1. vol 242. 244. 2d vol 757. 2 9
Poth. Charge — 226. 231. 229 —

Sweeney for Pluff — This is an action on an act
Cont. to draw monies advanced & the bills brot. up
to prove the Debt — besides the affidavit of the Pluff
Clerk before the Dd Mayor —

No 481
Pothier
Dagen —

Action for wph. of title. —
Stanley for Defend. costs ought not to be allowed as in the Superia Term —

Mr
Shedden
Simpson
Ewing opp

Petit pays Def. on appeal as not supported
Depos. ably did not appear —

No 503
Jones Cur.
Powers —

Action for goods sold & Defend.
Blaney for Defend. did not appear

On Petition
of Gw. Selby
Moffat
Hallowell

On question of a priority of mortgage —
Mr Rollard for Louis Leslie & Co. claims prior to Moffat, as having the corps of Hallowell a joint security — also subsequent in point of date to that of Moffat —

The hyp. of the wife in all cases where she contracts a debt with her husband she has an indemnity on the property of her husband Poth Com. 763. 764 — 765 — 6 Renuss: Tr. Prop. ch. 4. Sec. 8. No 17 & Seq. — No. 18. 19. 21. 26. Lebrun Com. liv. 3. Ch. 2 Sec. 2 Dist. 6 — No 1 & 2 — the arret has cited from Mornac 4 vol. 322. where the was not founded on the Edit des Hyps. 3 Journ. d'audiens liv. 7. ch. 23. arret 5 Juillet 1683 — 6 vol. Do — 1 liv. ch 34. p. 162. 3 — The action of indemnity is introduced only by the usage not by any particular Law — here there was no Mar. Contract, but in that case, the right attaches up to date of the marriage, & not by any Contract. which alone

alone was the object of the Edit des Hyps.—
1ère. Lamoignon. p. 126. tit. 21. des Hyp. part. 65.—
2e part. tit. 21— Arrêts de Not. Henrys p. 5. - 112.—
Thibault 286 — is of a diffte opinion, but in this he speaks
only of the Parliaments than that of Paris — when
he allows it is admitted — Lacombe. vo Indemnité
cites Brodeau, & arrêt du 1611—
Libran. Comté p. 16–17.— Poth. Comte 12. 13. 14. 15.

Mr. O'Sullivan on same side — liv. 5. tit. 15 Code —
liv. 8. tit. 18. — law 12th — this latter law has been held unjust
& is really so.— ~~Bardet. tit~~ Brodeau letter F. N°17
p. 734.— art. du Cout. Paris 232. Gr. Comte de Fer.—
Mornac book 20. tit. 4. — gen pouvoirs du — 1 vol. 1175 —
4th vol. do — p. 234.— 2d Bardet. p. ~~271.~~ 551.—
Gr. Comte art. 232. Cout. on whole closes on this article —
the article is silent as to the date of the mortgage given
to the wife, but the arrêts are clear — Bard. on Loüet
2 vol. letter F. p. 536. in fine — Lapeyrère 656. ch. 69.
& p. arrêts de la Cinquieme in feuillets p. 51. at the end of
the work — Auzanet. p. 171. — letter T. N°. 10. —
Lacomb. v° Oppos^n — N° 2. —

N°1084
Dagenais
vs
Berthelet
& al' —

Judgt for Plff. £25 - damages & Costs —

N°397
Chamard
&
Menard

Judgt — on acct — rendered. —

N°2165.
Chapman
v.
Harrison } K action dismissed —

N°1210
Rolland
v.
Paquin } K Judgt for Plff

N°1147.
Arnoldi
v.
Perrault
&
Cuvillier & al } Opposition maintained

N°42
Petro & Ducharme
v.
Sodouin } K action dismissed —
See arrets de Reglement de Jouy
p. 152. 3. 4 & arrets there cited —

N°694
Racine
v.
Gardner
& al } action dismissed —

N°87
Lacroix
v.
Gravelle } Defendt admitted to his serment Judiciaire

N°423.
Warwick & al
v.
Raymond } Judgt for Plff

N° 931 Ex Parte on Petition of J. Gale —	Judgt —
N° 1333 Jos: Cartier vs Eac: Cartier & al. —	Judgt on the acct rendered. —
N°. 463. & N° 1930 Armour Pickel & al & Jourdain & al — Opps	Order of distribution settled. —
N° 1136. The Sol: Genl vs Dion & al	Judgt for Crown — in four Cases. —
M. Kenzie vs Ritchie Envo Opps	Order of distribution settled

Tuesday 12th Febry.—

Pres.t

As Before.—

№866
Fisher
vs
Marcoux
&
Marcoux ps

Ors Pltffs motion for a Vend: exponas—
Stanley submits the case—

№792
Marier
vs
Roi. et

On motion for a new trial.—
Roi for Defendt— That it is enough under the orde of 1785, that the party is about ~~the~~ to leave the Province— of this there was proof by it appearing that the Pltff did leave the province— o this without consideration of the object for which the party leaves it, as the law does not distinguish.— The law ought to be interpreted favorably for the creditor & for the security of commerce—

Mr. O'Sullivan for Pltff. According to the littéral expression of the law, the party must be considered as quitting the Province, and abandoning it— ~~such~~ This ~~not Above plt~~ interpretation is of the Defendt— for it is evident in fact as well as in law in this case that the Pltff was not about ~~to~~ to leave the Province.—

Mr Rolland on reply— the Defendt has made an oath that the Defendt was immediately about to leave the Province— the fact was so— It is not for the Court to inquire into intention of the parties in such case—

On Petition of Geo: Selby Geo^r Moffat & al^s - Opp^s

Mr Sewell for Mr Moffatt -

In 1796 - W. Halloweill went to U. States & was there married without Contract - he had his domicile in Canada where he returned immediately - in 1820 - Halloweill borrowed £700 from Mr - Moffatt - & gave his obligation before a Notary - on 16 Sept^e 1824 H. obtained credit from House of Irvine Desbrisay & Co^y for which he & his wife joined in Security before a Notary - The Obligation of Moffat was prior in fact & in law to Irvine & Co^y That Mrs H - has no hyp^q from the Day of her marriage on the property of the Community had she even been married in Canada admits that a Comte did exist between the parties - But the wife has no right of indemnity on the property of the Community - The art. 225 Coute the power of the husband over the property of the Community is unlimited - There is a distinction between the remploi & indemnité, the first being favourable, but as to indemnity, it is to given only on the property of the husband, but not on the Community - Ferrid 20 March 1588 - on arrêts du Journal D'Aud: - cited from Jubet Coutz. 2. Vol. p. 66. art. 232 - to shew that the indemnity goes only on the property of the husband - this right cannot be exercised till the wife has renounced to the Communité - Poth. Comte N^o 759.

The wife has no hypothèque, there having been no stipulation for it by marriage Contract - had she been married in Canada - whatever the law of France may be, not so in Canada - Up to 1681 this was held in France - it was allowed when

when the stipulation was contd in the mar. Cont.
up to 1673 ten years after the establishment of
the Edit des Hyps. but this was not the law in
Canada, it is only by this Edit that the right here
contended for can be admitted, ~~and thus~~ and all the arrets
cited apply to this arret — In a comm. Country
the principle would be ruinous — it is fraudulent
and giving an undue preference — It is contrary
to the Roman law qr says the mortgage shall run
only from the day of the loan — But the Roman
law not the law here nor can we trace the source of the
present claim as founded on Rhode Island —

That the hyp. of the wife here is merely potentative
not real — Even for the remploi the right has been
denied to the wife — Where the wife cannot suffer,
or it is a mere possibility whether she can suffer
but such possibility cannot ground the right claimed

If a wife be authorised to oppose for her indemnity
on the Community or even that of her husband
she can be indemnified only for one half, until
she shall have renounced — as she is held a debtor
for 1/2 —

Thibault Créés — 1 Vol. p. 285. The question is
raised as to remploi when not stipulated in the
marriage Contract, & decided as it by the arrets
Rhode in that case the hyp. is only from the day
of the alienation — The arrêt of 6 May 1609 &
commented on by Mornac as cited by Pothier shews
there was a stipulation in the Mar. Contract — but
in regard of the Indemnity it is considered as
much less favorable & considered as hors bilan, &
the hypoth. granted only from the date of the

Debt

debt contracted when there was no stipulation in the Marriage Contract — The arrets of the 17th Cent.y up to 1681 — are all to the same effect —

For. Gr. Cout. art. 237. — states the hypo. of the wife for her remploi des propres aliénés. 3. Dy. liv. 20. tit. 4 law 11 — the preference given to the first lender, altho' a prior stipulation was made with another for a similar loan —

Institt. liv. 3 tit. 15 — The delivery of the things constitutes the Contract — not merely stipulation. —

5 Sep. 1692 — By an acte de Notoriété of 5 Sep. 1692 it is said that the Caution shall have his mortgage only from the day of the Cautionnement — 3 For. Gr. Cout. p. 426. N° 22. — where it is cited —

Renusson Prop. p. 392. N° 17 — the first instance of indemnity he cites, he says it was granted because there was a stipulation in the Mar. Contract — but N° 19 — he admits there are arrets where a different principle has been held & then refers to Edit of 1673 as regulating the difficulty —

Repr. 17 vol. p. 138 — the laws prior to 1683 not in force in this Colony — refers to case of a Testament holographe — where the laws not promulgated nor published in Colonies not in force

Repr. 8 vol. p. 654 — Lemaitre p. 256 — comments on art. 226 — where wife bound w.h her husband & is obliged to pay, & she has her indemnity only from the date of obligation where there is no Mar. Contract & in p. ~~65~~ 257. Lemaitre — he then cites Brodeau sur Loüet — where one case is cited to the contrary but the ground of this arret is not known, why it was a departure from the general principle

Renusson p. 386. Pothier — speaks of it as a question much contested, particularly where there is no stipulation by Mar. Contract. —

The remploi cannot be operated on this property 2 Old Denizt p 660 — who says the jurisprudence was to give the recourse of the wife on the property of the husband only — because he is the Master of the Community, & it is but reasonable that it shd be so, as the wife is equally debtor as commune & tho she renounces she can be indemnified only for one half —

It has been argued that the Edit of 1673 was only declaratory of the law, but it is evident it was introducing a new law, as the arrets prior thereto shew —

Lacombe tit. Oppn has been cited, where an arrêt de Reglement of 1691 is referred to — but it would seem this applies to the Case where the Creditors come in on a vente order of the wife — & Poth. Comté N. 766 — seems to refer to this course of proceeding —

Mr. O'Sullivan in reply — The Edit of 1673 was merely a bursal law introducing the enregistration of Mortgages, but in no wise changed the law existing before — and an exception is made as to the rights of the wife by her Marriage Contract. — Ordre Neron. 2 Vol. — The Depe has concluded that the law before this was either uncertain, or in his favor & this Edit cleared that up. — The arrets cited from the Journal d'Aud. when exd will be found to be founded on Custom of Bourgogne contrary to Custom of Paris — Conf. de Coutumes shews this ~~p 556~~ p 563. — Thibaut. 287 — shews that prior to 1673 the jurisprudence was as contended for on Custom of Paris —

Admits that the mortgs can be operated on the property of —

of the husband, & it is the case here — because by the claim here this is effectually the Case — as to Renonciation of Mrs H — she cannot be compelled to do so — but the Creditors can exercise this right —

The Roman law gives the mortgage from the day of the marriage — Renusson. Propes. p. 200 —

13 Vol. D'Aguesseau. p. 620 —

No 1654
Gravelle
vs
Rouleau
&
Leblanc
&
Proleau

art 22 du Tit 19 ordre 1667.

On Rule of the Gardien —

Borton for Plff — contends that there has been no unnecessary delay, on the part of the Plff, as the proceedings in Court prevented the Plff from proceeding sooner — here there were no laches. — as decided in Case of Warwick v Yule & Bowers —

Mr Ross for Gardien — the date of writ not stated — nor when service made — it was made in 1825 — rule issued — Seizure not legal — not signed — from date of time Guardian is discharged — Inspection. p 393. — 1 Couchet 193. if a year elapses after opp. made he is discharged —

No 169
Stansfield
vs
Stansfield

On action en prise de fait —

Defendt no. for delay to plead — as Deft is absent in England — as no instructions have been left to defend the Cause —

Grant for Plff — resists the motion as notice was given to the Defendt before he left the Country of the Plaintiffs claim —

No. 322.
McKenzie
vs
McGillvrai

Action on a bond, deposited in Notarial Rolland for Plff — the debt is ascertained by sufficient evidence — the only difficulty could exist only as to Mr McTavish, who was a partner of the House at the time the bond was made —

The

The obligation is of the 11 May 1814. — That Mr McTavish contends that the monies paid to the Pltff ought to be imputed to the principal - altho' by the arrêtés de compte between the parties these pay^ts were imputed to the interest — & this imputation cannot be ~~admitted~~ put up by a Debtor, altho' it might by a Caution — Mr T. says he withdrew from the Partnership but not proved — & to have been advertised in the Gazette — but no Gazette produced — nor sufficient —

2 Selw. N. p. p. 1123
1 Ph. Ev. p. 388
Watson 384.5.

Mr Scott for Defend^t the only objection is in regard of Mr McTavish, who retired from the Partnership in Nov^r. 1819 — when he retired the balance of cap^l of Pltff was only £1,333 — The retirement of Mr T is stated by Mr T. to have been stated in the Gazette to y^e the term referred. Watson on P. p. 385. — that Pltff had a knowledge of Mr T.'s retirement That no Judg^t can be rendered as Mr T. who is now an absentee and represented only by a Curator who cannot bind him —

Mr Grant for Mr Shaw — says, that there is no evidence to shew that he was a partner —

Rolland in reply, when Mr T. retired the balance was greater that stated, it was £6000 — & upwards & the act. of 1 Nov^r 1820 shews balance to be £11,000 —

No 97
Hughes
Closson

Defend^r mo. to have Pltff^s exhibits rejected as not regularly filed. —

№ 612.
The King
v
Ardouin

On action on a forfeited Recognizance — Exparte
Mr Charrier for Defendt — There is no exhibit from the Registr, a record of the forfeiture —
Mr Sol. Genl — there is an Exhibit of the Recognizance filed —

№ 353
Richardson
v
Lorenger

On demurrer —
Mr donnel for Defendt — action brot by Pltff as Curator to Thos Thain — Pltff ought to have named the reasons for wch he was named Curator — ought also to have been stated that the obligt had not been pd to Thos Thain —

№ 2155.
Beauchamps
v
Charpentier

action for damages for having been dismissed by Defendt from his service without Cause — Grant for Pltff — the Pltff was a clerk in a retail store & the agreement is proved. & he was to have received £40 — & boarded — but afterwards allowed to £60 — & am without board — the damages are proved. —

Mr L. M. Viger for Defendt — Servant speaks only of an acknowledgt made by Defendt — but all the obligations of the Contract are not set out — nor were both parties present — But should the Contract be proved — yet the Defendt was justified in dismissing him from his service There is no proof that Pltff had a right to go to market to buy his provisions and leave Defdts Shop — he also took up part of his time in doing his own business & left the Shop wt a young boy. —

№ 3 objected to a servant disclosing Secrets of the family —

Mr Grant in reply — the defence not proved. — See Cross ex. am. — the previous intention of Defe — to dismiss Pltff without cause is proved —

№847.
Bradley
vs
Lebœuf

action for recovery of money advanced to Defdt
Cherrier for Defendt it is stated that money
was advanced for a special purpose — to buy a
lot of land at Sheriff's Sale — Defendt denies this — But
admits that he rect a sum of money in deposit to employ
in buying a pond when convenient — this is a very —
different contract from that alledged by Plff — & he now
offers this money — but as Plff's action is not proved — the
whole case turns on the allegations of the Defendt — another
to which only the plff can have Judgment. —

№ 34
Brooks. —
vs
Harvey. —

on a demurrer to plea —
Peck for Plff — cites Rep. vo Respondt p. 619 —
Defendt should have given the name of the person
who delivered the articles to Defendt. —
Ross for Defendt says plea is sufft

№1994.
Ralté.
vs
Morin.
et
Moreau

On a re-hearing —
Boston for Defendt the object is a contest
between 2 lots of land & not between 2 individuals
this is a servitude réelle — this is established
by sufficient evidence — By the evidence, the 2 lots
belonged to Senecal — he sold the front one to St Francis
on condition of the right of way over the lot to himself
& his heirs — this being the case the servitude attaches
to the land, and follows it & not the person —
vo Servitude. p. 93. Old Denizt Repre p. 248. vo
Servitude. — & p. 253. — vo Voirie. p. 629. — Dec.
Dront vo Servitude. it follows the inheritance — 695 —

2 Bourj. 2e — antient titles with a continuance of possession is suffe to maintain the right of servitude — even in case of a decret Volontaire will not purge it when the titles of the land sold evince the right. Id. p. 3. — This kind of servitudes passes with the land —

Mr Le Vicomte for the Oppost. The Defendt here produces no title to the land seized, it is not shewn to be his land. — The words in the reserve are not sufficient to create a servitude in favor of the Seller, it would on the contrary appear a reserve in favor of the purchaser. — It is not certain on which of the lots the servitude was reserved, nor in favor of whom. —

Wednesday 13th Febry

Prest

As above.—

Beattie v Noxon— McMillan for Defendt action of assumpt for goods sold — action must be dismissed as it is in evidence that Defendt never had any transactions wt Pltff — Defendt purchased from Francis Beattie, who is called him as a witness to support the demand.—

Mr Boston for Pltff — the evidence here is complete to support the action.—

Jones, Curr v Powers Blenny for Defendt action for goods sold to this action Defendt has pleaded payt — & that at the time of the sale he gave a draft on one Fisk yt was accepted — yt this Pltff takes no notice in the declaration, nor does he file the draft yt was so delivd to him. Chitty 97.—

Walker for ~~Defend~~ Pltff — the draft was given only as a collateral security, but was never paid, yt was not necessary to take notice of it in the Declr

№ 1182.
Cuthbert v Delaunoire On motion that Defendt be held to contribute an advancing one half of the sum of £20 — to the Surveyor for carrying into execution the last Interlocr of this Court between the parties.—

№ 1372.
Schneider
vs
Sabourin

On Plff's motion & petition that another person besides Defdt be appointed Guardien, as he is dissipating the effects seized

Frs Bruneau for Defdt resists the motion — this is a Saisie Gagerie & the Defdt is entitled to be named Gardien himself — & the facts alledged are not sufficient to found the motion — this would be converting the Saisie gagerie into a Saisie Exécution 2 Pigeau 76 —

Mr P.B. Bruneau — the affidavit shews the risk the Plff runs —

№ 956.
Hart
vs
Nadeau

Hays on law

Peltier for Defdt — action for house rent Defdt says that he was only sous locataire of one Spink, & is not liable to the payt of the rent demanded, & that his effects ought not to be seized — That although the Plff may have a privilege on the moveables of the Defdt as a tenant — but he has no right of direct action of the Defdt as his tenant — for he is not his tenant — The Defdt is liable to an action at the suit of the persons from whom he leased & cannot be liable to two actions for the same thing —

Boston for Plff — Plff never knew that there was any lease made by Spink & Beaudry to Defdt

till

till he rec^d the Defend^s plea — as in the lease the Pltff made to Spunk & B — they were prohibited from underletting the premises — But the lease of the Defend^t now produces cannot avail him as it shews to be contrary to the authority which Spunk had. —

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No 1885.
Robillard
&
Raby —

Action for a balance due on Contract —
Roi for Pltff — Parties heard on the nullity of the sentence arbitral — consider 2 reasons alleged of this sentence as sufficient — namely, that one of the arbitrators had given his opinion before he acted, & that 2 of the arbitrators Delorme & Fournier were interested that the witnesses were intended — That Delorme & Fournier have undertaken the work since this award made on the same conditions which Pltff had the work —

M^r L. N. Vigé for Defend^t — It has not been proved that any of the Experts gave his opinion on the subject before operating — but he has — proved that certain witnesses were parishioners & therefore had an interest — This is no legal objection — when all were alike bound, they can have no particular interest — The objection made by the Pltff to these witnesses was of law and withdrawn — The objection that two of the Arbitrators Delorme & Fournier, undertook the work afterwards, & from this circumstance to presume an interest in them

to

condemn the work done by the Pltff — this cannot hold — it is no objection in law — unless it can be proved there was any connivance or fraud in the conduct of these men — but nothing of this appears. on the contrary by the award a day was given to Pltff himself to complete the work. & a protest was made of him for not having done so —

M Roi for Pltff. — The witnesses examined by the Arbitrators were interested, as they were liable to pay for the work done — and also the 2 Arbitrators were certainly interested, as appears by their subsequent conduct. —

№ 1092
Bullis
vs
Douglass

On Defendt mo. for delay to plead

№ 344
St James
vs
Querella
&
Amiot Jr.
&
Lacroix

On Pltff mo for Distr of the Sums seized
M Lacroix, mis en Cause by M Amiot
In 1824 he was employed as Attr to prosecute the Defendt in several causes — having obt Judt Upon wch was sued out agt Defdt the taxed costs amounted to £27 — & no goods found other costs were incurred & an Upon sued out agt Lands — they were sold & Defdt purchased them — on a folle enchere rule, a new writ issued, & a Sale was made for £7.1.8 the costs on this case amounted to £16.13.3 so that the whole costs amounted to upwards of £50 — There was an Attachment made in the hands of Mr Amiot, who declared he had £40 — in his hands

this sum the Mr. Lacroix rec^d under the Jud^t of the Court from Mr Amiot, & for which he had a letter from the Pltff sufficient to authorise it — that out of this the Costs on the Attachm^t ought to be allowed him taxed at £10 — The balle is not sufft to answer the costs he has paid —

Mr Bleury for Pltff — In this case the Pltff transferred as well the costs as the principal of the Judg^t. agt Duvillon, & to this he is entitled there being no distraction in favor of Mr Lacroix — That Mr Lacroix had no authority to receive the money from Mr Amiot, but must have his recourse agt Mr St James — The letter of St James contains merely a proposition, but not an authority to draw the money unconditionally but this condition was never complied with —

№2151. —
Brown
vs
Greenfield
& contra

Mr McMillan for Pltff asks for Jugt — the Defend^r having complied with the Interlocutory order of the Court for delivery of the Pltff's book — The Defend^r's atts did not appear —

№2444
Barron
vs
Brazeau

action en garantie formelle —

Mr Mondelet for Pltff Barron — action to be indemnified by Defend^r agt the paym^t of a sum of 700^l — for ql he is prosecuted by the widow Jons. 2 ql Defend^r undertook to warrant him

Brazeau pr Defend^r — Defend^r has pleaded the exception of discussion, & has offered money to this effect — That the garantie does not extend beyond the sum of 700^t — cites. Bouchard. v^o Discussion — Dic. Droit. v^o Caution. —

M^r Mondelet — the exception is insufficient ~~& not~~ as being pleaded after plea to the merits — & therefore too late — The Defend^r has not pointed out the property to be discussed — That the Pl^ffs right of action is also well founded as Defend^r

M^r Brazeau in reply — all these pleadings are in the same act, & may be taken in proper order — that it was not necessary to point out the property to be discussed as the Pl^ff had not discussed the Defr property — Dic. Droit. v^o Discussion — not bound in such to give any discription of the property of the principal Debtor — Id. Caution. ~~same authority~~ — to shew that Defend^r is not bound to guarantee Pl^ff as to the extent by him demanded. — Henrys. p. 817. Inv. 4. 2 mst 148. Rep^re v^o Discussion. p. 712. 713. — 2. Bourj. p. 345. Rep^re v^o Garantie p. 722. — Id. v^o Caution 762. —

№ 1058
Gates & al'
&
Sawyer —
McCulloch
&
Robertson

On Pl^ff mv. to suppress the return to a com. Rog^re

Ogden pr Pl^ff — the return is defective in every respect — no oath to the Clerk — no oath to the Garnishee — no return of the Commissioner on the writ — the affidavit of J. S. not attached to the Commission —

Mr Walker for the Garnishee — The Commissr have complied with the writ — The Schedule of oaths, altho' not marked A — is annexed to the writ — this enough — there is a sufficient return by the paper accompanying the writ —

No 567
Pothier
vs
Porteous

action for Loss of rents —
Roi for Plff — Plff has admitted the receipts filed by Deft — which reduces Plff demand as per statement filed —

No 1036 —
Vaughan
vs
Capson

action on note for £10 — but which with interest brings action within the Jurisdiction of the Court
Pick for 2. Bouy. 438 —

No 1448
Benoit
vs
Dizery

on Law
Mr Cherrier for Deft — the Sentence arbitral here rendered is null & void — the Arbitrators have exceeded the authority given to them — they have allowed damages to the Plff, but they allow damages in future, as they say, that every year the damages will accrue to the Plff — Dessaint arrets. Com de Gens. vs arbitre — Code Civ. ~~1039~~ 1028 — the arbitrators have adjudged upon an ultra petita — Void — referred to —

Mr

M Mondelet for Plff — The arbitrators have not exceeded their jurisdiction — and if they had done so, it could their report could be void only in so far as they had done so — The object in question was to ascertain the damages accruing to the Plff from the want of a road, which necessarily had a prospect to future damages as well as retrospective to those of he had suffered — 4 Dem. Vo Arbitrage. 11 Vol. — p. 24. 2 p. 39. 1 col. to shew that the Arbitrs can take cognizance of any accessory to the object in contest. — The Compromis is favorable — it is like the transaction. — 4 Dem. 2 vol. Vo arbitrage 241. 1 col. — Bouth. 697. Com: Rec: —

The sentence here is an acte authentique, and nothing can be alledged against it but by Inscription en faux — 1 Pigeau 217. — Rep. 246. 2 col. Vo Inscription en faux —

Charrier for Defendt — future damages are uncertain & cannot be estimated, had the Expts been authorized

— —

2. Jousse. Just: Cr p. 697. — N 32

Le pouvoir des arbitres est borné aux choses du Compromis, et tout ce qu'ils feroient au-delà de l'etendüe de compromis seroit sans effet —

Thursday 14th Febry.-

Prest.

As above.-

№ 115.

Wilson v. Spencer

On Defendr mo. to be permitted to take ∴ defaults & enter appce

Mr Cas. Brunean for Defendr alledges that Defendr was sick & unable to appear at the return of the writ-

Mr Boston for Pltff objects to grounds alledged as insuffte-

№ 994

Page v. Morris

On Defendr mo. to quash the writ- as irregular-

Mr. Pelton for Pltff- the Defendr having appeared the 13th he is regularly before the Court-

№ 1088.

Olivier v. Belanger

Belanger ppe

On Pltffs mo. that the Sheriff be held as the Garant of Pltff to defend him on the objections raised to the sufficiency of the sale of the Defendrs land-

Mr Jewell for the Sheriff- says Sheriff is the officer of the Court & acts under its orders- This motion is not

regular

regular— as nothing is contained in the motion on which no grounds are shewn upon which he can be held to answer—

№ 2430
Benoit.
Monjeau

On Pltff's mo. to declare enquête closed
Mr Le Vigé, for Defendt— he ought to have another day to adduce the testimony of another Witness in the place of one Countemanche, who has deceased since the enquête commenced.—
Mr Duvernet for Pltff— the Defendt is too late to have another day for the Enquête, not having done diligence— the Defendt gave the names of five Witnesses, & ex̃am̃d three, reserving to hear Countemanche— on his death the Defr was called to examine the other Wits but the Defendt declined, saying he meant to examine Countemanche only—

№ 193.
Robins
McArthur

Action of Revendication—
Walker for Pltff— certain quantity of wood found in the possn of Defendt has been attached & which he claims— as the timber has been disposed of he now claims the value & damages

№ 191
Annesley
McArthur

Similar action—

No 1881
Holmes
v
Charpentier

Action de compte & partage —

Mr Bourret for Defendt The Pltff prosecutes as if no partage had ever been made of the succession in question — but the conclusions were afterwards changed to a demand in resiliation of the Compte & partage already made — To this the Defendr has stated that the partage made is suffte and that Pltff in the right he claims is not entitled to come at it — That the partage demanded cannot be granted anew after all the heirs have had possn of their respective lots & that a Stranger cannot demand this as the Co-heirs have not themselves demanded — The Pltff does not shew in what the lesion lies, whether in the moviable or immoveable property — nor is it stated in which of 2 successions the partage shall be made — The transport under gt Pltff claims cannot give him the right he now claims that transport does not shew that he acquired in the 3 Communities between late Nolin & his three wives — nor does it appear that Pltff gave any consideration for the rights which he acquired — Rep.re Droits Succ. p. 553. — Poth. Vente. No. 341. — 342. — Rep.re vo Lesion. 464.5 — LeBrun Succ. & Chap. 1. p. 295. —

Mr Mouledet for Pltff — The lesion here claimed gives the right of action — the only question here is whether the heirs on whose right the Pltff claims

have

have been lésé or not — It is contended that the Plff being a stranger has no right to his present action Lacombe. Vo Restitution. 503 — when the Creanciers of the heirs have this right — Lacombe Vo Transport the droits accidents & rescissoires have been transfered to Plff — Lacombe. Vo Restitution 490 — the party always in time entit prescription shall operate as him — There is no prohibition to acquire the rights of Succr of another — Id. No 765 766 — The Co-heritier this Successor may exercise this right. Poth. Ob. No 35.

765

Bourret for Deferdt

No 1444.
Foretier
vs
Christin

On Law
Mr Sewell for Defendt — the defenses en droit must be disposed of — Dismissed

No 1288
Dezery
vs
Montreal
Water Works

On Law
Mr Sewell for Defendt — This is an action negatoire, to compel Defendt to take up certain water pipes on his lot of land. — The Defendants are justified from a consent of the present Lessee of the land to change the pipes — & the lessee had the right to do so under his lease — That a large part of the lot in question belongs to the Crown — It is a question here whether Plff as Usufructuaire can maintain this action —

Mr Lebourneux for Pltff — The brother of Pltff who gave leave to lay the pipes during his life, is dead and Pltff now holds in his own right — The Pltffs lessee had no right to permit the Defdts the soil & laying pipes even for the period of his lease — Pothier Louage. Nº 183. 2d. Nº 23. — 2d. Nº 88. —

Nº 366
Donegani
vs
Fraser. } action for sale of goods —

Mr Roi for Defend — The Pltffs. demand being now reduced to £21. — £22 — the only question is as to the costs —

Nº 733
Hebert
vs
Pilotte } Action for arrears of rente —

Rolland for Pltff — plea here is payt — but verbal testimony cannot be admitted to prove it — Jousse tit. 20. art. 2. — Danty. ch. 11. Ds Quittances p. 760. Nº 14 — payt. cannot be proved by Wt where there a deed. 1 Pigeau 264. — Livraison cannot even be proved — But the testimony is of a nature that cannot carry weight to destroy the Pltffs claim —

Mr Bleury for Defdt — the verbal testimony in this case is admissible & has been admitted by the Court — Danty. p. 743 & Seqv. art. 10. 11. 213 — The testimony is here sufficient to destroy the action refers to that of Mary Cullen —

№ 116
Ferrie
v
Mallet

action on a note — hears on law
Guy for Defendt — Defendt — not regularly
summoned — the ~~Plff~~ Dfdt is described as living
in Beauharnois, qr — is too general —
Exceptn dismissed.

—

№ 491
Masson & Co
v
Dubois

action for goods sold.
Walker for Defendt — pleads payt — by a
note of £100. 10 — in full payt of that sum, leaves
a balce due of £102. 6 — This note when it became
due was not presented, nor protested for non-payt
the fact of the note being given in payt of so much
is clearly proved — and credit was in consequence
given to Defendt in Pltffs books — this note was
soon after discounted at the Montreal Bank
by the Pltffs — Unless there be any subsequent under-
taking of the Defendt to pay the note when dishonoured
wch is not proved — Defts ex. on fairs & articles, but
does not admit his liability nor promise to pay — at
the time nothing S. about note being in the hands
of the Bank — 11 East. 114 — 1 T. Reps. 167. & 712
2 H. Bl. 609. — cases where party exonerated after promise
from an ignorance of the want of diligence —
M Bourret for Defendt — The note was received
only conditionally & to be deducted from Pltffs
demand in case of payt — The failure of the drawers
before the note fell due rendered it unnecessary for
Pltffs to protest the note — The Pltff left a notice
at Defendts house within the days of grace that the note
was not paid — The Dfdt cannot avail himself here
of the want of notice — as he answers on the facts stated

that

that he would endeavour to pay the Note —
Chitty on bills. 279 - 301. 302. 303 — 304 — 305. to shew that after promise the party is bound, even when promise is not precise. — It is evident the Defendt had a knowledge the bill was not protested. —

No 1228
Roe
vs
Tracy

action on Penal Stat —
Default case —

Shedden
vs
Simpson
&
Fortier

On opposition, claiming the effects seized
Walker for Pltff — Oppt claims under a Sale by Deft. to oppost — subsequent to Pltff —
This deed passed in this case is the only evidence adduced — no proof of the tradition —
Mr Laurent rises for oppost — the act carries on the face of it proof that the oppost was in possession of the effects claimed. — the Pltff has filed no plea to the opposition —

No 1329
McCumming
vs
Mactier Pal

action for arrears of rente viagere —
Mr Bleakley for Pltff — action founded on an acte authentique & a certificate of the Pltff being in existence —
Sewell for Defendt as to Gen. H. Monk. the action will not lie — he is sued only as having the management of the Estate, he is a mere Trustee — Mrs Panman is ~~not~~ sued in her own individual right, being sued only as

widow

widow — but not commune en biens — She is not liable as Tutrix, as the late Mr Pangman had directed all his property to be managed by Trustees and as Tutrix the widow is not liable — The Executors are the only persons of whom this action can be brought. —

No 1177
Smith
vs
Bercheon

Bowen for Plff — the only question whether there was a sale by the Defend. to Bercheon and it is of little matter whether this was the case or as to give the mortgage in question. as the Plff's right is equally ~~in favor of the~~ founded on the Jugt of Lorimier —

Beaubien for Defend — The Plff alledges in his declaration that Thibault purchased a lot of land from the Defend — the title is not correctly stated, as it is only a promise to sell — wt a promise to execute a deed on a certain paymt having been made — if this agreement there was a resiliation before a lotts passed & therefore no Lods & Ventes could be due to the Seignior — the paper here is expressed in terms future, & is to be considered only as a promise — whereas had it been words in the present, it would be a sale — qt is not the case here — This promise to sell was never carried into effect — but was resiliated in 1826 — The Jugt obt. of Thibault cannot affect the Defend — he was condemned on his own acknowledgt No Lods due on a sale w faculté de réméré. p. 14 —

Rep. p. 17. 18. 9 Vo. Lods & Ventes

That Thibault having never been the proprietor of the lot could not mortgage it

Boston for Pltff The act in question is an actual sale and bears Lods & Ventes — the purchaser was to have possession on the sale being effected — It is not the form of the act of sale gives the value of it — Rapin vs Lods & Ventes. p 683 — shews the kind of act here must be viewed as a perfect sale by possession of the purchaser — When the act was passed the Defendt received a part of the purchase money but when no money is pd but credit given, the Lods & Ventes are due — Pothier Traité p. 140. 1. 2 — p. 168 — Pothier Traité p. 140. 1. 2 Poudhom. 223 — where money is pd. on a promesse de Vente —

683

№ 1080

Rollard & Boast. & Donaldson

On Pltffs motion for submitting the Case to Arbitrators —

Bygrave for Donaldson ~~Rollard~~ says, this is not a matter which can be sent to Arbitrators — the action is for damages for a breach of an agreement in not completing a mill —

Friday 15th Febry. 1828. —

Pres[t]
as above. —

No 252.
Scott.
v
Duchine } On Pltffs mo. to be allowed to amend his return —

No 193
Millar
v
Fraser } action on Prom[y] note —
on demurrer & plea —

Walker for Pltff. Demurrer to 2.3[d] & 4 pleas pleaded by Defend[t] as not positive or direct contains no positive claim or conclusion on wh issue can be joined — nor are these pleas suffic[t] in substance, as they go to ~~shew~~ claim a right to shew that an intermediate payt. of the note between third parties would affect the right of Pltff — as to the fraud alledged, if the pltff can shew a valuable consideration, this right is preserved — 3[d] plea has reference to an exhibit — that is the note, instead of pleading to the declaration —

Rolland for the Defend[t] — The Defend[t] has pleaded several pleas — he says, the Note was never indorsed by Mr Oldham, so as to put the note in circulation — 2[d] The blank indorsement is no indorsement — & as Defend[t] is a surgeon, they cannot transfer the note — 3[d] Plea — that J. T. Belham never obtained the note from Mr Oldham —

№382
Guichaut
&
Bowker

On Law—

Mr Adams for Defendt the title on wch the Pltff's action is founded does not carry a mortgage and 2d prescription — The act in question was originally made bona fide & subsequently disputed before the Notary and one Watts—

Mr Buchanan for Pltff — action brot by the Seigneurs of the soil for the consideration of the sale of the land 2 de l'Hom. Decis. 294. p. 88. 89. & 144 — 1 la Loumes. 197. & 199 — Bunap Pty. 335 — Poth. Obl. №733 — the act although not authentic is no less valid. & №338 — Poth. Obl. №749. & 808. — Dunty. 4th Ch. p. 487. 488 — The question cannot be determined until evidence be adduced. — The Plea of prescription is insufficiently set out as not shewing that although the Defendt purchased yet not of that he possessed, or that he possessed peaceably and quietly according to law —

I will in answer, this action is founded on a deed of sale, not of a concession a sale by the Seignior — The authorities cited by Pltff shews that he has no mortgage right under his deed —

The 2d plea is prescription — it was not necessary for Defendt to allege peaceable possn the allegation in declaration shews that Defendt is in possession 1 Lamms. p. 31 —

№320
Generous
vs
Beaugrand
& champagne

On law
Rolland for Defendt — Declaration not sufficient to maintain the action, as it is not as agent of the Plff that the Defendt purchased the lands, but it is said that by saying that he meant to buy the land for the Plff. that this action is brought for the balance of what the land was worth —

Rodier for Plff. the action is well founded

№1840
Dufresne
&
Berthelet
&
Divers oppts

On law —
Mr Beaubien for Seol. Mathieu one of the oppts resists the Incidental demand of Mr Plucknett, he having made a delaissement he is out of Court and cannot be admitted to raise any contest in the Cause — Roper vo Delaissement after Judt. he is no longer at right to claim the fruits — 1 Bouv. 648. Lacomb. vo Delaissement — nor can he raise any contest in the Cause. —

Mr Boston for Plucknett — was purchaser, but made a delaissement — but if more money has been raised than is sufficient to discharge all the hypothecary claims, the purchaser, who made the delaissement is entitled to the balance — The delaissement puts only the mere possession, but does not lose his right of property —

Mr Beaubien — By delaissement the party is exempted from payt & cannot have the fruits which must go to his creditors & not to him —

№ 1271.
M.c Callum
Wm Grey

Action Petitoire

Buchanan for Plff. action founded on Letters Patent from the Crown —

Dodson for Defendt. Plffs are the wife & children of the late Jas M.c Callum & bring the action to dispossess the Defendt and a great many others — The act on pt. Plffs found their claim was passed in 1824 — The Letters Patent dated 13 Febr 1824 — but in the Deeds are stated as of 14 Febr. 1824 — This is a fatal variance —

The Plffs. never had possession under the sd Letters Patent — because before M.c Callum had acquired them Letters Patent he disposed of the lands to the Defendt — and he cannot now avail himself of his own act to destroy his own act — 1 Holt. Prop. № 245. 247. 324 Repts vo 15. p. 619. 622. —

The evidence — The exh. № 1 of Defendt is a letter from the Plffs. agent to Mr Douglass to assist Settlers on the land — № 2. a letter from the late Mr M.c Callum to Mr Douglass — to same effect — № 3. 19 Nov. 1819 from Son in law of Mr M.c — to Douglass — to same effect — № 4 — from Son Mr M.c Callum — on pt Plffs refuses to Defend in this Cause — dated 23 April 1823 — 5th. Letter from same date 8 May 1823. addressed to Mr Douglass — At this time the lands were held under free and common Socage under the original grant to the Bishop — 10 vol. Reps. 603 — ~~to Vol.~~ 2 vols 2 Vesey whatever may be the form of an instrument it must have the effect of a Sale when such was the intention — The

Letter

letters produced are sufficient evidence of the intention and consent of the parties — 4. Rips. 2e Contrat p. 607. — Besides this there are the answers of the Plff on faits & articles, and the letters produced by Mr Douglass on his examination as a wits — By a deed of Concession of the late Mr Callum to his son it appears the Plff granted his lands en Seigneurie, & under his patent he had a right to do, or in fine from. Doc. as he should see fit —

The answers of John Mr Callum shew that the consented to give deeds en form of Concessions en Seigneurie — & the terms are stated as the Concessions were to be made — So that the right of Plff. here must be regulated by the law respecting Seigneuries 1 Peyeau 266 — Obly. 801. where a commencement de preuve par ecrit & where there is anything ambiguous verbal testimony may be had recourse to — to explain it — 5 Vol. Poth. p. 3 — origin of Fiefs — 4 Rips. 608 — 5 Poth. 323 — 1 Bouy. 266 — 269. — 263. — 1 Bouy. 148. — 1 Hervé 394 — To shew that when a man is en poss. he is presumed to be a Censitaire & has a right to keep the land of the Seignior on paying the ordinary rents — Pothom. p. 6. 11. — In this Country we have the Edit de 1711 1 Vol. p. 323 ~~416~~ when Seigrs are held to make Concessions — Id. 487 — 533 — when re-union & forfeiture is enforced on default. 2e Vol. 318 — 1 Hevin 433 — Court must judge favorably for the Vassal. 1. Sannes 219 — 225. — The different kinds of action given to the Seignior, but he has not the action Petitoire

h. 607

because he is bound to grant lands to Censitaires. he holds only the *Seigneurie* directe but the Censitaire has the *Seigneurie* utile. —

Mr Buchanan for Pltff. — The case must be governed by the evidence before the Court — There is no variance between the instrument a Letters Patent stated in the Declaration & that produced being the 13th Febr —

The evidence adduced by the Defendt are very strong to support Pltffs action — There is no *commencement de preuve par ecrit*, made out by Defendt — a the answers of Pltff's on fact & articles & all the other letters go only to shew the lands to individuals and then they would make their arrangement for the purchase — There must be something under the hand of the party to make the commencement de preuve par ecrit as this — Obl. Nr 805. & 807. Nr 805. 807

22,50,63. 92. 129 130. 410. — Nor can the acknowldgt of one heir bind the others — There is no proof that John McCallum was the authorised Agent of his father —

Prior to the Letters Patent Jno McCallum was the proprietor of the Lands —

McCallum was consenting to grant Concessions to the Defdt & different other persons upon certain conditions which they refused to grant, even contrary to their own original Contract —

The particular situation of Pltff in this Case the old Laws of France do not apply as under the Prov: Stat of 1823 & the Letters Patent the Pltffs has the right to grant the Lands upon any terms they chose and at any rents —

The Seigneurs here have the action Petitoire, never having granted with the domaine utile

№2197

Crossland
cum
Annesley

Action on a Promy note —

Walker for Pltff — alledged by Defdt — that certain goods are detained by Pltff, wch had been pledged for the payt of another note, notwithstanding that other note has been paid — this is no defence to this action

Buchanan for Defend — defect of letter is here set up as not representing the person of Farrar, but it is not said that he is an Absentee or a dead man —

The property given in pledge has been so damaged ~~has been~~ as to be of no value to Defendt — This appears by the evidence of the pltffs Clerks, that the goods were ill-used by the Pltff while in his Stores — on this act the Pltff has no action. Liv. 18 tit 6. 3° Law — book 18. tit 1. 35. law — & 68 — liv. 19. tit. Law 36 — Poth. Vente. 53. 54. 55. & 307 — Instit Lord liv. 3 tit. 24 §. 3. Ven. Com. 754 — Hein. on Pand: §65 & 314 —

When the Creditor fails in his oblign to take care of the property he fails to have any action founded on the value of that property. Dig. liv. 13. tit. 7. 13 law 1 §. & 14th. law — Liberum Pact. fauts. p. 87. Sec. 8 Poth. Nant. № 32. & 33. — Lacombe Vo Gages. № 13 & 20 — & Instit. liv. 3. tit. 15. Sec. 4 — For Defdt

Walker for the Pltff — The objection as to the form

of

of the action — considers action regular & the instrument of his appointment sufficient —

That the evidence adduced to shew that the goods have been injured, has been entirely rebutted by their cross. Examination & the other testimony adduced — But if the property had been damaged, it can be no defence to this action, as it was not for the security of the payt of this note that it was placed in the hands of Pff for security — Poth! Treat. № 38 — where a Counter action is stated as the proper Remedy when the value of the property not ascertained, nor the extent of the damage —

№ 1473
Martigny
&
Girard

action Negatoire — on law —
Charrier for Defendt has pleaded his right and produced his title — in answer to this the Pff has shewn the whole transaction & has by his answer made a new action — & he shews more strongly the right of Defendt —

Buchanan for Pff — the Pff by his answer shews. by the transactions between the parties, that the right of cutting wood has been expended —

№ 1001.
Blain
Audiss
&
Robinson.
opt

On oppn after demurrer —
Stanley for Pff — the effects seized were in the possn of Defdt — the deed of gift by Defendt was executed in April & the Judge issued in Febry. —
Boston for oppost. the Attachmt was made in the possn not of Defdt but of 3d persons —

№ 96
Campbell
vs
Stanley

action for assault & battery.—
Walker for Pltff. The assault was violent and inflicted in order to disgrace Pltff—

Saturday 16th Febr.—

Pres.t

As before.—

№ 392
Stottval
vs
Grayval

action on note — on law
Buchanan for Defnd.r the allegations in the declaration are insufficient — not said that at the time of the indorsement the Defnd.rs were merchants as the law requires.— There is no custom of merchant to authorise this kind of indorsement.—

№ 57.
Thompson
vs
Fry —
&
Smithdeal

action of revendication —
Stanley for Pltff — says evidence is suffi
The Defnd.rs counsel did not attend —

№ 714
Doré
vs
Guy. Cur.

action en separation de biens —
Pltff husband is insane & Defnd.r is his Curator

№ 2210
Bergen
vs
Provost

action for having dismissed Pltff from Defd.rs service without cause —
Lacroix for Defnd.t — the Defnd.r was a drunkard

№228
Watkinson
vs
Pearl —

action on Promy Notes —
Grant — notes proved made by Defend — but
not the other Notes —

№1516
Smith val'
vs
McGillival

action to recover goods of came to the
hands of Mr Porteous after his failure —

Locdel. q. t.
Prohib. Goods
vs
Doucet claimt

On claim of Mr Doucet —
Mr Walker for claimt —
over to 18

№127
Holt
vs
Walker —

Action for damages for want of diligence
in collecting notes left w[h]am to collect —

Walker for Pltff — This is properly a bailment in
the eye of the law — It has been endeavoured to be stated
that this was merely a friendly office & not for a reward —
but in either case the negligence has been such as to
attach responsibility on him — Facts — Two Notes
were left w[h] Carter the Defend[t] agent two Notes drawn
Chinique & Mason indorsed to Chinic & Dumont & by them
to Pltff — To this it is D[r] that the drawers did not pay
when Notes fell due, but agreed to the renewal of the Notes
by taking smaller ones — when these fell due the drawers
failed — The evidence goes to shew that Defend[t] is not of
a profession or knowledge of business to transact this matter —
that discretion was granted to him of be exercised in
a reasonable manner — & lastly that Pltff suffered in
the conduct exercised by the Defend[t] —

Pothier, Mandat. – gineral principles – that when the mandatair exercises any discretion he does it at his own responsibility. Nº. 46. 47. 48. 49 – Lex Mercat: by the language of the contract the notes were left w. Defendt for collection & that only & it was his duty to have done the necessary diligence to this effect –

Mr Bedard for ~~Defendt~~ Pltff It is evident that the Defendt did not do diligence on the mandat committed to him & thereby damage has accrued – nothing beyond the written contract should be admitted in evidence on the part of the Defendt – to this kind of evidence the Pltff has objected, now moves to reject it – the parties were at liberty to have inserted any condition they pleased into the Contract, but beyond this, which can be supplied or changed – That Carter, the Defts Clerk is here suspicious, it was owing to his negligence that the notes were not recovered, all was the person who drew up the Contract – Ct. 23. art. 1. Ordr. 1667. to shew the objection to testimony, where that testimony is vascillating & contradictory, which is the case here.

Mr Grant for the Defendt Admits this to be a contrat de Mandat, but under the circumstances Defendt being a gratuitous contrat he is not liable for any injury that may have arisen – Considers the testimony of Carter, to be legal – Had the Contract been pr. forwards; the conduct of Defendt is justifiable. 6 T. Rep. 12. Andrew Rep. 209 – 1 Esp. 75. N. P. Rep. 2 Ld Raym. 909. 1 H. Bl. 161 – Same principle in Poth. Mandat. Nº 49. The Notes were protested when due – the Pltffs agent was then advised, and the most reasonable means thereon adopted in the opinion of mercantile Men, the taking of new notes – see Haddan's testimony & answers of Measam to 32 & 33 Interrogs –

And it is proved to be the ordinary Custom in the course of trade to renew Notes in this way — That the Notes of other Endorsers drawn by same persons were renewed in the same manner — Holt. 29. cross-interrs — Mr Leather — also —

Sewell for Defendr This a friendly act — Defendr never known to have acted in this way — it was understood that no reward was to be given — The Atty of Pluff was advised — the steps he took seemed to justify the Defendr proceedings —

Cases to 1 Hy Bl. 161 — 1. Cowp. 479 Moore v Morgieu
Instructions les Conventions ~~479~~ 429 —
3 Cochin. 332. —

Afterwards in Nov. Mr Holt in conversation with Defendr admitted that Defend had done the best that could be done —

Walker in reply. Ph. Ev. 1 Vol. ch. 10 —
2 Bos & Pull. p. 565 — 1. Powe. 143 — 144 —
2 H. Bl. 289 — 12 East. 6. — 3. Barn & Ald. 233 —
3 Camp. 57. & 426 — parol testimony inadmissible
ag. a written contract —
Objt to testimony of Cooke as inconsistent —
1st as to the express understanding that no commission should be charged for renewing the Notes —
2 as to the instructions to act with the Notes as he would do with his own property — no insolvency then contemplated
3 The conversation at Exeter between Pluff & Wright not probable, from short time he had been in the County — & his declining the introduction of Depr to the Hardware & his not applying to the Drawers or Indorsers of the Notes —
That Wr does not say what information he gave to Pluff about what had been done, yet he says that Pluff was perfectly satisfied with the diligence done about the Notes —

That Frost obt. security for a bill of Exch. returned from England indorsed by Chimie & Durocat in duty after they were pd

The testimony of the Wit. at Quebec, shews that the parties were in good credit, if pressed would have taken up the Notes — Fraser — Wilson — Brown — Chimie — & this some months after this transaction they honored paper to amt. of £10,000 a £12,000 — Notes are never renewed but with additional security given or something paid down —

There appears to have been no absolute demand on Chimie Durocat to take up the notes — on part of Chimie. —

Rufus 1 H.B. 161. — cited by Defendt — does not apply — cases different —
also Daly. p. 6 — as applicable to case — & p. 10 — even when there is no gratuity — p. 159. 160. 1. & 2. —
24 Vol. Pard. Polk. — Poth. Contr. Mandat. Nº 46 —
Dig. title Mandat. — Person who undertakes the Mandat is presumed to have the Ken. necessary to perform it & bound thereby —

1242
Hart
vs
Barnard
&
Barbeau

Mr Walker for oppt in her capacity of Tutrix to her children opposes sale of the lands sued, as being subject to the Customary Dower The lands are situated within the Eastern Townships — The late Canada Trade act has no doubt done away with this claim — but the Case is hard —

Buchanan for Pltf — The rights of the oppt for her Dower by laws of England is an usufructuary enjoyment of the husbands real Estate during her life only, but goes not to the Children. 2 Bl. Com. 129. 136

Monday 18th Febry.

Prest.

As above.

No 1462.
Dom. Rex
Gale vr. val

On mo. for an attachment for not obeying the writ of Certiorari —

Blenny for Prosr — contends that the magistrates are bound to make their report without any charge saving their recourse agt. the Prosr —

Sol Genl. The rule was short served — The magistrates not bound to send the record without their clerks fees be paid. —

No 786
Desrivieres
& M. Gillival
a
Roup & opt

On Plffs mo. for security for Costs —
M. Sewell for Opposts submits whether he is bound to give security being only temporarily absent from the Province —

No 929
Jun Requête
& Theoret val

On hearg as to the course of proceedg —

No 646
Solomon
& Girrish

over —

No 1473.
Stem.
vr
Hatt

action & damages for obstructing the navigation of the River Richelieu —

Boston

Boston for Pltff — Damages are demanded to the extent of £700 — by the prolonging of a certain dam on the St Peter's River — it is navigable, & the Pltff used & all others to raft their timber down that River 2 Vol. p. 397. Dec. de Fr. vo Riviere — Fremainville

Mr O'Sullivan for the Defend — This is not a navigable River — and if it were, the Defendt is founded in title —

1st W. for Pltff — Faubert — his testimony is contradictory & false — pap. 4. compared w. p. 23. — he was not on the Cape — p. 5 — & p. 24 — p. 26 — — dº qust 3 — p. 22. — qust 3. p. 28. qust 5. as to one channel spoke to by this wit — he is obliged to allow there is a channel on each, but not used. — but on this he is contradicted by all Defts Wts

Says the channel is navigable in all seasons — but on his cross-exam says, when it is shut up — they pass by the channel Da Sud. —

Frank Massé. ct 5. —

This is a Case of speculation, & the raft here was driven after the Dam purposely to have an action — the Defend sen test of Robert for Defts — saw raft coming & knew from the direction it was taking it would get aground, at this time there was sufficient room & water to have gone down the channel this is supported by other wits — This the only accident of the has happened since the Dam was built — Contremandre, the Pltff's pilot, says the whole channel was blocked up by the Dam — on his cross-exam that after the Pltff's raft was injured he had piloted down other rafts by the same channel —

Papineau, Defts Wt says. There is properly no north Channel as it stops above this place — so says Jos. Garceau

The River is not navigable — boats cannot be carried up the Stream — Le Brut. 2 Henrys. p. 19. — Decision is material, to shew when the right of the Seignior attaches, when a River is only partly navigable —

At this time there was not the distinction established of Rivieres flotables, nor was introduced to create a ~~fiscal~~ Domanial right to the Crown, as rafts were used for the conveyance of goods instead of boats —

Lev. 2. tit 1. Inst. 2. de Rebus publicis —

3 Despeisses — Lorseau des Seigneuries p. 74 —

Baquet. p. 455. — N° 21. —

Du. des Eaux & Fonts — V° Moulin —

The Defendr has filed an Acte of Foi & Hommage in which the right of Haute, Moyenne & Basse Justice is granted to the Seignior & the property of the River — An usage of 100 years standing vaut titre,

Bedard for Defendr — The Provincial Statute for opening a Canal to unite the Rivr. Richelieu navigable shews the fact beyond doubt — South Channel is the only channel — the Rights of Seignior attach where the River is not navigable — it may be flottable but this is but a late distinction —

McBoston for Pltff. Rejects the testimony adduced as sufficient to maintain the action — but if Pltff had adduced no evidence, that of Defendr is of itself sufficient. —

The River Richelieu is a navigable River 4 Pothier Traité 436 — a river in fact exceeding 10 feet is considered as navigable — Id. 439. concession of a Navr. River by the King is always considered as Fief —

That

That a river where it is flottable is equally necessary for public benefit as public navigable Rivers. — Farnsworth. p. 421. —
Id. 489 — Current even of a River cannot be changed —

Brewer & Cummings } Action of Revendication for wood. —
Mr McCord for Defendt — No evidence to support the action — except 2 depos. of Griffin & Vincent — but they have been taken irregularly & without authority & not by order of Court —
Mr Walker for Plff — the rules were regularly examined —

Tuesday 19th Febry. —

No 2197.
Crossland & Amesley } Judgt —

No 792.
Marie & Roi } Rule for a new trial discharged

No 114
Symes & Cartier } Action dismissed

No 1258
Bennett & Harrison } Action dismissed

№ 503 Jones. Curr v Powers		Judgt
№ 357 Mender Curr v Stevenson & al	IX	Judgt.
№ 540 Stephens v Knower & al		Judg ag. Knower. action dismissed as to Thompson. a
№ 267 Wilkie v Lumbert		action dismissed

Wednesday 20th Febry 1828.

№ 2485 Dawson v Ansell	IX	Judgt
№ 2292 Kendall v Lamb	IX	Judgt. J. Pyke
№ 106 Pothier v Eager	IX	Judgt

No 714
Doré
Gray
Can

Judgt of Separation.—

No 1994
Ratté
Morin
Moreau
Opt & al

Oppn & Intervention dismissed

April Term 1828.

Tuesday 1st April.

Pres.t-
Ch. Justice Reid
Mr Justice Boucher
Mr Justice Uniacke.—

Mr Justice Pyke was absent from indisposition during the Term.

No 674
Pichet et al
v
Manaigre
et
Cuthbert et al

On motion of Mr Cuthbert Jr Upon to fill up deficiency on Def.t—

No 1441
Flaherty
v
Fisher

On Law & on Defts motion
Upon for Defendt the amended declaration filed only on the 20 febry & Defendt has 3 days from that day to plead— the Plff has however without demanding a plea has set down his cause for hearg on Law— when there is no Law—

Boston for Plff— no notice of the motion— the amended declaration filed on 19 Febry with the necessary notice— no new plea being filed. the Plff has a right to consider this plea as the only one in the Cause—

Mr Solr Genl The demurrer in the 2d plea cannot apply to the new declaration —

Wednesday 2d April. —

Prest.

Same Judges as above. —

No 1372
Schneider
vs
Sabourin

On Plffs mo. to close enquete. —
Mr Brunean for Defendt — rule for Enquete was discht — mo. dismd —

No 1321
Mc Gillvel
&
Corbeau

On Plffs. mo. to ~~dismiss~~ reject Defends plea, as being irregularly pleaded —
Mr Cherrier for Defendt — the plea is regular and sufficient. —

No 1416
Nelson
&
Beaufils

on Plffs for delay to fyle certain exhibits
Mr donell for Defendt — has filed Plea & Plff ought to have known what papers he was bound to fyle before bringing the action — no affidavit produced in support of it —

No 1043
Bullis
vs
Douglass

on Defendt mo for delay to fyle certain exhibits —
Mr Boston for Dfdt the delay cannot be granted

№ 866
Jno Fisher
vs
Marcoux
vs
Marcoux opt

On opposition afin d' annuller as to certain monies paid by Defendr before Issue Judgt rendered on act of Plff demand —

Mr Driscoll for Plff. admits payt of £11.13.4 & no more has been proved — concludes as to payt of costs, as Defendr did not set up any plea to the action —

—

№ 1208
Lavoie
vs
Ouimet

action on deed of sale —

Bruneau for Defendr pleads mortgage on the land sold — the Plff offers security this Defendr agrees to accept, but claims his costs on this action. —

№ 1336
Gaudrie
vs
Lapierre

action on deed of sale —

Mr Lewell for the Plff — the action is to have the land sold declared free of mortgages in as much as the Plff has discovered a mortgage in favor of the Seigniors for lods & Ventes & other rights — This action is allowed by Coin 2 Argou 356 — 2 Pont de Roye 388 — Lourd 2 Vol. 230 — 5th Liv. tit. 1. art. 1. — The action is de la nature d'hypothecaire confessoire & negatoire — are of the same description — action to preserve a mortgage not yet due — Instructions sur les Conv. 265 — In cases of

441

Caution — D. Henry & vo Caution No 29 — Poth. Ob. No 441 — 2 Argou 372 — 2 Bourj. 434 — 466. Fr. de Subrogation

Poth Con. Vente No 86. — is in point. — N Denizt vol 9. p 155. — No 1. vo Garantie — Perrault's Rept p. 28. 29. — a Jug. in a similar case —

Mr Bibeau for Defendt — The Plff here has suffered no injury or trouble & shews none the Plff has possessed for upwards of 25 years the property sold and is not liable to any trouble on acct of any mortgage existed at the time of the Sale —

Instite. au les Con. p. 31 — no rept
Lacombe. vo Eviction No. 7. & 8 — vo Prescription No 5.
1. Pothi. Coutt. art 12. p 48 — 1 Bourj. 293. 4 —
Poth. Vente. No 1 — & No 48 —

Thursday 3d April 1828. —

Pres.
As before

No 1342
Raymond
vs
Lanzevin
jun

on Defts mo. to set aside service of process as irregular —

Bleury for Plff. the service is regular, as appears by the return of Sheriff — the affidavit filed by Deft is not sufft to let in the proof
Montreuil v Labelle — ante —

No 858
Pothier
vs
Blanchard

Continued as to proof of a sale made by Defendt to another person of the lot of land in question —

No 587
Duchenois
&
Roi. —
&
E contra

On Pltff mo. for nomination of another arbitrator in the place of Mr Guy the Defndt arbitrator, and to prolong the rule of Reference to 14th inst

Mr Bedard for Defndt — the Case has been continued from want of diligence on the part of the Pltffs since the month of October 1826 —

No 845
Bissonette
&
Bechard

Action on deed of transport

Badgley for Defndt — has pleaded compensation which he has proved. —

Mr Rollin for Pltff — moves to reject the testimony of Wits. to prove payts above 100$ — & binds proof not sufft. each item being proved only by one Wit — The evidence goes to destroy an act before a Notary, wch — can be done only by written evidence — cites Dauby — 1 Obligt. 318 — Binds as these payts. of — true were paid before the Renouncion made by Simon Morin, that these payts were included in it — Some of the payts appears to have been made subsequent to the signification of the transport. —

No 189
McVey
&
Sheldon
&
E contra

On Pltff mo. to close the Enquete —

Mr Stanley, the Defndt was sick & unable to attend the exn of his Wits —

№ 1840
Dufresne
vs
Berthelet
&
Mattieu opts

The Intervention & Incidental demand of Thos Jas Pluckmet was admitted —

Friday 4th. April,

There was no Court, being good friday

Saturday 5th. April.

Prest.

The same Judges. —

№ 933
Perrault
vs
Grant
&
Grant opt.

On Plffs mv. to dismiss oppn —
over to 8th

№ 779
Jarret
vs
Woolcot

On Plffs mo. to reject Defendts plea as filed too late —

Mr Cherrier plea filed after Plffs motion allowed to proceed ex parte —

Mr Greene for Defendt the declr was not filed, at least not so marked. —

№ 803
Mallet
vs
Bertrand

action en partage —

No 1052
Pothier
vs
Bowsteads

action for Rent — case submitted —

No 2304
Pominville
vs
Larivie —

On report of Experts —
Mr Brousseau for Pltff demands hom. of the report, except as to what is determined in regard of Costs —

No 646
Solomon
vs
Gurnish —

action for trespass — on law
Mr Walker for Defend The property is not sufficiently set forth in the declaration — refers to a certain survey, the nature & contents of which does not appear — The trespass not clearly set forth

Mr Ryan for Pltff the description is conformable to title & sufficient —

Monday 7th April. —

Present
Same Judges as before. —

No 1372
Schneider
vs
Labourier

on Pltffs. mo. to discharge inscription for proof —
Brousseau for Defend — The reasons alleged are not sufft. to discharge the Inscription —

No 792.
Marier
vs
Roi —

On Pltff mo. for Judgt on verdict with full costs —
Roi for Defendt the costs ought not to be greater than for a sum of £25. —

No 1136
Stanley
vs
Hamilton

On Defendt mo. to dismiss action, as there was no order of the Judge for summs the Deft who lives at a distance above 30 leagues from the Court House
Mr Stanley for the Pltff, the party has had a sufficient time to answer — the process ought not ~~to have been~~ be dismissed. —
Mr Ogden for Defendt the rules of practice constitute the law of the Court. —

No 1312
Dabin
Jackson
vs
Brodie &c

On Opposn mo. to grant an order for a survey of the land sold to estimate the quantity deficient —

No 1085
Gerrard
vs
Guertin

non suit on motion —

No 1334
Stuart
&
Ryan Jr

action on promy note —

Mr Walker for Defts Grant — There is no joint liability of Defendts the one being a Drawer the other the indorser of the note —

Bramview for Pltff — The contract is solidaire, from the moment the note was indorsed to Pltff

Rejon vs. Obligation — Solidaire — vs Solidité —
Rejon vs. Solidité — Poth Champ. Nr. 160 —

Nº 1102
Gay
vs
Winie

on Exception to declr

Rosseau for Defts — not stated that any demand was made at the Bank where the note was stated to be payable —

Nº 1360
Hart
vs
Lathrop

on demurrer — action of Defts as Carriers

Walker for Defendts Defts. is master of a Steamboat on Lake Champlain — an accident happened to the boat. Part of Pltffs baggage was lost — The objn to 1st Count — the Pltff has blended an injury to Pltff his daughter with loss of property — & it does not appear to which of the parties the Pltff or his daughter the property belonged — & there is a personal damage also to the parties complained of, without its appearing to which of them — 1 Dall. 282 — There must be a distinction for the hire for the baggage & for the fare in transport of the person — Comyns Rep. 25 — Esp. N.P. 621 — 485 — Contra —

In

In the 3d Count it is not stated that the Defdt is a common Carrier or was entitled to any reward
6 Esp. N. P. 4 Term Rep. 581—
This a mere bailment. 2d Raymond. 903—Cases
& Bernard— 2 Str. 1099—

Sol. Genl. for Pltff. The diffr. Counts are suffte
The first count in the decln states distinctly, that the
Defendt undertook for reward to transport the property
of the Pltff— There is no third Count in the
decln— but there is no room for a demurrer
to the first Count.—

No 664
Kinsman
vs
Lovis —

On Pltffs mo. to reject from the record the
plea &c as an action to the action as being
irregular & insufficient—

Mr Sol. Genl. The demurrer contains nothing of
law as a demurrer— he on the contrary sets up a
question of fact—

Tuesday 8th April 1828.

Present

The same Judges

No 455
Cattenach
vs
Laroque

on Defdts mo. to quash process on acct
of irregularity, there appearing no Jurisdiction
in the Court over the Defendt—

№837
Hays &al
v.
Lacroix

On Defend. mo. to reject Replication, as not forming the issue, but a departure —

M. Sol. Genl. for Plff. The Replication is sufft. and joins the issue. —

№269.
Vannier
&
Lallier
&
Garants

On ~~Defend.~~ Plffs. mo. & motifs —

Rollin for Defend. moves that the proceedings be sent back to the Commissioners the proceedings to perfect the testimony of the Wits heard before them — as they examined the witnesses without Interrogatories having been previously agreed upon —

M. L. H. Viger The Court has the power over the proceedings and can rectify what is wrong —

The Leg. Enquêteurs were held to take communication of the proceedings in the Cause and to direct the examination of the Witnesses accordingly — and Pyke seems to say that the Commissioners Leg. could reject or reform any part of the demand of the parties —

Bourret for Defend. This is an action pétitoire on the part of the Defend. has pleaded that he is the Propr. and possessor under good & sufficient titles & public possession — How the evidence is in support of the Defendants right — and the allegation that the Commissioners have not done this duty cannot be presumed, & does not appear by any act, but the mere allegation of the Plff. — The Plff has submitted his right to be ascertained by this course of proceeding

proceeding without Interrogatories reduced into writing —

Mr Vigr — The Defend: seems to admit that there is no necessity for Interrogatories to be laid before the Commissaries Enquêteurs — nor is there any precedent of such proceedings being had in this Court. Here the objection to the testimony taken by the Commissioners is, that it is not pertinent nor satisfactory either for or against the rights of the party —

Mr Rollin in reply — The Plff is anterior in title to the Defendant, and all he had to prove here was that he had obtained possession under this title,

That Plff has sued out an action en garantie at the Seigniory, of whom he ought to have his recourse in case he fails in this action —

Mr Rollan for Mr Dumont, the Garant of both parties — In this Case the Plff obt a deed of Concession of a lot of land, of he caused to be bounded himself, & of is verified by the P. Verbal of the Surveyor — Of this lot of land there is no contest, & action ought to be dismissed. —

No 1419
Robert
vs
Fournier

on report of the Experts & pro the merits.

Mr Ross for the Defend: objects to the report that it is irregular, inasmuchas the Experts have not determined the questions submitted to them by

the

the Interlocutor of the Court – That the Writ
expunged by the Reports were interested & inadmissible
nor were the Witnesses sworn to give evidence upon
any Judge of this Court –

Mr Bleury for Plff – The Report is sufficient
without hearing any Writs –

—

No 498
Allard
vs
Lacombe

action en Garantie – on law –
Mr Bruneau for Defendt – Defendt became
Caution for Benoit who was the Garant of
Plff – but the demand here is irregular, as the
Defendt has not had a copy of the original Declaration
served upon him with the process. – 1. Pig. 181

—

No 1808
Ex parte
Meloche
vs
Quesnel

On Petition of the Churchwardens of the
parish of Lachine to obtain a Reglement
for augmenting the allowance to be made for
interring dead bodies in the Church. –

Mr Bedard for the Petitioners states, that the
reasons alledged in the assemblée of the Parishioners
are sufficient to warrant the present application
and this Court is authorized to grant the object demanded.

Mondelet for certain parishioners of Lachine
to the extent of 24 – contends, that they are not
regularly

regularly called before the Court, by service of a copy of the Decree of the Court & notice at the Church door —

That this Court has no right to establish any duty in the nature of a tax on the Subject — altho' — in France this might have been done, yet in this Country under the Constitution of it, this Court can impose no tax on the Subject —

That the exception stated in the Indication act of Legislature acts, necessarily comprehends the present demand — the only exception to this principle is that given by law to the Govr. for imposing a duty or tax for building Churches &c —

That the deliberation here offered, cannot bind the parish, — because the Assemblée was not legally convocked — 1 Dousse — Govt. des paroisses. 117. 122. This particularly necessary in ecclesiastical cases, of which this is one — 1 Dousse. 126. —

Bedard for the Petitioners

1. In regard of the assignation of the parties, the act[e] of 1785 — does not require this course upon a petition of this kind, which properly speaking is not a Cause. —

2. As to the Jurisdiction of the Court, it is established by the Indication act — The Legislature taken notice only of matters of general police, but this is a matter of individual interest — The imposition here demanded of 200[#] — for every interment in the Church

is not an imposition of a public nature, but to regulate a private right —

That every parishoner has a right to be buried in the Church, & the Marguilliers cannot refuse it, the only way to prevent it is by augmenting the consideration to be paid for this right —

Poth. des personnes. p. 629. Every community has a right to make rules & regulations for its government — & the Juds to conform their regulations

Dr Denis Vo Fabrique. No 28 — art 12 of the Reglement there cited —

Id. Vo Sepulture. — same right of fixing the rate of burial in the Church —

~~Journ Gouv des Paroisses. p. 129~~

Journ. p. 73-74 — admits that the right has grown up to bury in the Church on paying a certain right, yet this must depend upon the Marguilliers to settle the right & grievance that Laboly

Journ. p. 75 —

Id. p. 129. Not necessary that the deliberations be taken by a Notary, but may be taken down by any of the Marguilliers present. —

That when any one parishoner objects to the deliberation it cannot have effect until confirmed by the Court —

№ 1045
Delisle q.t.
v.
Newell

Action on Penal Stat. for practising Surgery without licence —
Mr Sweeny for Defdt. The testimony is not sufficient —

Wednesday 9th April

Pres.t
The same Judges. —

№ 1727
Finlay.
v.
Bedard.

On Pltff. motion to reject certain Interrogatories proposed to him by Defendt —
Beaubien for Pltff — the questions proposed have no reference to the points in contest —
Mondelet for Defendt — The Pltff has already answered to the Interrogatories, but was ordered to answer over as his answers were not sufficient. — The facts & articles are pertinent. —

№ 10.
Leprohon
v.
Charbonneau
&
Hebert T.S.

On mo. of Tres Saint to be admitted to make a new declaration —
Mr Roi for Pltff. by Judge of the Court the Tres Saint was ordered to pay monies in his hands over to the Pltff. & he cannot now be admitted to make a new declaration —

No 800
Jeffries
vs
Burton &c

On hearing on Plea of misnomer —
Walker for Pltff, action for a trespass —
a plea of abatement by Defend. is wholly irregular
the plea by a Tutor alledges the minority of Defendr —

Mr Driscoll for Defendr — Minors can have
no ~~designation~~ addition, & cannot be considered in law
as Gentlemen —

No 1444
Forcier
vs
Christin

on Pltff. mo. for a reference to Experts —
Sewell for Defendr — There is an Incidental
demand &c cannot be referred to Experts —

—

No 1242
Maitland
vs
McLaughlan
&
Johnson opp

On Pltff mo. to reject the oppos. of the
opport. as filed too late & contrary to the Rules
of practice — The 37. Geo. Rules of Pract. S. 1 —
Rolland for the Opport. the return made on the 19th
Febr — about 4 or 5 o'Clk. P. M — & he had all the next
day to make the opposition by the Rules of practice, &
in this case the Term had finished before the delay for
filing the oppos. had expired, so as to fall into the
vacation —

No. 364.
Berthelet
vs
Downs.
&
E contra

On Report of Experts — on the merits —
Mr Guy for Pltff moves for homologation of report &
for Judt with Costs —

Mr

M. Boston for the Defend. The arbitrators here proceeded irregularly —

over to 14th

No 1084
Bowron
vs
Piercey
&
Econtra

On Report of arbitrators —

Dep. There are two demands submitted to the arbitrators & they do not appear to have determined upon the Incidental demand —

Walker. refers to Thayer v. Pierce & White where a similar award made — & yet held by the Court to apply to all the objects referred, as well the Incidental as the principal demand. —

No 1180
Sheddon
vs
Simpson

action on Inst — on law

M. Driscoll for the Defend. This proceeding is irregular and causes an unnecessary expense, as the Pltff might have had his Execution & the Defend. served the same effects —

M. Walker for Pltff. This proceeding here was necessary — & will so appear on the evidence to be addduced —

No 816
Hurteault
vs
Duhamel

action de Compte & partage — on law

M. Mondelet for Pltff. The Practicers have rendered the act. & partage — but Pltff is not satisfied therewith — The claim d'amenblissement in the Mar. Contract, has not been rightly interpreted by the Practicers

en regard of certain proprietors of the harbours — qui valent at the time droits echus. — Dic. Droit. vo Droit — The clause d'amenblissement are favorably received as encouraging marriages — vide Renusson — This clause does not operate an alienation — Denizt. vo amenblissemt. Rep. 269. 2e. col. vo Amenblissement — Poth. Comte No 304 — LeBrun. Comte liv. 1. ch. 5 — sec. 1. dist. 2 No 1

See Poothier Rogers

M. Roi for Defdr. The action ought to be dismissed as Defendt. was always ready to account — The question here is whether the amenblissement can be understood under the general words in the Contract — This cannot be, it must be by express stipulation or cannot be presumed — Poth. Comte No 304 — none of the authorities cited can be considered as establishing the right contended for by the Pltff —

Thursday 10th — April
Friday — 11th — "
Saturday 12th — " —

Ten Enquete days. —

Monday 14th April 1828.

Prest.

The same Judges.

No 1059
Messier dab
vs
Lemai

On Plffs. mo. to reject pleadings filed by Defr as to the irregularity of service, it being made too late — and being joined with a plea to the merits, & admits the regularity of action —

Mr Cherrier for Defendr The plea is regular and must go to evidence with the rest of the Case —

No 1174
Goodenough
vs
Jessup

On Plffs mo. that Defendr conclusion to the Jury be ordered to be changed, the case not being of a nature to be tried by a Jury. —

Mr Solr Genl for Defendr the motion is irregular, the action is for goods sold & delivered — & is a commercial transaction — there are several Counts & has occasioned different pleas in some of which Defendr is entitled to a trial by Jury. —

On Petition of Robitaille & Archambault dab Oppr

On Purchaser's motion to be admitted to give security to the Sheriff to enable him to make a return of having adjudged the property to the purchaser Archambault —

Mr. Mondelet for oppt the legality of the adjudication is in question & therefore it would be improper to admit the party to the security in question —

There is no opposition to the other parties getting their titles on motions made by Mr Rolland —
Mr Vigers for Oppt — unless the parties claiming titles have deposited the amount of the adjudication they cannot have the titles —

Mr Greer, for Archambault moves that the opposition of Mr Robitaille be dismissed as there is no regular conclusion taken by it — and as same cannot be adjudged upon by the Court without such conclusion being made —

Meunier
vs
Chevrier
&
Chevrier opp.

Plff moves that oppn be dismissed for want of proof —
Vigers for Defr. says that he has proved a part of which he will lay a statement before the Court

Devitt
vs
Hurot
&
Dignard opp.

Plff demands that oppn be dismissed from want of proof —
Mr Bleury says that the proof is such as oppn as by the deed of Donation which he has filed, nothing more being requisite —

No 840
Millar
vs
Hallowell

action on protested bill of Exch. —
Ryan for Defr. submits case —

No 2438
Benoit dit
Lavernois
vs
Monjean

Action en Reintegrande —
Mr Doucet for the Plff — The Defend. has taken possn of a part of Pltffs garden & have built a house thereon — this is proved & damages demanded

Mr L. Vigé for Defendt — The house is the property of the Defendt — the garden that of Plff — the Defendt has made an allonge to his house on the Plffs ground it appears that the parties were at first agreed & the Defendt having offered an indemnity to the Plff proceeded to build the allonge in question — The land may be worth £12. 10 — altho the wort Defts opinion on this point — The whole conclusions ought not be granted Dumont fa Plff. The Plffs right not being contested the Plff must recover according to the Conclusions of his declaration

Tuesday 15th April 1828.

Prest

The same Judges. —

№198
Brown
Moffat

on Defendt mo. that action be dismissed for want of Security for costs
Mr Walker for Plff prays delay till the first day of next Term —

№298
Jones
vs
Oliver

on till 1st ~~June~~ 17th

№1159
Go

№82
McGill et al
v.
Burton
&
King Intervs

On Pltffs motion that the Interlocutory Judgt of this Court, in respect of the nomination of a Surveyor —

Mr Beaubien for Pltff. The Pltff in this Case never consented to the nomination of the Surveyor named by the Interlocutory Judgt — and in this respect it ought to be changed. —

№555
Joubert
&
Meade
&
Busby et al

On motion of Mr Bruneau, to dismiss the opposition of Rogers as not suffte —

Mr Blenny for Opposr — the present application is wholly irregular, as no opposition can be dismissed in this Summary manner —

№156.
Pillet
v.
Taraton
&
St. Hourté

On Pltffs motion that the deposition of a witness taken under special consent be admitted as evidence in consequence of his death —

№177
Garden
v.
Snowden

On motion of Defendt to set aside the Attachment issued in this Cause — as attachment has ~~issued~~ been made for a much greater sum than that for which the order was made —

Scott for the Pltff — The Sheriff is directed to take Accounts for £300 - but it is impossible that the value of the effects can be ascertained —

Mr Charles for Defendt the attachment must be set aside, as irregularly issued. vide Lewis & Vandershaps

№ 873
Rhodes
vs
Porter

On Defendt mv. for delay to file an aut. till first day of next Term. —

Mr Sold Cont. for Plff, this delay cannot be granted, as even the delay granted would not advance the intent of the parties — who will not be further advanced — But Defendt is now in default not having rendered the aut answering to the Interlocutory Order made in this Cause — The Defendt should have produced his aut as far as he could give it —

№ 349
Rolland
vs
Bourdon

On Defendt mv. that Plff answer one to the 3d Interrogatory proposed to him, & reject certain papers filed by Plff with his answer —

Petin for Defendt — the Plff produces a new account which he wishes to set off as Defendt demand without having set up any new demand for such account and that part of his answer is wholly irrelevant & not conformable to the Contest between the parties —

Mr Rolland for Plff — the answer is regular

№ 1191
Cowan
vs
Provost
Contempt &c

Drummond for Plff moves that Offer be discharged as informal & no proof —

№1017
Laroque
Leblanc
&
Contra

Action on deed of Sale — on law

Mr Greene for Pltff — The action is brot on the deed as being an actual Sale — to this the Defendt has set up an exception —

Mr Brunean — The action is founded on an act which is a promise de Vente — but this Contract it was agreed that either of the parties might desist from the Contract on paying a certain Sum of money — & not having given the Defendt the right of the alternative the action is irregular — under that the act~~ion~~ is now rescinded by the parties ~~having~~ the Pltff having taken possession of the lot of land in question —

Mr Greene for Pltff — The Defendt has also pleaded an Incidental demand, which is inadmissible there being no facts stated sufficient to maintain it besides it is an action of trespass which is here set up as the Pltff —

Mr Brunean the Incidental demand here arises out of the Principal demand —

№2298
Lusignan
&
Rankin

Action of trespass —

Mr Mcdonall for Pltff — The Defendt has denied the facts charged —

Mr Sweeny for Defendt denies the facts —

№1040
Cameron
&
Beaudet
et al

Action for wages — Merits —
McDonell for Plff action for wages for four years & some days as a house maid
Mr L. Vigé for Defdt The Defdt is sued as Curator to one Chapman — submits to the Judgt of the Court — but pleads that Plff's action cannot be entitled to more than her wages for a year & day, but indeed she is not entitled to any wages, as she lived with Deceased on a capacity not to gain wages she had a Child who lived in the house & was supported by the deceased — Defdt has not adduced any testt but has signified facts & articles, to Plff which she has not answered, and which he now prays may be taken as acknowledged & confessed —
Judgt ——

№1027
Lefevre
&
Dubreuil
&
Sureau
J.S.

On action of amount — by default —

№385.
Hubert
vs
Cartier

Action for a legacy left by the late Mr Cartier to the Plff —

№1500
Algar
vs
Sanburn

On Exceptions —
Mr Solr Genl for Defdt — This declaration here contains no right of action on gt the Plff can maintain any demand agt Defdt —

Mr Day for Plff.— The Defendt as the purchaser of a succession is liable to all the debts due by that succession — Poth. Vente. Nº 529. & Nº 540.— Cod. Succ: Art 575. 2d par. 5th Chap. — & p. 576 — Repse Droits. Succ. p. 551 — N. Denizt Vo Cession de droits Incorps. p. 392. Lebrun Succ. 2 Vol. 286 — 392 How it was part of the consideration of the sale that the Defendt the purchaser should settle the affairs of the Estate, & implies pay of the debts —

Mr Sol. Genl — There is no legal liability stated on the declaration, and it must be the effect of law alone and not by any terms of the Contract that the Defendt is bound. —

Nº 657.
Smith —
Mc Queen vs

Action on bill of Exch.

Mr Millan for Defendt — The draft was granted conditionally, viz that if not honored it was to be returned to Defendt the receipt given does not specify this, but by the evidence adduced this is made out — also see Dunlop vs Russell —

Walker for Plff. The evidence adduced that the draft in question was to be delivered up to Defendt in case it should not be accepted, is not proved, nor is it testimony to be admitted, & Plff has therefore objected to it moves to reject this testimony — as in contradiction to the written Contract —

№ 291
Wright
vs
Bingham

On Report of Arbitrators —
Scott for Pltff prays Judgt on the report

Mr Sollv. Gen. for Defendt moves to set aside the report — on the ground that the arbitrators or Commissioners should not fulfilled the intention of the order of reference — they have not finally determined on the whole content between the parties they differed in opinion upon a part of the Parties claims, and named an Umpire, which has done

№ 1385
Wilson
vs
Spencer
&
Smith ats

On opposition of Ann Smith —
Mr Grece for Oppost — the monies levied here are not the produce of the goods & chattels of the Defendt — on gts alone the Pltff had a privilege — as Defendt is a bankrupt —

Mr Adams for Pltff — the goods were seized under a Saisie-arret, & they were liberated on the money being paid for them —

№ 672
Muttlebergh
vs
Slack —

On Law —

Driscoll for Defendt has excepted to Declaration as the place where the Contract was made is not set out. —

Mr Sweeny — asks to amend on payt of Costs —

No. 649.
Menzies
v.
Sobin —
&
Pap. Gar.

action of damages on a Contract of Lease
Mr Stanley for Pltff — The Pltff was to get
possn of the premises on 1 May 1826 but
did not obtain it in consequence provided
of the Defendt the damages sustained by the Pltff
in consequence to the amount of £200 —

Mr Labouchere for Defendt — by the evidence
the Pltff has admitted he can recover no damages —
the Defendt having proved that there were several
houses which were more convenient for the Pltffs
business which he could have rented —

He has called on Pap as his garant who kept
possession of the house in question —

Mr Swaney for the Garant — contends that
he is not bound as Garand — the Defendt possessed
the house under a verbal agreement with Mr Sobin —
Sobin brot an action on this agreement & obtd a Judgt
agt Pap. & therefore there can be no garantie as soon
as the lease has been admitted —

No. 933.
Perraut
v.
Grant —
Grant. Apt

On Pltffs motion to dismiss the Opposition
Stanley for Oppt states —
Papers wanting "

No 1780
Wisely
v.
Jones

action for work & labor —
Walker for Defendt the worm delivd not a copper
worm — but 77 feet head & so the was compromised on it —

Stanley

Stanley for Plff. The Defdr by his agent gave directions to have the worm made similar to one Pluff had made for one Doyle, & was done, and in this worm lead was introduced in the same manner — the evidence prove that the worm here was good & suffte and was worth the sum demanded.

No 8.
Grouard
and Lalonde
&
Jos: Lalonde
Intervs

Ou dient Volontairement
Me Bibaud for ant. Lalonde opposte — who claims the half of the land under an opposn afin de distraire — claims this half in right of the Community between Gabriel Lalonde & Ursule Lalonde — who left a Child in whose succession the land in question is found — The opposte as the nearest heir des propres is entitled to the half in question as the heritiers des propres maternels — under the 326 & 329e art. of the Custom de Paris & Re amenuissement, No 6. No 7. Poth. Contie — No 314. Cout. d'Orleans 293 — 1 Bourjon p. 228 — Rapse re amenuissement — p. 370 —

Me Fre Brunreau. en 1798. Gab. Ursule married had a child — after his death the father took possn of the lot of land & put it into the 2d Community — & it has been since sold to diffte persons — The Intervt party here claims the 30 years prescription — but the Curateurs as proprietors of the property having signed the Marriage Contract, they cannot come off their act — The party also invokes the prescription of ten years under both, signed by the parties — The property was

a

a propre in the person of Gab. it was originally his
& after the amenblissemt having had its effet the
property resumes its former nature. Lebrun p. 97-194.
Lebrun Comb p. 97- Pothier is of a different opinion - refers to Renusson -
p. 114 - 2e Pr. Coc. pr. 350. small commentary -
The property belonged to the father here by droit de reversion
Lebrun. p. 81-

Mr Greece for Oppt. in reply - the prescription
cannot be invoked here, as Gab. Lalonde could not prescribe
as his own tutor - the marriage contract - he died
only 1822 - 344. Vo Presumpt Rpse - he was a mere
consumer -
As to the renunciation of the heirs by their signing
the Contract by qlz Gab. Lalonde amenblit this land
~~Laumbe~~ 1. Parf. Not. p. 87 - Laumbe. Vo Contrat.
No 19 - the signature to a marriage contract cannot
deprive parties of right. Poth. Hyp. p. 469. -

3 Moyen - that the maternal relation ought to succeed
by a rapprochement de ligne & therefore preferable
to other heirs - Rep. vo Rapprochement de ligne -
Poth. Suc. p. 80 -

As to the fiction having ceased - the modern Jurisprudence
has altered the former decisions - Poth. Comté No 307.
314. No 56. Comté. Cout. d'Orleans - Journ Palais. 1688. 7
Janv. - agreed to by Bourjon - Poth. Succ. p. 85-86-
~~Poth. Comté No 314~~ Lebrun. p. 144 - art 13. Id. p. 89.
Rpse vo Donation. Id. vo Amenblissement. p. 372
2 Prev: de la Comm. p. 59. 2. Argou p. 111 - Poth.
propres. p. 276. - When there is a partage the propres
follow the heirs of the person on whose lot it falls -

Rep^{rs} v^{o} Propre. p. 28.— Rep^{rs} v^{o} Succ^{n} p. 570— p. 640. Palma Palmis & p 605.—

Robert.
~~Namur~~ — Fournier } action to compel Defend^r to take a deed of Sale of 2 houses sold to Defend^r—
M^r Ross for Defend^r the property is mortgaged for more than it is worth — this security can secure the party in such a Case—

Wednesday 16^{th} April.—

Pres^t.

The same Judges.

N^o 252
Scott
vs
Duchesne } on Defend^rs mo. for delay to answer to mo. for a folle enchere.—
M^r Brunean for Defend^r the Pltff purchased

N^o 463.
Gauthier
&
Secourt } On Defend^rs mo. to sign certain exhibits. dismiss—
Blenny for Pltff — action for an illegal seizure of the Plaintiffs property & effects — The execution was issued on a Judg^t which was conditional, & upon condition happened the opposⁿ made by Pltff was maintained & the seizure set aside — The damages proved amount to £150.—
M^r O'Sullivan for Defend^r after the agreement between the parties before the Notary the Respt. had a right to his Oppn — in the opposition the Pltff mentions nothing of the act passed before the Notary or its being false — in the Replication filed in the Superior Court refers to an act, but so imperfectly that it

it cannot be understood to apply to any particular act — There is also the oath of the Judge to Sp. Pltff on oath but in his answers nothing appears to invalidate the act but we do not see who the Notary complains of — was, nor what act it was — & Therefore it cannot apply to the act produced by the ~~Pltff~~ Defend in this Cause on his defence — But the Inferior Court could not dispose of the authentic act by setting it aside without a regular Inscription en faux — The act now produced by Defend is therefore good in defence in this action But the acts of Pltff are not of a character to be believed

No 711
Magnan
vs
Reeves —

On Pltffs mov. to reject certain Interrogatories proposed by the Defend to him be rejected as insufficient & irregular — because the Defend intends thereby to revive the objects which had been determined upon by the Proceedings, & cannot be again brought into contest — over to 17th —

No 595.
Davies &c
Pickel —
& Darge —

over till to morrow —

No 2306
Ruthafor
McKay

Question submitted

No 786
Desrivieres
vs.
McGill et al
&
Hart et al

On defense au fonds en droit —

Mr Buchanan for Oppt — Mr McG — having been a partner when the obligation in question was made, the Oppts claim a mortgage on his Estate —

Beaubien for Pleff — Mr. McG — was not the person who borrowed the money, nor did he sign the obligation, it was made by another partner in the name of the partnership, but this cannot create a mortgage on the property of the other partners, one partner not having the power to bind the profits of his Copartner, any more than an agent or procureur could bind his principal, which he cannot do beyond an act of ordinary administration

Rep Prov. p. 415. 416. 419.

Ld. vs Jouett.

Mr Buchanan for Oppt — The oblgn made by Mr McTavish, & he acknowledges that the money was received into the house — But an enquete of the fact ought to be previously had. —

No 450
Boucherville
vs
Ainse —

Action pétitoire —

Mondelet for Pleff — the parties are agreed as to the principal facts & right of the Pleff, but as the specific quantity of land is not very certain it must be ascertained by a survey under the Judge of the Court — The only question here is as to the Costs of the action, from the necessity there was to institute this action — refers to the evidence

Mr Le Vesconte for Defendt— This action is wrong as the Defendt never contested the right of property of the Pltff, but the action is mistaken, it ought to have been en bornage, so as ascertain the extent & limits of it

No 1353 & No 1363
Simpson & al
vs
Madden

Case submitted

No 845.
Marassé
vs
Raymond
et al

Action for assault & battery. —
Bliss for Defendt— the action not proved —

No 51.
Thompson
&
Fry

Case submitted

No 235
238
Robins
vs
Cumming

Action for the recovery of timber taken by Defendt— belonging to Pltff

Walker for Pltff, makes note as to part of the amount of a former Judgt as Defendt— for part of the timber in question. —

Mr. Sweeny for Defendt— The writs of Defendt— have not been examd— & no evidence appears for him in the Cause— This action is wrong, as after the delivery to the Defendt— of the timber he could have an action only for the value of the timber. —

№814
Starnes.
Dewey
&
Sweetmain
Intervs —

action on a transfer on a deed of sale —
Mr Sewell for the Intervs party — The Intervs
party has been more diligent in his proceedings
ought to be preferred to Pltff. — Prior to the
transfer to Pltff. the Intervs party had obtd a Judt
agt Wood the Common debtor — he in consequence
attached the monies in the hands of the Defendt
obtd a Judt to this effect — There never was a legal
signification of the transfer made by Wood to the
Pltff. but merely a notice, wch is not sufficient
the 108e art. of the Coutum requires signification
with service of a copy — Fr. Small Comr on that
article shews also that a Copy must be served
1 Bourg. 557. — Rep.e p. 256. vo Transport —
Parfait Nle vo Signifn de transport —

Mr Ross for Pltff, contends, before the Judt rendered
in favor of Sweetmain, he the Pltff had legally
signified the transport — refers to the exhibit №3
filed by Pltff as being the signification of the
transport. —

Mr Sewell in reply, contends that the act —
referred to is not a sufficient signification. —

№263.
Locdl. g. t.
Prohibd Goods
Doucet. Curr
claimt —

On claim of the Curator —
Walker for claimt — contends that there appears
no legal evidence of an intention to defraud the Customs
Mr Ross for Informt — contends that claim cannot
be admitted. —

№ 1260
McGregor
vs
Thatcher

action for wages — on law —

Walker for Defendt has pleaded prescription as to the whole demand except as to last year cites 127 art. Coutu —

Peck for Plff pleads an interruption of prescription and also that by law the prescription cannot be pleaded. The prescription applies only when the servant has left his master's service — Rep. vo Domestique. p. 104 — Lacombe. vo Salaires — Bretonnier Quest. Droit — p. 146. Prescrps annale à 6 mois —

Poth. obl. № 716
N. Denut. Vo
Gages. §. 2. № 3.

№ 34
Brooks
vs
Carey

action de Revendication —

Ross for the Deptt has stated the person who deposited the crate of earthen ware claimed, & states that he claims no right in the thing himself —

Mr Peck for Plff — The plea here filed ought to have been filed as a preliminary plea — Poth. Procs. № the plea of prescription of two years ought to have been given —

№ 177
Garden
vs
Snowden

Defendt motion for setting aside attachment granted, same having been sued out for damages beyond the debt sworn to. —

Thursday 17th April 1828.—

Pres.t

Same Judges.—

№ 1059
Messier & al
vs
Lemai

On Pltff motion to amend—
Vigier for Defend.e objects— —Granted.—

№ 349
Rolland
&
Boudon

on rule to strike out part of Pltff's answer

№ 181
Normandin
vs
Loiselle

On Pltff motion that Defend.e be held to answer over to certain Interrogatories.—
Dyer

Bruneau—the answer to 5.e Interrog. should be suppressed entirely & Pltff held to answer over— & the latter part of the answer to the 10.e Int.o

Rolland for Pltff contends that the answers are sufficient to 5.e— & the answer to the 10.e Interrs cannot be divided—

№ 711
Magnan
vs
Reeves—

On Pltff's mo. to reject certain Interrogatories proposed by the Defend.e to Pltff, as the objects they comprehend have already been determined

Mr Sweeny for Defend.e moves to set aside the report made by the Expert— The amount has been rendered by the ~~Defendant~~ Defend.e submitted to arbitrators, their report

report is informal & insufficient — The Arbitrs have only exam^d one wit^s — have not heard the parties themselves — have not decided upon all the matters referred to them & as they refer certain facts to the oath of the Pltff to be examin'd hereafter —

Mr Pettit for Pltff — the report is formal & Pltff to

No 804
Dixon
v
Spencer
&
Wells

Def^ds mo. that the inscription for Enquête of this Cause be discharged & Def^ds admitted to plead

Walker for Pltff — Def^ds arrested on Capias & did not enter sp. bail — till yesterday — & must take the Cause as he now finds it —

Brunan for Def^ds — There is no 2^d default entered against the Def^ds — and he cannot be considered as excluded — There are two Def^ds — & default only as^t one —

Walker in reply — only one Def^d summoned & only one default necessary —

Motion granted

No 1727
Finlay
in
Bedard

Def^ds motion to discharge the Inscription of the Cause & the Pltff held to answer over to Certain Interrogatories proposed to him

Mr Mondelet for Def^ds. the 3^d & 6^th Interrog^s

Vam

have not been answered by Pltff

Mr Beaubien for Pltff — The action is to compel Defendt to furnish certain acquittances & discharges on a deed of Sale made by him to Pltff and the answers of the Pltff are sufficient.—

No 800
Jeffries
v
Burton

Mccauley on law

Driscoll for Defendt — The conclusions are inconsistent and cannot support the action —

Walker for Pltff — Pltff allowed to amend —

No 802
Jeffries
vs
Burton

On law — action in bornage —

Driscoll for Defendt — The Pltffs title is not sufficiently set out — The Pltff says only that he is possessor of a lot of ground, but this is not sufficient, he should state that he is proprietor & shew his title —

Mr Walker for the Pltff, it is sufficiently stated in the declaration that the Pltff is possessed as legal proprietor of the land in question, the title is matter to be proved —

No 1174
Goodenough
vs
Jessup —

On Demurrer

The Sol. Genl — The plea when not stated on Deed —

No 1453.

Smith et al
v.
Brown

On law

Mr Sewell for Defend. Defend. was appointed Tutor of the Plffs and as such received sundry sums of money belonging to the Plffs. Sworn this time he purchased a house & made improvements on it. It is alleged that this purchase was made with the monies of the Plffs & it is demanded that this house be declared to be the property of the ~~Defendant~~ Plffs.

Beauvais for the Defend. This action cannot be maintained by any principle of law, that the property purchased with the monies of the Plffs shall be considered to belong to them. 1. Pigeau p. 40.

Mr Sewell for Plff. cites d'Auteuil p. 477. refers Droit. refers 198. the Tutor cannot by any act of his do an injury to the Minor. Mod. p. Cog. Ch. 16. Hulot. Dig. 3e Vol. p. 497. p. 543. tit. 9. 2 Poth. Pand. liv. 26. tit. 9. art. 1. No 2. p. 198. &c.

No 2028

McCutcheon
&
Digonard
&
Richardson
J. S.

v

Berthelet
&
Richardson

In several actions. on rents.

Beauvais for Plff. The Defd. made a transfer of 3 Oct 1824 à Pre Moreau the half of the sum adjudged to be pd to him by J. Sauvé the 9e Oct 1824 Pre Moreau made a transfer to Alexis Berthelet the same sum. the 11 Oct 1824. Berthelet caused the transport to be signified to Mr Richardson. on 16 June 1825. protest as Mr R. for non payt. as the monies were seized in his hands

The Saisie arrets were made after the 11th Oct 1825 the date of the signification of the transport

Mr Sol. Genl for Mr Richardson — on 16 June 1825. Mr R. was called upon to pay — before this in April 1825 Mr R — had made his declaration on the writs of Saisie — Arret made in his hands, and in it refers to the signification of the transfers which had been made upon him — On this, that was a consent rule that notice was to be given in the public gazette for all creditors come in — on this ant. Mr R — was warranted not in paying the Money in his hands till the Court should decide, nor will he be held to pay Costs in the Suit against him —

Attachments were made in May 1824. & still subsisted at time Mrs. R. made his declar.

Mr Beaubien for Plff Berthelet — The Plff's right of action originated from the date of the transfer signified to him on 11 Oct 1824 — and Mr R — was the debtor of Mr B — from that period —

In the Cases of Cuvillier vs Dejaraid & Richardson T. S. — in this Case the Plff is entitled to the amount levied, as the process was ~~levied~~ served regularly on Defendt — also in the Case of Berthelet vs Dejaraid & Richardson T. Saisie, the Plff is entitled to a like Judgt for £128. 18 —

No 876.

Dela Bruere vs Papineau & Beaubien et al

On rule for Defendt — to name another Deputy in the room instead of Theophile Lemaitre the report of Mr Bardagy & affidavits of other persons —

No. 1251

Hyvons
&
Baron
&
Brazeau
Gar.

Action in declaration d'hypothèque

Blaney for Pltff asks Judgt.

Mondelet for Defendt. asks his Judgt. upon the Garant for the whole amount of his demand & not for 700 ll. only —

Brazeau for Gart. The Garantie was only for 700 ll. having become bound for that sum only — Dic. Dr. Comm. vo. Caution. p. 241 — Rep. 766. vo Caution —

Mr Mondelet for Pltff on Garantie — it is not so much upon the Cautionnement as upon the particular Circumstances that the Defendt Gart. should be condemned —

Friday 18th April

Pres.t
Ch. Justice Reid
Justices Fournier & Taschereau

No 2028. Vincent & al v. Voyer & al		Action dismissed.—
No 1271. McCallum & Grey.—	W	Action dismissed.—
No 1401 Masson & Co. v. Dubois.—		Judgt for Plffs
No 1881 Holmes v. Charpentier		Action dismissed.—
No 1288. Dezery & Montreal Water works	W	Exception maintained.—
No 1177 Berichon als Smith	W	Judgt for Plff
No 1249. Maitland & McLaughlan & Johnson opps		Plffs motion granted rejecting the opposition.—

No 498.
Sentier
& Allard
v
Lacombe
Gar

IX action en Garantie dismissed. —
Practice

No 802
Jeffries
v
Burton et al

Defenses en droit dismissed

No 1419
Robert
v
Fournier

Judgt for Pltff

No 1260
M^c Gregor
v
Thatcher

IX Plea of prescription admitted &c

Saturday 19th April

Prest.

The Ch. J. & Just.s Fletcher & Armitage

No 1336.
Gaudrie
v.
Allard } W. Action dismissed

No 588.
Tuckerman
v.
Henshaw } Judgt for Pltff.

No 1242.
Hart
v.
Barnard } W. Opposition dismissed
Barbergt stat. 6. Geo. 4. ch. 59. sec. 8.

Laing
v.
Watson } On Defendr motion that action be dismissed for want of proceedings

M.r Rolland for Pltff. Defendr has no right to make this motion — he is in default for want of a plea and the pltff is now proceeding upon that principle — That a former motion made by Defendr to the same effect has been rejected by the Court —

Rossiter for Defendr. The Defendr cannot be kept in Court until it suit the convenience of the Pltff to proceed in the Cause — he is a party here in the Cause and entitled to take the benefit of the Rules of practice

June Term 1828.

Monday 2d June.

Pres.
Ch. Just. Reid, & Justices Fowler & Nisbet

No 1441.
Flaherty
v.
Fisher

On Pltff motion for a new trial.—
Mr Boston for Pltff.— The Jury have given a verdict contrary to evidence — and the words used by the Pltff, allowing they had been proved were not sufficient to exonerate the Defendt from a Verdict of him — produces an affidavit that he has a necessary witness absent.—

Mr Dot Grant for Defendt no new trial can be had here — on the principle that the ~~verdict~~ verdict is given upon evidence — cits. Grant on New trial — p. 172 & p. 209.— & p. 195 — no new trial in penal actions where Verdict is for Dfpt

No 364
Wilson
v.
Spencer
&
Pierce, mis
in Cause —

On motion of the Gentlemen that the mis in Cause be held to deliver up the horse seized, of which he has become wrongfully possessed —

Walker for Pierce — no proof that Pierce ever had the possession of the horse —

№364.
Berthelet
v
Devins
& Contra

On rule obd by Defendt to shew Cause why Report of Experts should not be set aside

Mr Guy for Pltff – the Report is right and made in conformity to the evidence laid before the arbitrators their report cannot be set aside by affidavits produced by Defendt nor can the opinion of witnesses be received of that of the arbitrators –

Boston for Defendt – Defendt was prevented from adducing all his evidence before the arbitrators in consequence of their arresting him in his progress by their declaring that they were satisfied that the Defendt had made out his Case. –

—

№866
Fisher et al
v
Marcoux
& Jones. optt

Hearing on law on oppos.

Driscoll for Pltff – The two boats claimed not sufficiently ~~described~~ specified so as to identify them & enable Pltff to answer to claim. –

Walker for opptt – The boats are sufficiently set out as regards a Chattel &

Tuesday 3d June.

Pres.t

The Ch. Justice & three Judges.

No 1516
Flaherty
&
Fortier
&
Fortier opp.

On oppos.t motion to open the enquete and to be allowed to ex. his wit.s
Blumy for oppt. The enquete was closed during absence of oppos.t wit.s but the right was reserved to oppt. to make present application —
Mr Pelletier for Plff — The enquete was regularly closed — no diligence done by the oppt —

No 162.
Prim. —
&
Clarke

On defend.r mo. to close Enquete —
Mr Gwerry for Plff says he was always ready to proceed and is still ready —

No 780
McKenzie —
&
McGill et al.

On Plff.s mo. to prolong rule of presence
Mr Sol. Gen.l There is no proof of any diligence done by Plff, therefore ought not to be allowed. —

No 1372
Schneider
&
Labourier

On Defend.r mo. to set aside Plff.s discontin.ce of the Plff.s action without payt of Costs — and that Defend.r have distraction de frais — Rep.s vu Defens

Mr

M^r Bruneau for Pl^ff — the Cause was not dis^d the day mentioned in the Defend^r motion — & therefore he is not bound to answer — That as to dis^bursem^ts & frais, this cannot be allowed to adopt until costs be allowed to the Client — That the parties having settled their contest, had a right to discontinue the Cause in the manner Pl^ff has done, this act of arrangement —

No 1209
Bourgeois
v
Guertin

On Pl^ff^s motion to have inquete declared closed —
M^r Bruneau for Defend^t —

No 1180
Shedden
v
Simpson

On Defend^r^s mo. to be permitted to file a copy of the writ of fi. fa. ag^t goods of Defend^t to shew that Defend^r^s effects under the Saisie arret and out by Pl^ff, are now attached & seized under the said writ of fi. fa. —

Boutin
v
Hebert —

Action for Seduction —
Trial by Sp: Jury
Verdict for Pl^ff — £20 — damages —

Wednesday 4th June.—

Nº 876.
Labruere
vs
Papineau
&
Desrivieres
& al!

Pres.t
Ch. Just. & 3 Puisne Justices

On Plff's motion for prolongation of the rule of reference, & also to name a tiers arbitre

Mr Cherrier for Defend.t — object to the nomination of a tiers Arbitre as unnecessary & no grounds for it being laid before the Court.—

Nº 158.
Pillet
vs
Taraleron

On Defend.r mo. to reject Plff's plea & answer to Defend.r plea & Incidental demand —

Mr Letourneux for Plff contends that his pleading is irregular —

Nº 346
Gatis & Co
vs
Millard & al

On Defend.rs mo. to quash process for irregular service

Mr Bleakley for Plff — service was made on Plff's agent on of Defend.rs that he is one of the partners — Deniz.t — Vo Societé entre marchands — art. 24.— 27.—

Mr Sol. Gen.l — the parties are not stated to be Copartners nor sued as such — not pr. That the Contract on which the parties are sued was a partnership contract — cites case of Turner vs Fire Assurance Co.—

No 134
Pothier
vs
Hunloon

On Pltff motion to reject the Defend's plea as insufficient—
Mr Roi for Pltff— the residence of the heirs is not given by the Defend—
Mr Driscoll for Defend— the plea is sufficient the advantage ought to have been taken of the defect if any, by pleading & not by motion—

—

No 1163
Guichard
Ayers
&
D: Ayers
Intervs

On Pltff motion to dismiss the Intervention of Daniel ayers from delay in proceeding—
Mr Sweeny for Interv's parties says plea is now ready—

"

No 1063
White—
vs
Metzler—

On Pltff's rule obtd by Defend— to shew Cause why a Contrainte par Corps should not be granted on the Jud't rendered in this Cause
Mr Beaubien for Defend— asks to be allowed to plead in writing—

No 1829
Dupré
vs
Yule
&
Yule et

On Pltff's motion to dismiss opposition
Mr Bedard for Pltff— This oppos'n cannot be maintained, none of those allowed by Law,— it does not contain matter of oppos'n Poth. Tr. Proc. Civ.—

№ 1727.

Finlay
vs
Bidard

On merits — Action on act of Transport.

Mr Beaubien for Plff — action was brot in the name of Defend. as Lemai, the debtor — who was condemned on condition of the Defends discharging certain mortgages on the land sold to Lemai — The Plff gave his right of mortgage on the land, by act of 16 May 1826, which was duly notified to Defend — but Defend refused to obtain the other discharge to Lemai unless Plff gave Defend as discharge for all demands of him. —

Mr. Mondelet for Defend — The transport here is without garantie on the part of the Cedant and only putting the cessionaire in his right — & Plff was bound to do the necessary diligens to give effect to the transport — That nevertheless the Defend has produced the very quittances demanded of Plff now has in his possession and of which he is bound to communicate to Mr Lemai — This Plff contends he is not bound to do & has instituted this action — Lacombe. vo Transport — Domat. —

Beaubien for Plff — There was an obligation on the part of the Defend to be performed in which he has failed — The Defend has constantly refused to deliver to Lemai the necessary acquittances unless Plff gave him a discharge — at last after the action was brought he files the acquittances — but this was too late, & even if Plff were obliged to deliver

Then

these discharges to Lemai - rpt Defendt ought to pay the Costs of the action -

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№ 1174
Goodenough
&
Issupet

On Defendr mo. that cause be struck from the role de droit, no replication having been filed on Defendt -

№ 1303
Masson & Co
&
Langueder

On law -

Mr Sol. Genl has made a defence au fond en droit, qe is well founded - not stated for which of the Notes, the action is brought, as the specific date of the Note is not set out, only by stating, that a Note was made on or about the 13 Novr the place where the Note was made St George, is mentioned as the place, but where St George lyes. is not stated -

Mr Bourré for Pltff - the declaration is sufficient -

Friday 6th June 1828.

Prest

The Ch. Just. & Justices Fowler & Pyke

№ 1390.
Rex —
v.
Paul Lavoie

On rule of Defendt why he should not be condemned to pay Costs of the rule —

№ 384
McGinnis
v.
Cartier fils
&
Cartier fils & ps

On mo. to be heard on the right of Oppost to adduce verbal testimony —
Mr Rollin for Plff. the opposn founded on a contract between the parties, wch cannot be proved by verbal testimony —

№ 1328
Pothier
v.
Roi —

on Defendr motion for delay to plead

№ 1063
Cartier
v.
Guilette

On Defendr motion to be permitted to make a desaveu incident —

No 273

Rolland & Pothier & Lacoste

action en redition de Compte as Executor of Pltff's Grandmother —

Rolland for Pltff — The acct. has been rendered and the Pltff's demand now rests upon a right to have the account reformed —

1. Ch. de Recette — certain articles not included as remaining unsold —

2d. de This includes the sale of certain immoveable property particularly to Pd. Gibb. of Pltff's content as irregular sale, being a forced sale, & a purchase made by Defendr himself —

The Defendr was authorized by the will to sell the real estate, this the Pltff do not contest, but contest the purchase made by Defendr himself through the intervention of Mr Gibb — the different acts passed to effect this are null, & the receipt given by the Defr to himself shews an unusual precaution used by Defendr to cover the transaction —

The principle is clear that an Administrator cannot purchase the property of which he has the charge — Poth. Vente. No 13. — Domat. Lo 1. tit. 2. sec. 8. No 1 & 2. — Rep[ts] p. 479. v[o] Vente. — N. Denis[t]. vol. 10. v[o] acquereur. p. 248. — 1 Bourj. p. 55. No 75 — 3. Temple. 362. — M[c] Cord & Langan dal. Simpson. v Labrie dal. 20 Oct 1813 — Voyer & Burns à Quebec — Baudreau & Gauvreau à Quebec — Sales annulled — English Cases — 2. Fonb. on Eq. ch 7 — p. 191. in note — 1 Vernon. Rep. Whitpool. v[s] Cookson. — 1 Vesey 215 Brookes Rep

As to the proof of the simulation —
Repse vo Simulation. sec. 2. & 3,
Dc vo preuve. p. 584. —

2. Journal Pal: p. 937. — 3 aout. 1678 — arrt to shew that Gibb altho' a party to the act is not intended —

1. refers to deposition of M Gibb as clear —

2 Correspondence between Defend. & Plff — ~~Defts~~ exh. No 2 filed vo debats de Compte by Plff. — also. No. 7. — No 9 Defends letter of 9 april. No 10. — — No 13. — No 15. — No 17.

3 Defends refusal to answer to the questions proposed to him on faits & articles — on this refusal the Plff moves that the questions be taken as confessed —

The opinion of Court grounded on that of the Court of appeals.

Repse vo Simulation p. 327. Sec. 4. 1 Col. — Poth p. 7. No 16. Contrat d'assurance — Do. No 14. Rebatt — Dic. Droit. vo Faits & articles —

//

As to the 3d. Ch. de recette — the title to the Constituts —

1. Then is the Constituts de Roussian not carried into the account altho' in the Inventory —

2. All the Constituts of belonged to the Tutorship, & of the Defts claims under a sale from her — in 1804. the Defts purchased the Fief Laguenetiere and also a certain rente Constituee of 3000# — In this sale of 1804, there is no mention of the sale of any Constituts, but only the droits & privileges attached to the Fief, but Constituts is a very different thing — it is like a Seignior who sells his Estate he sells all that is attached thereto, but not the

particulars

rents & revenues not attached to the Seigniory and attached only to the person of the Seigneur — The Defendr has brought witness to prove this sale of the Constituts, or rather the intention of the parties in the sale made of the Fief — But this proof is inadmissible, & the Court has reserved to determine thereon — There is a contrary presumption of the sale of all these Constituts, by a sale of one specific Constitut — and more — upon rules of interpretation of Contracts by Pothier —

Rispr vo prescr. p. 520. —
2. Le Launs. p. 406 — 672. —
Salle tit. 20. art. 2. —

4. Banc dans l'Eglise — of the revenue of which no acct has been rendered — after death of Madme Lavoie — the pew descended to her 2 daughters Mre Pothier & Mre Chevrinanville, & after them to their children — of whom Plff. Mr Rolland is one — this pew the Defendr has leased, but has rendered no account. for this the Defr is liable — Poth. Mandat Nos 58. & 60. — Domat. liv. 1. tit. 15. Sec. 3. Dom. 8. p. 131. 3 Frey. ch. 10. p. 379. 380. —

5. Salaire d'Executeur — This cannot be allowed. there is no such principle in the law —

Poth. Mandat. No 22 —
3 Frey. ch. 10. p. 376 —
Poth. Don. Test. ch. 5. art. 3. Sec. 3. p. 366. —

N. Denzf. vs Exrs Tutr. p. 221. Sec. 4 — 4p. 230 —
1 Argou 412. —
Repr. p. 159. vs Executeurs —
Art. de Not. de Denzf. p. 497 —
2 Basnage. p. 210 —
Lacombe. vs Ex. Tut. No 13. — seems to admit the principle when the execution is pendle. —
Fer. Ep. Comre
In the amount rendered à l'amiable to the Plff. there was no such demand made —

The Debt due by Mr Debuke, Notary, not proved
Poth. No. 46 — Mandat. —

The Plff claims under a transport of the rights of Mr Dutrimouille. — to this Defts says he has bought Mr Dutrimouille — & he charges this to the act. of the Plffs a thing wholly unreasonable —

Mr Bidard for Defendt —

2°. By the last will of Mad. Lacoste the Defendt had full authority to sell the real Estate — that the sale to Gibb was necessary — advantageous — & has been approved by the heirs themselves —

There was part of the Testators property in bad repair & the means to repair being considerable, he found it most advantageous to sell — this was the intent & the express consent of the Legatees, who consented to devote regard

this

this sale to be made — See Mr Destrahan's letter of 1811 —

The sale to Gibb was legal, and the testimony given by him of some circumstances can arise only from his want of memory —

Poth. Retrait No 158

There are cases where a Tutor a Mandataire can exercise the retrait on the sale of a property sold by him & of which he had the administration. see Poth. Retrait. No 158. — The heirs heir must be considered the sellers, by the means & intervention of the Defendt. the Tutr, who nevertheless could exercise the retrait on such sale. —

Poth. Retrait. No 117. There is no authentic act the production of the simulation, which was essential a single witness can in no case avail — The Plffs cannot be allowed to come of their own act — In this were the Sellers by the Defendt —

The only wit to prove the simulation is only Gibb he is not a competent wit he has an interest as a party to the act — and therefore his testimony ought to be rejected —

The Plffs have consented to and approved the Sale —

The correspondence referred to by the Plffs between them & the Defendt — is in favor of Defts and being produced by Plff

The argument continued till to morrow —

Saturday 7th June 1828.—

Pres.t

Ch. Just. & Justices Fourchee & Pyke.—

No 473
Rolland
Pothier
& al vs
Lavoie & al

Mr Bedard for Defend.t cont.d his argument
He contended that the facts of simulation alledged
by the Pl.ff have not been proved—
As to the correspondence produced by Pl.ff. the
letters of the Defend.t ought to be considered as evidence
as being produced by Pl.ff & making of him—cite
Lacombe. v.o Titre.—

That Mad.e Destimauville all her life time
profited by the sale of this property by the Defend.t—
having received her proportion of the interest of the
money for which the house & lot were sold—
The Sale was made with the consent of all the heirs
see Mr Destimauville's letter of 28 april. 1811—

That Destimauville received his proportion of
the interest of the money of the Sale—see the acct
rendered by the Defend.t No 14— on this acct
there was a balance appearing due to Destimauville
part of which, £50— was paid to him at the—
sollicitation of the Pl.ff

The property in question was sold to Gibb
for more than its real value, as appears by the
testimony of Chevalier, & others—

As to the Constituts on the Fief Lagauchetiere—
the Defend.t contends he bought them in 1804

sworn

from Mad.e Laiole & therefore Plff.s have no right or claim therein —

All the rents Constitutes were created & arose from the prix de vente of the fond, and consequently represented the fond — It is evident from the deed of Sale that Mad.e Laiole sold all her rights in the Seigneuriage, in the fullest manner —

Pothier in his answers to facts & cases says that he is the proprietor of the Constitutes under the deed of Sale of 1804.

The deed of sale is not clearly expressed, but certainly was meant to include all the Constitutes — at all events, Mad.e Laiole acted prudently by confirming this sale by her last will & Testament. —

The property was a Volume when sold, & the whole right therein —

The mode in which the parties executed this deed shews their intention, by the payt. of the arrears of rent to the Defend.t — this has been proved by several Wits —

Banc d'Eglise. —

The Pew in the Church was considered as a family pew vested in perpetuity — it was therefore a pew belonging to the Line of Laiole — not of Mad.e Laiole, whose name was Dupré — it constitutes no part of the Estate of Mad.e Laiole, but of her Children Heirs of her husband —

№ 1206
Boston
~
Pinsonault
&
Barsalouce
opt

On ~~Pltffs~~ opps motion to be allowed to appear by Mr Roi & to prosecute the opposition —

№ 346
Gates & al
~
Millar & al

On mo. of one of Defendrs that the cause be rejected from Rôle de droit, inasmuches the issue is not complete —

Mr Bleakley for Pltffs — Not necessary that at issue should be joined on the plea filed by Plaintiff but is entitled to a hearing without issue —

№ 473.
Rolland
~
Pothier &
&
Lavoie

argument contd

As to the Salaire claimed by the Deft it ought to be allowed — The Defendr here does not administer for himself but for the Pltffs & Mad. Pothier — all the authorities of law are not agreed that the Exor is not entitled to Salaire — The Defendr here has been vexed by a litigious prosecution of causes much loss of time, & money to defend & is entitled to a — recompence — see his answer to 20 Interrogts on faits & articles —

Debt due by Debtor — This is a petty objection & if necessary, a prosecution may still be had for it

as

as to the charge of Puffs in Defts ans. in regard of Mr Pittmanville, it will be found correct.—

Mr Rolland in reply

1. As to sale to Gibb— the objection here is not as the sale, but that the Defendt purchased the property under all the formalities which he put in operation for this purpose—

There is no proof that the heirs ever consented to the sale or even had any knowledge of it but if the heirs consented to the sale, it was not to the kind of sale put in operation here—

There is no proof either of a demand to sell or of an approbation of the sale made by Defts—

The principle that the purchaser cannot be admitted to come off his own act of purchase, applies to the case when there has been a dissimulation in the purchase, & a greater sum than that specified in the deed— the deed in such case estops the purchaser— see Poth. abo. Retrait. Nos 424—

2 As to Rents Constitutes—

Madr Laude sells a fief, whether held en fief or en roture, this is evident from the terms of the deed— this can never comprehend Constitutes— & this is more evident from the circumstance of a certain constitut being sold— in 1764— the Fief Legouchetiere

was

was sold en which sale the Constituts are also expressly mentioned — also in 1785. was found another similar sale —

Mde Lacote did not confirm the sale of the Constituts to the Defde by her will —

Peo in chief — This although a family pew yet ought not to go to the eldest son or to the eldest of the family — but to all those of the same degree — after the death of Mr Lacote it belonged to Mde Pothier & Mde Dethmanville

Salaire of the Exor — Laroche — Terms & argou seem to admit that the Court may allow a Salaire to the Executor — but this is not the general principle — there must be an administration accompanied with difficulty & loss of some kind, for which an allowance ought to be made but this not the case here —

Mr Roi for the Intervening party —
The Intervention made by Mde Pothier and the Mrs Pothiers as legataires universels of Mde Lacote — The demand here is en cheriedation of Mrs Rolland, by her having contested the last will & Testament of her grandmother Mde Lacote — The Testatrix may impose any conditions

the

he may see fit on his legatee—

Rep^re vo Heritier. 501.—

Recard. des Don. part. 3. ch. 7. sec. 5. N^o 816—

Rep^re vo Fideicommis. 360.—

Argou tit. 1. liv. 2. p. 365—

Domat.—

That Mad^e Rolland has contravened this clause of the will in regard of the act of 11 Jan^y 1804— which the Testator confirmed in all its parts by her will— That the Pl^ff here contest a part of the dispositions of Mad^e Lacote, by claiming a part of the Fief Laguarthier out of the succession of the late Eric Conrad Lacote, altho' Mad^e Lacote had sold the whole of this Fief as belonging to her, as appears from the above act of 11 Jan^y 1804— & therefore whether Mad^e Lacote had the right to sell or not the Legatee were bound to confirm the sale which Mad^e Lacote had made to the Def^ds— That by the said deed of sale, M^r Lacote sold the Constituts to Def^ds— & also the sale made under the will by the Def^ds— which are contested by the Pl^ff are acts by which the exhereditation is also incurred

Rolland p^r Pl^ff. The question here is whether the Pl^ff has an conditional Legatee, this not the Case— this is a <u>Lex penal</u>, founded on the Constitution of Justinian, the effect of which never was admitted in the laws of France— The facts are not as stated by the Intervention,— the ratification in the deed of

of 1804, regards only the legacy made to Pre Lavoie
& nothing beyond this — The words in the will are
too vague as to any other disposition of her property
to carry a strict operation, as no thing precise can
be drawn from such general words — The word
disposition will apply to a great many acts, not
contemplated by the Testatrix — But at all
events this can apply only to such property as was
really hers, and not to property which never
belonged to her — The Plff does not claim the part
of the Fief Lapouchetiere q.t. Made Lavoie says she
purchased from Elie Lavoie & q.t. she states to have
sold to Defend.r — but Plff claim 1/8 in the said
Fief which the.d Elie Lavoie never sold to Made
Lavoie — But the Plff contest here only the act
of the Executor in regard of the Sale to Gibb & not the
disposition of the Testatrix — & the contesting the non
existence of the sale of Constitute to the Defend.r cannot
be considered as contesting the will of the Testatrix —
as to the part claimed in the Succession of Elie
Lavoie, the Plff contend that this never belonged to
Made Lavoie, & it is uncertain what parts & portions
they were which she sold to Defend.r and it cannot
be understood that she sold or meant to sell
what did not belong to her in the Fief she
sold to Defend.r —

As to the law on Penal Clauses. 1 Jour. Pal. 1 Aout

1676

1676 - p. 1666 -
1 Reccard. 793. -
5 Jour: audce p. 204 - 2e part -
Poth. Don. Test. p. 321. - ch. 2. art. 3
Repse vo Peine Testamentaire. p. 74 - & 79 -
Institutes de Justn. liv. 2. tit. 20. sec. 36. p. 325 -

As to the right of accroissement -

To shew there was no accroissement here in favor of the Pothiers here as the Partage & the succession excludes this right -

Repse vo p. 112. vo accroissement. -
Denisart. co. vo accroissement -
Reccard Don. ch. 4. sec. No 537. 538. -
Pandect. de liv. 30. 31 & 32 sec. 2 art. 1. No 408 -
2 Bouis. p. 340 -
3 Inst. Institutes p. 243. 244. -
Poth. Don. Test. ch 6. sec. 5 - p. 409. -

But even if the fact were as stated, yet the legacy would in that case come to Pltffs -
Poth. Don Test - above cited - refers to the Pandects -
Pandects. same chaps. No 427. & 428
The Defts Pothiers have not filed their exhibits bas
The proceedings in the other cause in which this Intervention has not been made, but which refers to the other cause, have not been filed in this cause - The certificat not made by Pothrs

Monday 9th June.
Tuesday 10th do } Enquete Days.
Wednesday 11th do }

Thursday 12th June 1828

Prest.

Ch. Just. & Justices Fowler Pyke & Unwin

No 575
Harrison
vs
Osborn
&
Brown

on Pltffs mo. to exp. wit. about to leave the province —
Mr Blamy. for Defend — affidavit not suffd

No 758. 1243
Lamb
vs
Rodier

on mo. to suspend proceedings until costs are paid —
Mr O'Sullivan contends that the quantum of costs has allowed ought to be re-considered & a deduction made —

No 1301
Ackley
vs
Langredon

on mo. of Defend — to be permitted to adduce further testimony — & the rule set aside declaring Enquete closed — on affidavit filed —

Mr Burton for Pltff. The Enquete was regularly closed & cannot be opened — Submits the question as to the paper lost from the record —

No. 2130
Stone
vs
Lay —
& —
De Longueuil
oppt

On Pltff mo. to dismiss oppn as filed too late —
Mr Sol. Genl for Pltff. return made & oppn filed 7th —
Mr Sewell for oppost —

No 876 —
De la Bruere
vs
Papineau
&
dt par reprise
d'instance

On Pltff mo. that Court name a tiers Exprt.
Mr Cherrier for Defend — no necessity for this motion, nor anything to support it —

No. 1285.
Pennoyer
vs
Lyndsay

On Defendr mo. to bring in Gov. Proctor as his garant —
Mr Day for Defendr — Proctor prayed Defendr to pay over any monies in his hands & protested against him — Pltff as now as the assignee are acting in the name of Proctor & he has a right to prevent him —

No 1419
Namur dit
Laclaire —
&
Fournier

On Defendt motion to reject the security offered by Pltff —
Ross for Defendt the security is insufficient as to the affidavits produced. —

No 1226.
Ironmonger & Menedier & Gauthier opp.

On Plff's mo. to dismiss opposition, for want of affidavit to warrant its being made
Bleakley for Plff—
Ri. for oppt. The Plff's have called on oppt to fyle his reasons, the has done so—& is now called upon to shew cause why oppn should not be dismissed.—

No 79
Beaudouin & Langellier

On Plff's mo. to reject plea filed by Defts

No 250.
Boutin. & Hubert

On Plff's mo. for Judt on Verdict—

No 1222
Dorion & Fortier

Action for Lods & Ventes— on law.—
Bedard for Defend. The father in law of Defr made a donation of land on a pays de rente Roture— This is not an acte of sale, but made en avancement d'hoirie. Bourd. Lods & Ventes. p. 153— No 10—

Lacroix. for Plff Deborge. v Dorvet— it was allowed by this Court to Plff— alias Pondhomme.

No 935.
Fontaine
vs
Malbouf

On Law

Mr Mondelet for Plff — The plea is contradictory and cannot stand, as Defds plead. an exception for delay — & 2d. payt —

Bleury for Defend — The plea is regular & en conformity with terms of the obligation —

No 656
Robinson
vs
Hart
& contra

Action for work & labor as a Carpenter —
On merits. —

Mr Buchanan for Defend — The Plff is answerable in damages to Defr in more than the sum demanded — The work had & also the materials & workmen have estimated it at £93 — There was a special agreement between the parties for building the house according to which Plff ought to have brot. his action. 1 Ch. on Pleads 104. 312. 314 a claim can made on pt parties agree to make a deduction of £3. 10 — The notion upon which only 15 ℔ dozen —

104. 312. 314

No 595.
Davies
vs
Pickel
vs
Mr Grant
& al

On motion that Mr Grant should be held to bring back certain monies paid him by order of this Court sans à rapporter —

Mr Lewell for Mr Grant —

No 1096
Campbell
v
Wilson
&
E contra

action for house rent under verbal lease
on law

Walker for Pltff — to this action 5 pleas
have been made, four of which are insuffte

1. No particular covenants of lease broken by Pltff
2° of same terms
3 Defendt disturbed by townsmen —
4. all these pleas limited —

On all these covenants no damages are
alleged to have been suffered —

1 T. Rep. 645
Willis. 156 —
Com. Digest N. 54. 55. 56. 1st Pleader
6 T. Rep. p. 573
2 Bl. Rep. 1012 — all these

Covenants are independant & will bear separate
actions if founded

As to the Insolvent demand, rests upon the
same Covenants set up as a defence to the action —

Fraser & al. —
v
Stevenson & al
&
Brown oppost
Judgt on oppn
N

No 1808
Ex parte
On Petn of J. B.
Malcolm, Marseillais
Judgt on Petition
N

Ex parte
On Petition of G.
Selby. Dunbar
&
Mossat.
Hallowell &
others — opposts
Judgt
N

No 8.
On Petn of Girouard
Dec. Voltr
Ant. Leland oppost
Judgt
N

No 51.
Thompson
Dorion
Judgt
Contra

Friday 13th June

Prest

The Ch. Justice & Puisne Justices

№ 2153.
Holt
vs
Carr —

On Plffs mo. that Enquête be declared closed

№ 1182.
Culbert
vs
DeLanaudiere

On Plffs motion that the Court name another Surveyor in the place & stead of Mr Manuel to execute the Interlocutory order of this Court for drawing the line of division between the Seigniories of the parties — inasmuches Mr Manuel demands £20 to be advanced to him before entering on the execution of the said Rule — Court named Mr Stevenson

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on 2 motions —

№ 492
Monjeon fils
&
Charron
&
Bourgeon

On Plffs motion for Judt on the conclusions of Plffs demand, inasmuches Deffdt has not given the sureties ordered by this Court —

Mr Green for Deffdt — The Plff cannot obtain a Writ of Deffdt without having satisfied the Mortgage debts which he has not yet paid —

on Plffs mo. to dismiss the opposition of the Deffdt wife — as inadmissible —

№ 119
Charbonneau
&
Pillet
&
Pillet Jun.

Mr Roi for Plff — The delay demanded by Deffdt cannot be granted — nor on any of the pleas mentioned it is too late to plead them after the plea pleaded —

№ 199
Rolland
vs
Donaldson

action for arrears of Seigneurial rights

Mr Doris for Defendt — action consists of two parts — one for personal demand for rents due by Defendt — the other for the arrears due before the Defr became proprietor — but the Defendt was not in possession of all the lots when the action was brought & cannot be bound hypothecairement —

As to the personal demand — There is no proof of possession — except for one year — adverse Pltff must obtain Judt for amount demanded for Lot № 162 — As to Lot № 170 — for 2 last years, he is not bound, not being in possession — Lot № 171 — The arrears here were due by the auteurs of the Defr — Lot № 171 — Last year to be deducted from this, as being the debt of his auteur —

Rolland for Pltff — For Cens & rents the Defendt is held by his possession for all arrears personal & other by his being in possession — The action is works in chose — Defendt admitt possession Lot № 114 —

№ 1031
McKie
vs
De Chantal

action for damages — for assault

Barlow for Pltff — Pltff was beat by others as well as by defendt — & whom act Defendt ought to be bound as they acted in concert with Defendt —

Mr Mondelet for Defendt — 2 Wits necessary to prove a fact — no proof of violence by Defr — Wits give contradictory testimony —

№209
Hart
vs
Conroy

On Pltff's motion to be permitted to file a certain Jugement, not in his possession at the time the action was brought.—

Mr Sollé Gark was heard for Pltff—
Mr Ross for Defendt— The Enquête has been closed and nothing shewn which can entitle Pltff to produce further evidence—

№465.
Rolland
vs
Pothier

action ap Deffts to render account of his gestion—

Mr Rolland— In 1778— The late Laroche donna par Jugement to Dorillebaut, after he sold to Mde Laroche, during the contre of the community with his Children—. That Elie Laroche one of the Children was entitled to 3/16— at his death he left 3 heirs one of whom is represented by the pltff & asks that by the Rolland proportion of 1/16— of the Jugt— and an account of gestion— & that he be condemned in Costs—

Mr Bédard for Deffdt— The action is really an action en revendication, not en reddition de Compte the Deffdt here is proprietor. He is prosecuted as an administrator merely & under that head Pltff cannot maintain this action— The Deffdt has rendered an acct— under the will of Mde Laroche— The Pltff alleges that

Lah

late Elie Lacote was prop. of 3/16 of the Fief — & claims that 1/16 as appurts. the Lacote he adjudged to the late Lapanchetiere being a Fief the whole belonged to Mde Lacote — cites 25e art. of the Custome — brothers & sisters do not inherit in equal degree — & Pltff cannot as heirs of one of the sisters have any right in this Fief —

The Defend. has also pleaded for exception — that by act of 11 Jany 1804 — ~~that Made Lacote~~ the Pltff Defdt acquired 7/8 of the Fief from Made Lacote & Mde Dame Lacote — exhib. No 1. of Defdt — the other 1/8 Defdt purchased from the late Mr Forbes — this land Defdt purchased en Roture. held it as such until 26 May 1804. exhib No 3 — when he acquired the right of property en Fief — held it for upwards of 10 years under that title so as to have his title confirmed by prescription — the fact is proved by several witnesses — Chevallier Larochelle. La Rue Razy Aumais — Cartonpré — Mr Guy —

The exception en garantie — That the Pltff being heir of Made Lacote, are bound to warrant the sale she made to him — Roth. Vente. No. 165 & 167. —

That the Defdt. is en fact the only proprietr of the whole Fief — exhe No 2 — Transaction between the Seigneurs of Montreal & Defdt — this produced by Pltff is evidence against him — as there is nothing stated to the contrary in the declaration as to the validity of this act — the allegation to the contrary in the list of Exhibits cannot be admitted, as of no value as the act so produced

The

The Pltffs allege that on 2d May 1778, Pre Lavoie & Marie Archambeau were proprietors of this Fief, when they made a Will & thereby disposed of the Fief, leaving one half to Mr Gaillabout & other half to Pre Lavoie the husband of Marie Lse Dupré — The Defendr has pleaded that these persons the great grandfather & mother of the Pltff were proprietors & in 8 June 1768, converted it into a rotture and from that period enjoyed the propts as such — this act the Defdr contends is valid — but the Pltffs contend was invalid — But it was not necessary for the Judge of a Court to declare it so — This was no new acquisition made by the Seminary of Montreal who held the Fief superieur altho' they constituted a Communauté —

That of concession by the Seminary of this land in Fief was merely an act of Administration & as such did not give up the rights they had in the propts —

cite 1 Ferrier. Gr. Com. art. 51 — No 17. 1er Alon. The concession made in Fief by the Seigr is not an alienation — Id. Alon 2. at begins. No 2. & 3 — No 16. & 17. — The foi & hom. reprents the prest alienated — No. 18 — 20 —

Small Commts of Ferrier art. 51 —

Dic. Droit. Vo Lower de son Fief —

Pothier. Fief. p. 304 — 309. —

Repse vo Droits Seigx p. 536 —

——— vo Vassal. p. 465. —

——— vo Domaine. p. 59. —

1 Pr. Jurisp. tit. 10. No 173 —

Repse vo Indemnité. p. 167. — 154. & vol. — 158. —

1. Bourjon tit. 4. des Censives. Sec. 2 dist. 3. prop. 15 —

——— p. 240 — 241 — prop. 31 —

167

Id. p. 227 – note on 5e. propos.n –
Rep.e p. 127. et pend. 128. v.o Maisonneuve –
1. Gr. Comm.e p. 70 – Glos. L. 5. N.o 8 –
Du Droit. v.o Puissance de Fief.
Poth. des Personnes. p. 634 – 635 –
Desp.ses – p. 16. Art. 12. 214. of ord.ce 1724 –
Rep.e – v.o Conversion p. 35. et 37. 2de ed.n –
Fr. Gr. Com. art. 12. p. 319. 320 – N.o 6 –
Du Droit. v.o Dessaisissement de Fief –

That by their authorities by reuniting to his Domaine the property granted en Fief, makes no new acquisition. The declaration of 1743 contains nothing contrary to this point. The Ord.ce of 1749 was never enregistered in this Province – But the act in question made of conveying the land in question from Fief into roture was no new acquisition in the sense as supposed – The act was legal, but all acts required the sanction of a Court of Justice to annul it –

as to the continuation of Comm.ty between Mad.e Lavoie & her children – The Pltff say that Elie Lavoie had 1/8 & 1/16 – In 1792. Mad.e Lavoie was sued by Mad.e Potter to make an Inventory & proceed to a partage – An Inventory was in consequence made in 1792 – when Mr Potter demanded the cont.n of Comm.ty. wch was granted, & an ajouté was in consequence made to the Inventory – The Pltff however did not insist upon this cont.n of Comm.ty – This ajouté was made w.th a Condition that Elie Lavoie should renounce to the purchase his mother had made of Mr Daillebout. —— But the cont.n of the

Comm.ty

Comb. must be demanded – Thos Eloi Lacote never demanded & his his cannot now do it – art. 240 – Cout – Fr. Civil Commentary – Poth. Comte N. 800 – That neither Eloi Lacote, having in his lifetime demanded the continuation of Comb, nor his heirs during the lifetime of Made Lacote – they are now too late – Poth. Obl. N. 899. – Fust. in favor of the Pltff could neither have nor benefit Pltff –

This action is in redition de Compte – before this action the Pltff had instituted another action ag. Defdt to render an account of his administration of the property of Made Lacote – he then comprehended therein the rights of Eloi Lacote – Defdt never had the administration of the property of Eloi Lacote – he never administered but as representing the succession of Made Lacote –

Mr. Rolland – The action is en redition de Compte ag. Defendt as a negotiorum gestor, as holding the part of inheritance belonging to the Pltff – In Feby 1792 Made Lacote had a power of Attr from her son Eloi Lacote to manage his property – the Defendt on having come into the possn of this property as Exer of Made Lacote – The account rendered in the other Cause contains nothing certain, is not given as an act. of the Estate of Eloi Lacote – nor is Pltff bound to ask for the account in another Cause –

The Pltff demands their share in the Fief – in this they are right. for altho' this land was en Fief & was afterwards en roture, & subsequently en Fief, by the act of the Defdt & the Defendt was the Negm gestor of Pltff. what he

did

Poth.

did for himself, he is in law bound to do for Plff.
The Defdt being in the possn of the property of the
Pff, no matter under what title, he is bound to render
an acct as a negtr gestor to the owner —
The Plea of prescription is without foundation — there
is neither title nor bonne foi — now a negtr gestor
can never acquire for himself the property he manages
he is presumed to know all the rights & titles of the
property he manages — By the sale made to Defdt
by Mde Lacote — it is only of a part & portion de
fait — describing the parts so sold — & in this is stated
1/8 by Cession from Mr Elie Lacote — there was no
such Cession in existence — here then was a want of
title — this cession, is only a procuration, which was
delivered to Defdt & which he was bound to know the
value of it — this was of no avail, because at the
time Mde Lacote made this sale to Defdt — Elie
Lacote was dead, & the pr. of attz ceased to have
effect — then can therefore be no prescription under
such title, which also shews bad faith — Poth.
Prescript. Nº 28 — 1 Bourg. p. 1086 — Rep. vo
prescrip. p. 315. 316. — Lacombe vo Prescription
sec. 3. Nº 1. — The Defdt has been asked on oath
if he had this acte de Cession, he says he does not
recollect ever having seen it — this is evident then
that he had no title to this part, & must carry a
proof of bad faith, as intending by the sale of Mde
Lacote to acquire prescription as the heirs —

Poth

Poth. Mandat. No 202. & suiv^s

As to the Exception en garantie — in this the Plffs are not bound — becaus they say, that Mad^e Lacote never sold the property in question to Defend^r — the property of Elie Lacote — & in this the part & share which Elie Lacote had in the purchase Mad^e Lacote made from Mr Caillebout, as the Community was then continued and inasmuchas no mention is made in this deed that she ever sold this 1/16 of Elie Lacote to the Defd^rs — Rep^re v^o Garantie p. 725. 726 — Poth. N 173. Vente —

If the Plffs are garants, it is only for 1/4 of the right & this claim for the other 3/4 will be founded —

By filing the transaction between Defd^r & the Seminary the Plffs do not admit the truth of what is therein said, but only the transaction that took place

Poth Prop. 406 - 416 & suiv. — Vente. N 276 — Rep^re v^o Subrogation — Poth Mandat. 59. 60. 213 — 3 Toullier. p. 379. — 1. Dunessois. 171. 183. Domat Lit 15. Sec. 3. Dom^e 8. p. 131. —

Argument continued till to morrow —

Saturday 14th June 1828.—

Prest.

Ch. Justice Reid & puisne Judges

Rolland v. Pothier

As to the exception of warranty—

As to the continuation of the Community art. 240 Cout. to shew that all persons are entitled to the continuation of the Community, & this right is transmissible to the heirs— the authority cited from Poth. by Dsp. does not apply— vide Lebrun Succ. liv. 3. ch. 3. dis. 2 No. 19. & seq.— But in Nov. 1795. Mrs Lavoie rendered an act to her children of the continuation of the Com3, & admit the right claimed.

As to the Renunciation of Mde Delanaudiere cannot be retracted— Rep. p. 136. vo Renc— Poth. Suc: 163. Lauren art. 307. Renusson. Prop. ch 2. dis 6. No. 2. p. 62. 63— 4 Fr. Gr. Cout. p. 661— 2 Henry. liv. 6. quest. 24. p. 758. 9— Lemaitre ht 15. p. 554— Lebrun Suc. liv. 3. ch. 8. dis. 2. No 47 & 48—

Mde Lavoie was heritier mobilier of her son Elie but the Constituts are not to be considered as moveable & she could not inherit them— Lemaitre p. 488— Renusson Prop. p 31. No 20— ch 1. Sec. 10.— Id. ch. 5 dis. 1. No 6— 1 Bourg. p. 425.— Tit. 14. Sec. 15— vide case Forsy. Fresnier. Vs Lavoie— where it was judged to be foncier

The Defend ought therefore to be held specially to render an act of their Constitute —

There is no proof that Defend. ever made any transaction with Made Delanauden & pd her all her rights —

The Defend. in his answers to faits dart. says he never had means the act of Cession of the rights of Eli Lavoie to Made Lavoie & that he is not bound to produce it.

That Defend was not authorised to sell the real Estate of Eli Lavoie, although he was authorized to sell the property of Made Lavoie under her will — That the Plffs here claim the property sold to Gibb — but in the sales made to Clarke & the Plffs claim their share of the monies — The Defd says he is not in possession of this property & not bound to account for it — but if he put himself out of poss.n by an improper act to act his liability

Poth. Vente. N° 272 — Rep.se & Subrogation p. 413. —
Poth. Prop. N° 406. —

Defend has alledged that Made Desmarais had confirmed the Sale to Gibb — but there is no proof of this —

That the Exceps. peremptoire but pleaded by Defend must be considered as a plea to the merits of the Case & judged according to the Merits of the Case —

M.r Bedard in answer — Requests the Court to distinguish the demand of a portion of the Fief — from that of the account demanded — which are two distinct objects. —

Defend purchased the land en roture, but afterwards acquired the Fief, in w.h the Plffs have no right — the Defend. purchased in his own name, & never was nor can be considered to be the Mng.r gestor of the Plffs. —

Two demands here inconsistent — Resp^ts v^o action Herard shews what the action here ought to be — The action neg^m gestorum — is of a different nature, & the purchase made by the Defend^t does not carry with it the necessary implication that he was in this respect acting for the Plffs — The possession of the Estate of Mad^e Lacote taken by Defend^t did not make him answerable as an agent of the Plffs, as he had a suffic. title for his doing so, his title of Executor — and the Plffs claim cannot be directed only ag^t the Estate of Mad^e Lacote —

The Plffs here insist that the land in question was always in fief, and if so in fact the law excludes the Plffs from all share in it — The Plffs aware of this, then change their ground and make their claim on the land as en retour — but they cannot be allowed thus to change —

Defend^t was never prov^d of Elie Lacote — nor of the heirs of Elie Lacote — if he acted after the death of Mad^e Lacote in the property left by her, it was as her Exec^r, & he cannot be considered as an agent of the heirs of the late Elie Lacote, only as holding the property of Mad^e Lacote under her will — but in regard of his own individual estate, he cannot be considered as the Procureur of the Plffs — The authorities cited by Plffs do not apply, see Poth. Mandat. N° 59. — & Domat —

307

The act of procuration from Elie Lacote was found in the poss^n of Mad^e Lacote & among her effects after her death, & entered in the Inventory — There was another act apparently of the same date, but this paper was never rec^d by Defend^t — nor is he bound to produce it — he who alledges bad faith, must prove it — & the presumption must be

be in favor of the Defend— under his purchase of 1803— of— is a sufficient title upon of to ground his plea of prescription—

Had Mad. Lacote even sold what really was not her own, even what she knew was not her own, yet unless the Defend— can be shewn to have a knowledge of this at the time— he is entitled to the benefit of his purchase— and the heirs of Mad. Lacote must guarantee the title— No proof on this point has been made as Defend— & he is not bound to prove the right of his Seller— unless bad faith has been made out

The transaction between the Defend— & the Seminary is valid and Defend. is entitled to all the benefit of it The act of 1768 ~~was~~ must be considered binding until set aside— this act subsisted until the time of the above transaction— and as the Seminary of Montreal could sell the Fief to the Defend. how can the Plff claim any right in it, after such a sale by the Seminary—

What by the sale, Mad. Lacote sold all the rights whatever they were of Elie Lacote in the Fief—

By the 240. art. of the Coutume, the children may demand the continuation of the Com.ty— but they must claim and this to be entitled to it— Poth. & Fer. This ought to be demanded during the lifetime of the Child entitled to it— Poth. № 300 Com.ty— here the continuation of the Community was never demanded—

The act rendered by Mad. Lacote of the Continuation of the Community was made only to Mad. Pothier, and on a certain condition— but it does not touch any right nor shew any claim on the part of Elie Lacote—

The Rents constitues are not to be considered as a realty
Poth. Tr. des Propres. p. 269.-

No 1500
Alger
vs
Sanburn

On a re-hearing -

Mr Buchanan for Defend - it was necessary for the Plff to have stated the nature of the debt pl was due to Plff by the late Saml Burnham, as the Judge. was not rendered as him nor of his legal heir - but of a Curator -

The Plff cited an authority from Lebrun to support his action - but this authority is not founded on any Arrit, nor on any principle of Customary law - he has had recourse to the Civil law, but has mis-cited it & his opinion therefore cannot have weight -
The law in 2d book Code title 3 - is totally different from what is cited by Mr Lebrun - The law cited from 4th book tit. 39 - is contradicted by the following law Mornac on this law says there is no such law as that stated by Lebrun - There was never any privity or contract between the Creditor & the purchaser of the Estate - & consequently no action - Pothier 20 Inv. tit. 17. § 1097 - Pandects - gives this very law & lays it down differently from what he does in his traité de Succ - Argentré p. 643 -
The 334 - art. settles the manner in wh heirs should pay the debts - p. 1035 - Gr Com. de Fr. says the purchaser not bound for the debts of the succession -
2. Fer. Gr. Com. art 108. p. 146 Purchaser not bound

Dec.

Dec. de Droit. Vo Vente de Succession — The heir continues personally liable to the Creditor, unless the purchaser consent no action can be brot. of him — There may be many means of defence within the knowledge of the heir of the purchaser cannot know, besides the great inconvenience to accrue to him —

over

No 668
Foley
vs
Donegany

On Report of arbitrators. —

Mr Sweeny for Pltff — two reports before the Court — prays hom. of the report of the two arbitrators — Objects to the paper annexed to the report of Mr Dowd, the Defendt. arbr — and contends that Pltff ought to have Judgt on his Incidental demand —

Mr Bleury for Defendt. There is a motion to set aside the report of the two arbitrators, as they have not finally determined upon the Incidt demands — The work has not been well finished and of this a report ought to be made — the two arbrs have not said so — the Case ought to be sent back to the arbitrators —

Sweeny in reply — prays Judgt

No 159
Hart
vs
Bowron
et
Lukin Gst

On law on action en Garantie —

Mr

№291
Wright
v
Bingham

On Report of Arbitrators —

. Pltff asks for homologation of report

Mr Sweeny for Defendt — It does not appear that the report was ever filed by the arbitrators —

Mr Scott for Pltff — The report was published last term day rule of the Court —

№1222.
Todd —
v
Drummond

On Law —

McCord for Defendt action irregular — The Pltff states himself a Curator to a vacant Succession of a deceased partner, without shewing anything in the declaration of the nature of the action

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№1063
White.
v
Metzler

On Pltff's mo. for a contrainte par corps against the Defendt in satisfaction of the Judgt. rendered against him —

Mr Boston for Pltff states that diligence has been done on the exon issued out of Defendt goods & lands without any satisfactory result — & present motion now made —

Beauvais for Defendt — There is no law that authorises this proceeding — The ordr 1667. tit. 34. art. 2. — grant the Judgt rendered here was not for dommages & interets & if it were, it amounts only to £7.10 — This sum was not adjudged to Pltff as damages —

That

Resp^m. v^o Contrainte

The damages & Costs can be united only in cases of a Criminal nature

H. v^o Dommages

That the Costs amount ought to be taxed at £6. 9. 9 & not the sum demanded by Pltff. by the taxed bill he produces — The bill of Costs has been taxed as in a Cause above £30 — qf is an error — That the Costs cannot be joined to the damages, as the contrainte is granted on each point separately — as to the subsequent costs accrued in the discussion, the Contrainte is not allowed as the reason of the law does not apply — But were even this the Case the costs here were wrongfully incurred by the Pltff by seizing the property of another person as that of the Defend^r —

Boston for Pltff. the only question here is whether the Court will allow the Contrainte for the sum of £5 for the house rent — but as to the damages & costs they may be united so as to make the amount of 200^t — That the Costs here were rightly taxed, and until a relaxation had been ordered, the bill must stand — the Costs are an accessary & may be added to the principal — 2 N. Denizt. v^o Dommages p. 172 —

N. Denizt. v^o Dommages p. 172. N^o 9.

Beaubien for Defend^r — refers to authority cited from Denizart, as being held contrary to the spirit of the ordonn^ce of 1667 — & so held by the same writer, N^o 10 — Defend^r never gave in a description of the realty seized —

Boston — for Pltff. cites from Bornier on article — to shew that costs & damages may be united —

Monday 16th June 1828.

Prest.

Ch. Just Reid & 3 puisne Justices

Bent vs Spragg & Howard oppt

On objection taken by oppt to the testimony of a witness produced by the Pltff

Rolland for Oppt The wit here is the atty ad negotia of the Pltff, & at his instance the attach in this cause was sued out — cits. Serjeant. tit. 13 de Replevins. art. 1. lit. 3 —

Walker for Pltff. The wit is an agent but not an atty ad negotia of the Pltff — That the atty such as here contemplated is not excluded from being a witness — the law does forbid the receiving the agent as an attorney — Dauby. p. 55 — Poth. Obl. Nº 825. 6. 7 Repr vº Temoignage. p. 69. — Poth. Pandects. Lib. 1. tit. 3 Lw. 3. p. 53 —

25 Lw. 25 Law de testes

Disp. 3 part. p. 43 des Temoins —

Domat des preuves Lw. 3. tit. 6. sec. 3. art. 23. —

Serjeant. tit. 13. art. 1. no. 3. —

Rodier —

p. 1048. Selw. N.P. 2 Sh. 1069. 2254 Bac. — 163. 1 T. Rep. — Pl. Ev. 49. 50. — Laws of Scotland Ersk. Instit.

Rolland in reply — where the party is agent in one case only the prohibition is stronger — That the wife is agent of Pltff in all cases —

Nº 89.
Ex parte On Petition of B. Keenon

on Rule ag. Wm. Gibbs Pell — appr

№ 177.
Garden
v
Snowden
&
Garden
claim

On Pltffs mo. that property arrested be delivered up on giving Security —
Pltff prays — until till to morrow to hear Depr

№ 595.
Davies val
Pickel
&
Dorezi Claim
&
Grant —

On motion of Dorezi that monies in the hands of Mr Grant be pd over to Sheriff
Sewell for Mr Grant — states the monies have been paid in conformity to the Judgt —
except a sum of £34 — due to the late Sheriff which he prays he may be authorised to pay it over to his heirs —

Mr Rossiter for Curator — admits pays made by Mr Grant, except as to £41 — of the late Sheriff is not entitled to, as he was already paid all his fees —

№ 1219.
Robert
v
Fournier

On Defendr motion that Cause be dismissed on default of his having given necessary Security —

Mr Blenny for Pltff states that the action cannot be set aside —

№ 1220
Clarke
v
Young
&
Contra

Action for breach of Contract —
Buchanan for Pltff — Submissive to arbitrators Report — Prays for the confirmation of the award

award and Ind. accordingly. without taking into consideration the agreement with Mr Frost as to sending the Ship in question to England there to be sold and the proceeds applied as therein stated — this Instrument is introduced irregularly before the Arbitrators, and is made between strangers to the Cause — this cannot be admitted as affecting the rights of the Plff —
1 Bur. 277 — Com. Dig. Vr. Arbitrement. (I). 9. 210 note —

Rolland for Defendt — There are two distinct Defendts in the Cause — the Defr Young, who has pleaded several facts also an Incidental demand — On his part he objects to the award that the Arbitrator was not regularly continued & it ceased for a length of time to operate —
2d The principal & Incidental demand were both submitted to the Arbitrators, but no notice is taken of the Incidental demand in the Award, which is irregular & Arbitrators ought to have awarded upon both demands —
3d The Arbitrators have stated a fact which must prevent any Judgment being entered as the Defendts Captors — they have not before the Court a Contract made by one Robt Frost, the Attr of the Plff, who acknowledges having received the Vessel in question to be sent to England to be sold — and after the Arbitrators do not state what the monies arising from the Sale of this Vessel & proceeds of the freight to England, nor do they shew that Mr Frost has accounted for the monies in his hands —

The

The vessel in question has been attached and according to the conclusions of the declr. the undersigned must be declared good & this vessel sold — yet this vessel appears to be gone out of the poss.n of the Sheriff & been taken away by Mr Ford the agent at whose instance this vessel was attached — & this Court can give no Decr until this vessel be in their possession

In regard of the Cautions — It is to observed that their obligation must be strictly construed — now the vessel here was to be 340 Tons — yet the parties without the Consent of the Cautions the vessel was made of 396 Tons, qr. must have delayed the finish of the vessel & the day of her delivery, on qr. the liability of the Cautions is founded —

The vessel was attached in the hands of all the Defendrs without distinguishing whose property it was — qr. vessel has been withdrawn by the Pltffs agent without Defendrs consent, & has been disposed of by him — This must discharge the Caution —

Mr Sol. Genl in reply — a motion was made & consented to by Defendt on 1st April last to extend the power of the Arbitrators to 1st June inst —

It will appear sufficiently clear that the Arbitrators have examined all the matters in contest between the parties & determined upon the Incidental Pltffs demand as upon the principal —

There is no evidence that Mr Ford was the Attz of the Pltff when he made the agreement laid before the Arbitrators — but has any injury been done — on the contrary it was for the advantage of all the parties —

The

The vessel was as much in the possession of the Curateurs as of the Defend. Young. & they must have consented to the taking away of the Vessel, as a thing for their benefit — Then is no novation here but by the consent of the parties —

—

No. 754.
Richardson
vs
McKenzie

On demurrer to plea —

Mr Buchanan for Plff. has objected to the irregular manner in which the Defend has pleaded — Tallier Rougers Droit Civ. Franc. 7 Vol. p. 402 — The reconvention here is inadmissible as the Plff's demand which is for a liquidated sum of money. —

No 776
Dupré
vs
Lusignan

action to compel Defend. to open a certain street. — On merits. —

Rolland for Plff. the late Mr Lusignan sold certain lots & established a street to be laid out for the convenience of the purchasers — the Plffs lot is bounded in front by the street Lusignan —

Mr. McDonell for the Defend. The street Lusignan never existed — to show what is understood by a street cites the Provincial Stat. 36 Geo. 3. — cites regulations of Police respecting opening of streets — refers to P. Verbal of Mr Grey bounding a lot on the rue Lusignan. — That a barriere has always existed on that street for upwards of 40 years.

Rolland for Plff. there is a P. Verbal of establishes a street of 30 feet wide —

№ 1140
Fairchild
~
Cushing et al

On demurrer to declr

Peck for Defendr declr insuffe — not alleged that ever any Ca. Sa. was taken out or lodged at the Sheriff's office. — Stat. 1825 — which states what ought to be the conditions of the bail bond —

Mr Sol. Genl cites case Harwood. v. Griffon when this question was determined — In this case it is not necessary that a Ca. Sa. should be issued, because the debtor is not in gaol, but committed to the custody of his bail. —

№ 1343
Vaughan
~
Haynes

Cause up parte

Dorsoll for Deffr — no allegation of an indorsement, on wch costs accrued by which only the Cause comes within the Cognizance of the Court. —

№ 1516
D. Smith
~
M'Gill —

Action ~~to recover~~ 176. & 177 art. of Custom of Paris. for value of a quantity of hats qt came into the hands of the Defendt as the property of a. Portevins, a bankrupts —

Gr. Cont. on 176 & 177 p 1317. 1325. 26 29. 29. 55. 1331. 1378. 9. 1340

Walker for Pltff — The hats were shipped from Scotland to Defendr — who was bankrupt & he made over the 6 boxes of hats to his Trustees by a supplementary deed. under it the Defendt took possession & have disposed of the hats, the value of qt is now demanded by the present action — The answers of the Defendt on oath & articles.

Louisiana Office 3 Book ch. 8. № 15 Troncon on 176 art. Coutts —

Lomt. Litter P. 19. 1. 5. 6. 19. 23. № Bacquet Droits. 344 page

The only difference in this case from that formerly adjudged is that the property came to the hands of the Trustees and was converted into money before the Pltff could exercise his claim, & on that account he contends that the value of the hats should stand in the place of them —

Mr Scott for Defr The pltff can have his preference on the effects themselves and not on the proceeds of the sale — Where goods are sold & turn'd into money a distinction also is to be taken, — Ex. Court Bankruptcy 176 ant. Cont. p. 1326 —

Mr Buchanan cites an authority from Bacquet on the same point —

Mr Walker for Pltff the Trustees can set up no better title to the property than the bankrupt —

1.

No 1441 Flaherty vs Fisher — } Rule Nisi for New trial discharged

St James & Charbonnaux & al' — } action dismissed

Tuesday 17th June 1828.

Pres.t

Ch. Just. Reid & 3 puisne Justices.

Bent
v
Spraggdale
&
Howard opt

Testimony of James Holt, being the agent of the plaintiff in this Cause, was rejected.—

Holt
v
Walker

W

action dismissed.— Pyke—

No 311
Bennett
v
Drummond
&
E contra

On mot. to dismiss Incidental Demand

No 920
Rochbrune
v
Labranche

On Defend.rs mo. for delay to call in Garant—
Mr Cas. Bruneau for Plff. the affidavit not sufficient—

No 1211
Bistodeau
v
Coursolles
&
Vandandaigue
T. S.

On petition of Vandandaigue praying that he may be permitted to fyle a regular Civile & that pet.r be admitted to make a new declaration, as monies have been attached by other Creditors besides Plff.—

No 953
Adams
v
Sayer

action on 2 Engt. in Jersey Country
Stanley for Defdt. £5— pd. on acct—
Bourret for Plff— this money not pd. on this acct

№828
Kirkland
Curtis

On Law
Boston for Defendt has demurred to the action — The action brot for a Subscription for building a Church, Pltff has no interest in the money nor any right to maintain an action
Adams for the Pltff it was agreed that the Subscribers should pay the money to whomever should be appointed to collect it — a meeting of Subscribers was held & the Pltff appointed —

—

№275
Clergy Revns
John Clarke

On Law —
action for arrears of rent on a grant of land to Defendt

Boston for Defendt — Pltff cannot obtain a decree for rent, but only to rescind the deed of lease in case of non-payt —

—

№1042
Bullis
v.
Douglass

On Law
Boston for Pltff. The matters pleaded by the Defendt are not sufficient to entitle him to hold the land —

№175
Archambault
v.
Sannot

on Law
action for Decouvert — Voismaye Journal 1 Vol. 200
L. M. Viger for Defendt — Repertoire Arbre. 561 —
Augt. 16 June 1713 —

Inst. 8 Fev. 1732 – Hogan –

L. M. Viger for Defnd. This is an action for Decouvert between Co-heirs in the same land – the Pltff here concludes for decouvert suivant l'usage – but it is not stated what this usage is – This usage applies only to different Concessions, but not to different portions of the same Concession –

Bourré for Pltff – the Pltff demands here what is usual between lands of the extent of that possessed by the parties, each possess 1½ acre of land –

No 652
Warwick
vs
Freeland

Comments – Report of arbitrators –

Boston for Pltff. the arbitrators have noticed a Promissory Note, of Defnd ought to deliver up or pay –

M Walker for Defnd – there is only a balance of £10 due to Pltff. & they want a Judgt here of £10 for this Note so as to secure Costs above £30 – Defnd. for this Note so as to secure Costs above £30 – but all the Pltff can have is Judt for costs as in the Inferior Court –

No 851
Edwards
2306 Deals
Masts
&
Claimants

action founded on 6 Geo. 4. ch 114 – for forfeiture of articles coming from the United States without paying duty – seized also as having been made a means of conveyance –

M Scott for Hutchison – claims the masts, of which cut on head of Chateauguai river a permission obtained to bring in 200 masts, were cut in the State of New York, & duties were secured – It is no proof that a great part of the masts

were

were cut in Lower Canada — only about 18 were cut out of the Province — The importation was legal under the precaution thus taken — The 57th Sec. of the Stat. cannot apply to the Masts as being a Carriage — vehicle or boat. —

Mr Driscoll for Martin — is willing to pay the Costs of duty on Court ~~cause~~ giving up the deals —

Mr Ross in reply, the note of hand given to the Collector could not apply to any particular Masts it was meant more ~~than~~ as a means to detain — The raft of Masts here comes under the description of a vehicle used by the Statute —

No 1221
Filgiano
Sentenne
} Action for damages for breach of Contract in leave service of Defendt

Bleury for Defendt The Pltff failed in his Contract, as he did not furnish board to the apprentices as he was bound. — No damages are proved —

No 149
Jacobs
Bender
} Action en separation de biens —

Bleury for Pltff — moves to reject the testimony of 2 Wits as irregularly made & inadmissible —

Mr Mondelet for Defendt — moves to reject the testimony of certain Witness produced by Pltff & without Defendt knowledge — No proof of any debt due by Deft — the 3 Indts filed by Pltff appear to be paid. —

& Objects

Objects to the introduction of these obligations of the Defendant filed by the plff after the enquête closed

Mr Bleury in reply. cites Rép.ve v.o Sép.n de biens sec. 2. Domat. 1 Vol. p. 117— 1 Bourj. 704—

The verbal testimony is suffe Dunty. p. 200. Lebrun Comte 322. No 6. 7. 8 & 9—

No 711
Magnan
& Reeves

action of account—
Pelletier for Plff— report made by arbitrators on the account rendered by the Defendt— admits the sum & prays Judt for balance — case submitted by Defendt

No 111
D'Aout
& Boule

action on deed of sale—
Robin for Plff— admits payt of £6 — asks for Judt. for bala on opposing seizures
Mr Cherrier for Defendt There is a mortgage for Seigniorial dues & in such case the Plff ought to be held to pay the lods & ventes before obtaining Judt— & Defendt ought to have his Costs—

No 1342
Raymond
& Langevin

on demurrer—
Mr Mondelet for Defendt— The declaration does not contain enough to maintain the action —

No 346
Gales & al
v
Marshall

On plea of abatement of
Bleakley for Pltff. the plea pleaded here
is insufficient, and Pltff has admitted it — and
contends that Isaac and John is the same, as
the Defendt is a foreigner —
Mr Sol. Genl. for Defts —
10 East. 83 — 2 Taunt. 401 — invasion of name —

No 1655
Dufaut
vs

Wednesday 18th June 1828
Present
The Ch. Justice & puisne Justices

~~No. 2035.~~
No. 876. —
De la Bruere
v
Papineau
&
Desrivieres

On Defendts motion that another person be
named as Exor put in office in room & stead of
Mr Duvert —

No 115
Wilson
v
Spencer
&
Pierce mis
en Cause —

On Pltff motion for a Conclusit of the mis en
Cause for taking away a horse under seizure —
Walker for Pierce — says he purchased the horse
for £35 — is willing to give up the horse, saving
his recourse —

No 81
M'Gillon
&
Burton

on Pltffs mo. that report of Surveyor be set aside as he has proceeded without giving notice to the parties

1370.

Beaubien for Pltff — There are 2 Causes between the parties in the Cause No 1370 — he has filed the notice he received from the Surveyor, but in this Cause No 81 — he received no notice — There is an affidavit produced by M Stevenson the Surveyor, wt. a note, but it cannot be considered as a notice in this Cause No 81 — The Pltff Witnesses has given a contrary affidavit — It is the Defendts fault not to have given notice, as he directed the Surveyor to proceed, the Surveyor is not required to give any notice to the parties —

Rolland for Defdt — This is not an Interlocutory but a final Judgt — no notice was requisite in this case as the Surveyor acts in execution of the Judgt — The boundaries were to be planted at the joint request of one or other of the parties —

Mr Beaubien — The words of the Interlocutory do not preclude the necessity of notice —

No 1374
Millar &al
&
Fraser —

On Law —

action by Pltffs as indorsees of a promissory note drawn by Defendt — To this action an exception has been taken that when note was transferred it was not indorsed with a full indorsmt — The Pltff have demurred to the £. 3 - 4 plea — The 5th plea is in compensation. — vide Reply 2d Endorsement — The indorsement may be

filled

filled up by the bearer — The Professors says something
under the code Napoleon — 1. p. 101. & 108 — N°. 117.

M° Rolland for Defend^r — The opinion of the Court
here must be the same as heretofore, namely that
evidence must be adduced — The pleas here are
sufficient — if the facts are true — That the Note was
sent to the party to receive the money & not to transfer
it, and that no value was received — The Note
cannot be negotiated by a blank endorsement, as the
words of the law are clear to this effect —

N°1500
Alger
vs
Sanburn

M^r Day for Plff. cites. Poth. Pand. Liv. 18, tit. 4. law
1^st he who purchases a succession, purchases with
the burdens of it — Cujs. Just. Liv. Liv. 18 tit. 4.
2^d law §. 9 — Same Law §. 17. & 18 — even the debt of the
heir is restored to him when he sells the succession
so for the Roman law., of however ought not to be
admitted here as in time of Justinian. but as received & admitted in France
1 Domat. p 340. part. 2 book 1. tit. 1. Sec. 13 — the purchaser
holds the place of the heir & bound to same burthens
Poth. Vente. N°529 — Rep^re Droit. Succ. p. 550 —
Poth. Suc. ch 5. p. 576 — in 12°. p. 246 in 4^to — — N. Denizt. 4 V. 1
p 392. V° Cession de Droits Succ — Lebrun — p. 638.
& Gr. Coust. p 1009. art 334 — N°3.

If a succession could be sold in this way the
Creditors would run the risk to be deprived of their
rights — This action might have been brought on
the words of the Deed of Sale —

As to the question reserved by the Court as to the
liability of Defend^t under the title under pl^ff

him

here claims — The Ldy was rendered of the Curator to the Estate & Succession of the late —
this Curatelle we must presume was regular — and all proceedings ~~as equally~~ of the Curator are equally valid as of the heir — Rep^re v^o Curateur. p. 197 — if the heir be absent or unknown all proceedings of the Curator will be valid — also Domat. as above N^o 8. —

M^r Driscoll of counsel for the Pltff — The parties ought to be bound to execute in good faith the Contract they made, that is, the Defend^t undertook to pay the Creditors of the Succession — There is a personal right given of Defend^t —

M^r Buchanan in reply — still persists in the opinion he has urged, that the Civil law quoted by the Authors do not bear them out in their opinion, the texts cited, from the Code de partis book 2 tit. 3. 4^e book Ord. tit. 39. 12^e law — This law applies to the Fisk, & not to individuals — refers to the opinion of several Commentators as this being the Case — Cujas — Mornac & others — D'argentré — The heir by his Contract could not give a greater right to the Creditor than he had before — one man cannot stipulate for another — no man can acquire rights but by a Contract to which he is party — The authority from Gr. Coust. 4 Vol. p. 1009 — does not go the length contended for by the Pltff — see p. 146 — 2 Vol. Gr. Com^rs — where the principle is clearly stated & in conformity to the Citation from the Civil law — Dec. de Droit. Fr. — Vente de Succ^n —

There

There is a defect in the declaration which cannot be cured as the cause of the action of the Curator should have been set forth so as to give the Defdt. an opportunity to answer thereto.

No 1159
Gerrard & Ux
vs
Cuvillier

action on note — Defdt prays

No 71
Petition of
Fenton Penn
& Ux
vs
Lindsay

On Petition that Defendt be held to deliver up a certain Instrument to be deposited among the Minutes or Notarial of the late Mr Lindsey Notary —

The Defendt has produced some affidavits — one of Mr Proctor, which contains Misstatements & the other from Mr Kimber who wishes to explain away his former affidavit — cites Repse vo Acte — fo. 141. — 139 —

Mr Day for Defendt — The Statement of the Petn is not suffte — to warrant the conclusions thereof — The acte was not ententeyee — Repse Vo Acte — fo. 138 — 1 Proc. Civ. fo 12 — note (d) The allegations are not proved — The acte was never signed by the parties so as to make it available as an acte sous seing privé — refers to affidavit of Kimbert — The Defendt is not in possn of the act having given it to Proctor —

№ 177
Garden —
Snowden —
& Garden Intervs

Dongany
& Maitland

The Defendr states that issue is not complete —
Plff submits case —

№ 1444
Foreter
v Christen

On report of Arbitrators —
Scott for the Defendr — objects to the report of the Experts —
1. Experts not sworn as such — but as Arbiters —
2. Work not done according to agreement —
Mr Lacroix for Plff — The Experts were also arbitrators — they were sworn — they have done Justice —

№ 944
Godue
v Meunier

action to rescind an act passed contrary to 283. art. of the Custom —

283

Cause ex parte —

Mondelet for Defr — The Plff has no right of action, she having renounced to the Community & has therefore no longer any interest — The act here is not a donation but a Sale —

Roi for Plff — The act is entitled Donation — must be considered as such —

Thursday 19th June.—

Pres.t
Ch. Just. & Justices Fletcher & Uniacke

№ 1829 St Geo: Dupré v. Yule—	Pltff's motion that Sheriff be authorized to sell to the amount of the other executions returned as well as that of Pltff.—
№ 1031. McKie v. Chantal	Judgt for Pltff £10 damages & Costs—
№ 1090 Dom.s Rep.s v. P. Laroix	Judgt that Defend.t pay Costs of rule & obt a/thm—
№ 771.— Dupré v. Lusignan	Judgt for Pltff
№ 1787. Finlay— v. Bedard.	Judgt for Pltff

Friday 20 June 1828.—

Prest

Ch. Just. & Justices Fonblanque & Vaisey

No. 1063.
White. —
Metzler. —

Rule for Contraints absolute. —

No. 71.
Ex Parte
On Petition of
Turton Pennell

Contraints granted according to conclusions of the petition with Costs —

October Term 1828.

Wednesday 1st Oct.

Prest.
Ch. Just. Reed
Justices Pyke & Umiacke.—

No. 70.
Lacroix
v.
Hetrick

on evocation from the Inferior Court
The Plff contends that the action is in Complaint and cannot be evoqued —
Swift for Defdt. There is a question of title here to the land —

Thursday 2d Oct

Prest
Ch. Justice & Justices Fourke & Pyke

No 1429
McFie
v.
Currie

on Plffs mo. to have enquete closed —
Mr Sullivan for Defendt states that the Defendt has witnesses to produce, but it was impossible for her to know when her Witnesses could be examined —

No. 1737
Fowler
v.
Bistodeau

on Plffs. mo. for costs & Cost. —
Blowy for Defdt cause ordered only yesterday

№ 1637
Porteous
v.
Jackson

Or Defendts mo. to quash the Capt. ad Resp. as affidavit is insufficient — ch. Durand v. Rolland.

Mr Sewall for Plff — There is no instance where evidence is allowed where the affidavit is positive — as here —

№ 1652
Jones
v.
Marcoys

Or Defendt mo. to quash the writ — as order to the Sheriff is to take Security for a greater sum than that sworn to — cites case of Gruden v. Snowden. —

Walker for Plff. The Defendt can suffer no injury by it — The sum sworn to is somewhat less than that mentioned in the declaration — The Capt. is correctly dated and was the sum sworn to enough to authorize it

№ 1803.
Rodrin
v.
Colclough

vide —

№ 1800
Richardson
v.
Carpenter —

Or Defendt mo for delay to plead — on the ground that the land in question belongs to the King and not to the Seigniory of Beauharnois —

Mr Sol. Genl for Plff no sufficient grounds of delay shewn by the affidavit —

№ 2035.

Blestein
M'Kenzie

On Plff's motion for a contrainte agt the Defendt as Curator for not paying the amount of the monies in his hands to Plff—

Ross for Plff. cites Rep. vo Contrainte. p. 595—599.

M'Sol. Genl. for Defendt— There is no Sup. here agt. Defendt carrying a contrainte par corps. nor no service of such Sup. on him, which was necessary before it can be obtd— Code Civ. art. Tit. 34. art. 2.— art 10. shews how this contrainte is to be obtained— This is also applicable to Curators— 2 Pig. 54— Rovent. 236— 1 Pig. 882— Dalloz on 34 Tit— shews all the formalities—

M'Ross for Plff— notice of Sup. was not necessary when Defendt was a party to the Cause—

№ 1152

Armour
v
Brown
Smith. by
Rep. &c. &c.

On Defendts motion to set aside an entry in cause—

rule to 3d—

Friday 3d October 1828.

Pres!

Ch. Justice & Justices Fowler & Pyke.

No 364
Berthelet
Divins

On Pltff's mo. that same Arbitrators do proceed to ep. the matters in contest — new arbitrator to be named.

No 780
McKenzie
McGillivrad

On pltff's mo. to prolong rule of reference & to name another Arbitrator in the room & place of Mr Turner who refuses to act.—

No 1416
Nelson
Beaufils

On Dfts mo. to forclose pltff from filing papers which he was bound to file on the 1st inst.—

Mr Sweeny for Pltff, action for recovery of money on sale of land — Dft admits — but demands for certain Letters Patent.—

No 1405
Barcille
Chevallier

action on an acte de Cautionnement — Mr Dorion for Dfts says he submits con

№ 1152.

Armour
vs
Brown
&
Smith, jun
sup. d'Instance

On Defend? mo. to annul an order of this Court of the 20 June 1825 which was entered without consent of Defend & without his knowledge as the supris d'instance was never consented to by Defd.

Beaubien for Defend The Court has been led into an error by the false assertion of the said Smith, who was interested in obtaining the entire satisfaction of a Jud. of 4th a great part had been paid —

M Sewell for Pltff — No cause here shewn, that there has been any error or want of consent — it is evident that a rule was obtained founded on the above Jud. of 20 June 1825. on which a contest ensued, & when this objection ought to have been made — There is besides no proof here of 4th can be admitted of the record

—

№ 1427

Cameron
&
Cameron

On Pltff. mo. to have the enquête declared closed. in so far as regards Owen Cameron one of Defds —

Mr Sweeny for Defds The Defd is a merchant, & furnished articles to Pltff in pay. of the note — his books a good evidence —

—

№ 1247
Clergy Reserves
v
McMillan &

On Defts mo. to rescind the rule for Plff to proceed ex parte, and that Defendt be allowed to plead —

Mr McCord for Plff — the plea was long overdue before the order obtained precluding the Defendt — he consented to receive a certain plea subsequently, but

№ 490
Tessier & Lavoye
v
Sarrault &

on Defts mo. to set aside the inscription of the Cause —

Mr Blemy for Defendt — Cause returnable the 4th Feby. last — about end of Augt last Defts consented that should pyth his exhib. as of the 4th Feby — Augt 2 days rec'd notice to pyth his plea in 3 days — & in order to get time to pyth his plea — agreed that Plff should inscribe his cause on the Roll d'Enquete — the Plff inscribed his cause on the Roll of causes by default — which was contrary to the intention of parties —

In the Cause between the same parties, on an opposition made by Defendt — Defts ~~now move~~ has filed 2 oppositions & move to be permitted to appear for Sarrault, & that the 2 oppositions be united & that he have till to morrow to pyth his moyens & that the cause be struck from the Roll of Enquetes ex parte

Mr Cross for Plff — the Plff's proceedings are regular, & Defts mo. ought to have been to pyth a plea —

In the case of Apps — filed by Mr Young. No moyens were filed under the notice; & the Cause was inscribed ex parte — & there is a mo. here to have the enquête closed —

In the opposition made by the Defend. here the Pltff has moved to have it dismissed —

No 1803
Rodier
Col Court

Ou mo. to grant writ as being in French
Rolland for Pltff — Defend — shews no law for this mo — Pltff states that he is a British born subject — so are the greater part of the Kings subjects — the general practice here is to issue writs in French as well as English — The mo. appears not founded on the Ordre of 1785, but upon principle that every writ must be in English

McCord for Defend — contends that the general principle ought to be admitted that every British subject ought to be sued in the English language — Justice in the British Dominions is administered in that language

—

No 1484.
Thain.
Robertson

Ou Defend mo. to oblige Sheriff to receive an opposition presented to him within the time prescribed by law —

Bedard for Defend — question here as to the hour at which the opposition was presented — being after office hours —

Mr Sewell for the Sheriff — This case is of importance to the Sheriff as well as to the public in regard of the duties of his office — There are certain hours of office — That Sheriff's fee was not tendered to him, he was not bound to have remained the oppos^n even within office hours. —

Blestein vs McKenzie } Rule for Costs discharged, the plff not having given the 4 months previous notice required by law, cpt applies as well in the Case of Curator as for the purpose of Costs & damages +

Saturday 4th October. —

Pres^t

Ch. Justice & Preston Justice. —

N°. 1640 Cartier Hubert } Cartier ⅋ al } On defend^r mo. for delay to plead. +

N°. 1128, 1679, 1808 Spalding ⅋ McGibbon } On defend^r mo. to unite these three Causes — Mr Sewell & Mr Bowen for Plff^s contend that the Defend^r should plead to these actions before

N°. 352 Tessier & Lavergne & Lacombe } On Plff^s mo. to reject the depositions of two wits produced by Defend^r.

Mr

Mr Cannon Brennan for Pltff – The testimony adduced is to prove payts above 100£ & is inadmissible

Mr Chevin for Defendt – This motion is premature the Cause not having yet been called on the Enquête roll – the Ends have reserved to determine on the Pltffs objection – which ought to be on hearing the merits – But the testimony here is admissible There is a plea of compensation by Defendt for articles furnished to the Pltff – on which verbal testimony is admissible –

Mr Brennan in answer – None of the articles mentioned in the Defendts act – are stated to have been delivered to the Pltff before even the testament was made on which the Pltff claims his legacy –

No 595
Stretton et al
vs
Cushing

On Pltffs motion to reject testimony of a witness examd by Defendt –

Mr Mitton for Pltff – action on a bill of sale of a raft of wood –

Mr Peck for Defendt – The Enquête is not yet closed & therefore motion is premature – The Sale here was a conditional one – money to be paid when the timber was sold – but it is not yet sold – Dunlop vs Russel. ap. 1823 – where a similar plea was maintained & testimony admitted ag. a written document – Pothier Ench. Ev. p. 440 – cites 6 L. Rep. 379 – 7 East. 200 – The Pltff has opened

a

a door for a Defend. to make this evidence by having gone into a proof of all the Circumstances of the Agreement —

M'Millan — Peake on Ev. p. 112. 115. Ex. 5. and p. 117. 123. —

Monday 6th October

Pres.

Ch. Just & Justices Fowler & Pyke

No 1881.

Valiere
v.
Cameron

} over to 8th

No 1446 & 1191.

Hart & al
v.
Sprague & al
&
Hutchinson
ppt

} On objection to testimony of Jas Henry Lamb produced by opport.

Buchanan for Pltff — certain Real Estate sued as belonging to Defts — is claimed by opport —

It appears that property was sold to Wm Hutchinson one of the Defends — The opport has produced Mr Lamb as a Wit to invalidate this title — objected.

1 This Wit. is security for Costs for the opport —

2 Is not only the attorney ad litem, but the Solicitor in the Cause —

3 That he has an interest in the Suit &c to receive a reward for his trouble in the business —

4 Is a voluntary creature —

On 2d. ground — as collateral in the cause that Wife is incompetent — It is only in cases of necessity when domestic testimony is admitted, as persons in the situation of the wife — Rodier tit. 22. art. 4. Jousse on Dt — Domat 1 vol. 215. explains what domestique is — Ord. 22. tit. 5. § 9. Pand. Poth. — Lacombe. vo Temoin Despeisses ed vo 1 Morin. p. 1319. to shew what negotiorum gestor is — Poth. Proc. Civ. p. 97. 2 Jousse p. 101 — Lafayette vo Temoin — No 29. 2 vol. p. 737 — Poth. obl. No 791 — Custom of Bretagne art. 163 has similar regulation on the subject — Dunod's alliance des Coutumes — p. 112 — ote Charondas — Argentré p. 504 —

1 Starkie 85 on Evidence — has made a remark on the applicability of a witness in similar circumstances —

Ab Poth. Garde on same ground —

The question here is, in whom does the title to the property here vest — not a commercial transaction — the parties being security for costs renders him — incompetent — The deposite offered of money to pay them costs comes too late — Pl. Ev. p. 58 — 1 Term Rep. 164 — 2 Esp. ca. p. 600 —

Mr Bedard for Appt —

From 1812 to 1 Jany 1825 Wm & Jas Hutchinson were in partnership as Merchts — in Montreal — of this there is the strongest evidence from all the transactions which appear — The houses in question were purchased with the money of this partnership by Wm Hutchinson one of the Defendts — and by the subsequent transactions between the parties it appears that this purchase was made on account of the partnership, refers to Exhibit No. 5.

and when property is purchased with the funds of the partnership, whatever the form of the act may be, it is considered as belonging to the partnership

In Feb 1820 Wm Hutchinson entered into partnership with Jno Sprags & Co and till their failure in July 1825 —

The business of the Concern of Wm & Jas Hutchinson was wound up in Jany 1826, by which it appears that Jas Hutchinson was their only Creditor — & it also appears, that the partnership of Sprags & Hutchinson owed about 20,000 to Wm & Jas Hutchinson —

The facts proved by the Clerk Lamb, regarding the affairs of Wm & Jas Hutchinson —

The Court is not intended as being security for the Costs, having monies in his hands belonging to Jas Hutchinson — now the Opposr applied to the Judge to be permitted to deposit the amount of his security which is still undetermined — to give the opportunity to Lamb the Opposr. stood to make the deposit of the sum for which he had become security

It can be no objection to the testimony of the Witness that he says a claim of the Opposr for his services remained on this Cause — but he has no direct interest here, as his claim will be the same whether the plff or Opposr gain this Cause —

Mr Sol. Genl in reply — This is a question of title & verbal testimony is inadmissible to change the nature of such title — this question could not have been tried by a Jury. — The motion for the deposit, is that Mr Lamb may be permitted to make it — & nothing could discharge him but entering a new security in his stead —

№ 1528
Lewis
vs
Mc Nie

on Defend. mo. for hearg on law
Buchanan for Defts. issue not complete
Boston for Plff – The answer is general

№ 656
Robinson
vs
Hart
& contra

on report of ~~arbitrators~~ experts –
Mr Buchanan for Defts objects to report
and moves to reject it – The experts
have exceeded their power in condemning the Defts
& have acted as arbitrators – nor have they proceeded
on the points referred to them – Rodrin. p. 313. tit. 21.
art. 8 –
Boston for Plff. the report is correct

№ 119
Charbonneau
vs
Pillet
&
Pillet Gart

Hearing on law – action by apothecaire –
Roi for Plff states, that Defts has
objected that he ought not to be held to
quit the land until the ameliorations made by
him & his auteurs be reimbursed to him – to
this the Plff answers that the Gart can claim
only what improvements he has himself
made, but not those of his auteurs & for
this he is bound only to give security –
By reimbursing the ameliorations made by the
predecessors of the Gart it would be reimbursing
to him a part of the purchase money paid by the
Garant – That neither the kind of impenses

Dumont vs. Old. Lindsay vs. Dequindre et al. Dec. Dont vs. Impenses:

and ameliorations on by whom they were made. Me Casimir Bruneau for Garnt. contends that his plea is founded — Poth. tit. Hyp. Repse vs. amelioration — Is entitled to the impenses made by his auteurs — Lorsier. Lor. 7. p. 169. — Lorsier Lor. 7. p. 169 —

No 1809
Roi
Raunts
2 Chilly —

On law
O'Sullivan for Defdt — not certain that the words in question were spoken of the Plff — not stated whether the words were used in a language understood by the those present at the time —

No 1599
Miller
vs
Eisenhardt

Action of trover — on law —
Henshaw for Plff — The Plff has demurred to the pleas of Defendt on insufficient — 1st Plea insuffte 2d That 2d plea it was put into his hands a titre de prit —
Peck for Defendt — moves to withdraw 1st plea — and contends that two other pleas are sufficient — Sig. 521. Revindication Repse Poth. Proc. p. 455 —

No 668
Foley
vs
Donegani
&
Donegani

On opposition of Dispt — on law
Sweeny for Plff — The grounds of the opposn cannot be maintained agt a liquidated debt due to plff by his Judgment — to this opposn the Plff has demurred —
Bleury for Oppost — The monies due to Oppost by Plff were advanced to him in the course of his work

and

and as the Pltff is en desonfiture, the money to be lost to Defendt unless this opposition be admitted —

No 303
Desrivieres
vs
M'Vicker

action for malicious imprisonment
on law —
Mr Driscoll for the Defendt

No 1473
Stern
vs
Hall

on re-hearing — as to the question of right of Court in this action a demolition of the Nuisance can be ordered
Mr Borken for Pltff — the continual practice of the Court has always been so. Rules cases —
This rule cites Lw. 47. tit. 23. Dig. — as the foundation of this law — This Court possesses all the powers of the French Courts under the Judicature act — 3 Bl. Com. p. 220 —
Dimz. vol. p. 370 —

over to 13th —

No 1655
Dufaut
vs
Dufresne

action en separation de corps & de biens —
Duesnel for Pltff refuses to the testimony adduced in the cause — & concludes for a separation

Mr

Mr Mondelet for Defend— The facts alledged for a separation are insufficient — as the conduct of the Plff merited an ill-treatment on the part of the Defend— but Plff being unworthy to the protection of the law can be entitled only to a simple — maintainance from her husband —
2 Pigeau 202. 3 L. Poth. Mar. 519. —

The Plff's matrimonial rights ought not to be allowed her— Denizt. vs Adultere — having lost them by her unworthy conduct. —

Mr Quesnel in answer — objects to testimony of the servants & of the brother & sister of Plffe — as suspicious — Repr. vs Adultere — their testimony is besides contradictory — Poth. Cont. Mar. Nº 508 p. 375—

Tuesday 7th October 1828.

Prest

Ch. Just. & Justices Fowler & Pyke

Nº 902 & Nº 1211
Main, Cur
Coursolles
Vandandaigue J.S
&
Bistodeau
Coursolles
Vandandaigue J.S

On Plff. mo. to unite these Causes — as a Saisie-arret has been made by Plff in both Causes in the hands of Vandandaigue and in consequence of a Judgt. obtained by Bistodeau agt Coursolles —

Bleury for Bistodeau — These causes cannot be united as Plff has obt. his Judgt. agt. Coursolles with order on T. Saisi to pay to Plff —

No 159
Hart
v
Bowron
&
Lukin Gar[ts]

On mo. of the Garnt to discharge the enquete as the parties must be put back in law —

No 271
Closson
v
Mequin
&
Lukin Gar[t]

On mo. of Garnt. similar to above —
Burton for Pltff — proof is necessary —

No 1635
~~Bezeau~~
~~v~~
~~Bezeau et al~~
~~Abby~~

No 1759
McKay
v
Ferrie

On ~~Defts~~ Pltffs mo. to discharge inscription & to be allowed to ex. a writ — & Defts on sub & tantely —

Rolland for Defendr. The Enquete was closed in April or May last — & this application now too late —

No 461
Donegani
v
Donegani
et al

On Pltffs motion that Commissioners to be named for the execution of the Com. Rogr &c
Defr submits the question —

No 1312
Dabin
v
Jackson
&
Brodie opt

On Report of Expert — as to deficiency of the land sold —
Burton for opptr — claims hom. of report
Rossiter for ~~Defts~~ opposr Jackson, resists application

as

as the rule of reference has not been regularly complied with — but no notice was ever given to the opposte of the operation of the Surveyor —

No 1675
Andrews
vs
Crooks

On Defendrs motion to be admitted to take off the 2 defaults entered against him & enter an appe under the circumstances stated in the affidavits filed —

Mr Adams for Plff denies facts stated by Defrs and offers others off. them. —

Olivier
&
Billaudel
vs
Delizzy. mis
en Cause —

On hearing on opposn a fin d'annuller Rolland for opposte states, that there were no bidders at the sale, sufficient to constitute a legal sale — Héricourt & Thibault — mention the general principles of sale by enchères, but do not specify a case of this kind which could not have happened under the formalities required under the antient system. —

Mr Letourneux for Plff, moves to set aside the verbal testimony adduced, as being contrary to the return of the Sheriff — There is no law that requires a fixed number of Encherisseurs — Héricourt p. 178 180 — Denizart vo adjudication —

Mr Bouvé for Delizzy, the Purchaser — There ought to have been an inscription en faux of the return of the Sheriff to entitle the oppot to adduce verbal testimony. —

No 346
Gales & al
vs
Millard &

on law

Sol. Genl Plffs have no right of action as there appears to be no transfert of the assignment made to them by the Principal & therefore they have no right of action —

Mr Bleakley for Plffs contends that no signification here was necessary, but were, the institution of this action was a sufficient signification — M'Neal & al vs Gardener —

No 1850. & 1851
Johnson
vs
Brown

On Defendt motion to unite these Causes — as originating in the same grounds —

Mr Rolland for Plff the actions are different and founded on different contracts & obligations —

Wednesday 8th October. —
Prest.
Ch. Just & Justices Fowler & Pyke.

No 1840 —
Lafontaine
vs
Armstrong

On Plffs mo. that Sheriff grant him a deed of the property adjudged to him —

Mr Sewell for Sheriff. Stat. 41. Ch. 7. Sec. 15 — sent. that Sheriff grant a deed after Judt. & Distribution

No 1859
Raymond
&
Raymond

On ~~Defts~~ Pltffs mo. to compell Defendt to
charge conclusions to the County

Rolland for Defdt there is a plea of Exceptn to be
first determined — & cause fixt for Lundy.

No 498
Lantier
&
Allard
&
Gerrans

on Defendt mo. for delay to produce the
minute of a deed —

No 978
Goguet
vs
Lasnoureux

on Inscription en faux -
Roi for Pltff has made an inscription en
faux ag the will produced by Defendt —
1. That the testatrix had not the use of her intellectual or bodily health enough to enable to understand what she was doing, not having the use of speech —
2. That the will is a fabrication —

The testatrix could not speak when she made her will — as appears by the evidence adduced
The will made partly out of the presence of the Testator —

Moves to reject the testimony of 5 witnesses who are related to the parties within the prohibited degree, ~~as~~ inadmissible in this case
cits. Rapr. vo Suggestion —

Mr Sullivan for Defendt The testimony in this case destroys all doubt as to the capacity of the

the testatrix —

Move to reject the testimony of

The relations examined on the part of the Defendt are legal witnesses, as they speak to a circumstance of a domestic & private nature in which they are the most competent. —

Roi in answer — contends that the relations cannot be admitted as witnesses in this case

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No 185

Archambault
Pellier —
Pellier opt

Ors opposition apon d' annuller —
heard on law

Cherrier for Pltff — The oppot claims under a deed of donation from Defendt. This deed was made subsequent to the institution of the present action with a view to frustrate the pltff's demand — And besides there was any to addition of the effects under the donation —

Rollin for Oppot — There must be proof of the facts alledged. before determining this Cause —

№ 1707

Mactier
&
Jacomb
exp —

On Defendt motion to quash the writ & proces as being in the English language and not in the French language which is the language of the Defendants —

Mr Chorrier for the Defendant — The ordr of 1785 has directed the course to be followed which has not been abrogated by Stat. of 1801 The distinction made by some of this ordr applying only to persons born since the Conquest is not to be found in the law, nor admissible as all are equally subjects of the King as well those born before as since the Conquest —

That the Conquest could not have the effect of changing all the antient usages & customs of a country, it only changes the domination & yet under some act made by the Conqueror making such change — cites Montesquieu — upon the conquest of Bilgrim — when Buonaparte conquered Italy — he introduced the language & laws of the Code Civil Franc — by Special legislation All the public acts in this Country from the Capitulation downwards confirm to them their language and their usages — & particularly the British Statute of 1774 — The French language makes a part of the French law as by some of the French ordonnances it is

ordred

that all the proceedings shall be in the French language — ord^e of Gen^l 1^er —

Mr Sewell for Duff — The language of the Gov. is English — & he uses in all the Courts of Justice throughout the Realm — and that there never was any law of ~~Canada~~ creates or admits a distinction of language in this Country — The laws have been pressed to the Canadians — but the language used by the King does not affect them —

The Prerogative of the King has changed the language of the Country, in regard to all instances when the King speaks to his subjects — This does not change the law of the Country —

No other language was ever used in the Colonies of America, Stokes Col. p. 259 —

There does not exist & never did exist any law of admitted the Canadians to claim a right to be sued in the French language — The ord^e of 1785 legislated only between the two descriptions of subjects, viz^t new & old subjects — & ~~and~~ to amend construction of Statutes — By this ord^e all the Indians would be entitled to be sued in their language — refers to 9^th Sec. of ord^e as interpreting the part

of —

of it touching the language — to shew that the language must refer only to such new subjects as were born before the Conquest, as in the Case of Lunes the distinction is not made —

In the 41 & 42d art of the Capitulation — the Canadians are held to become British Subjects —

Lacombe, vs. Doute — acts must be interpreted in such manner as to subsist —

The ordre of 1785 has been repealed by the Stat of 1801 — ch. 7. sec. 1. —

That in the acts passed by the Legislature the English is the acknowledged text —

Mr Sherwin in reply —

The proposition that the language of the Sovereign is English, is not founded on an incontestable principle Geo. 1. spoke German — the language of the Realm is different, but it cannot hold among a people who do not speak it — not bound to know it until so ordered by law — But the Sovereign has acknowledged the language of this Country by many public acts, so far from having set it aside —

The Prerogative of the King does not extend to the right of enforcing the Laws in a language different from that prevalent in the Country —

(hears on land)

№ 1156
Hebert
vs
Toupin

action for damages for not complying with the terms of contract

Mr Bruneau for Defdt. The first action was discontd and defdt plead by exception that Pltff cannot maintain his action for damages but only that Defdt be held to rebuild the house according to the Lease rendered in the former Cause between the parties — That the former action being founded on a Refusal of Defdt to do so does not exist but cannot form a ground of the present action —

Thursday 9th
Friday 10th
Saturday 11th
} Enquete days

Monday 13th October 1828

Prest

Ch Just. & Justices Fletcher & Pyke —

№ 1446
Hart &c
vs
Sprague &al
&
Hudson

On mo. of Defdts party to be allowed to give security for Costs instead of Mr Lamber —

Mr Solle Genl objects to mo. as too late. The party having been sworn expand. in the Cause 1 Archbold's prac. 319—

No 1696
Rep
Vaughan

On Plffs mo. to quash the proceedings had before the Magistrate —

Mr O'Sullivan for Plff. party occupies the rear of a lot Has been condemned to work on the road occupied by the lot of another person see 3d Sec. Road act.

Mr Boston for Defend. The whole of a 200 acre lot owed the duty of making the road in front of it, and every occupant is bound to work thereon in proportion to the quantity of land each individual occupies — This is agreable to law — upon ref to 4th sec of Road act — sec 6. clause — 4th do — more applicable — The act. 64 — the principle of 4th will apply here — where several tenants occupy one house —

No 1389
Terrien dit
Duprastalé

On Defend. mo. to reject ex declaration of Plff to the declan of Defr for an insufficiency in form

Mr L Vigé for Defend — The Plff made their declaration on the 6th of Defr contend is insuff. — There are several Plffs and all have not united in giving a power to Plff's atty to make a declaration in their names, the wives of four of the Plffs not having been parties to the Procuration — the power of Atty extends only to one of the Defendants which is irregular — The act referred to in the Procuration does not show it to be the same act filed in this Cause —

Mr Blumy for Plffs — contends that the Procuration

is

is sufficient in form & substance —

№ 1828
Gamelin
vs
Ker —

on Defts mn to grant process on the ground of vanaka
Sol Gen for Defts — The fiat for the writ for £235 — writ issued for 375 — & the bill of particulars is for £235 —
Driscoll for Plff. The interest calculated on the bill will amount to £375 sworn to — The fiat is of no consequence — & the sum endorsed on the writ corresponds with the affidavit —

№ 1079
Rolland
vs
Donaldson

on Defts mn. to have enquête declared closed —
Mr Driscoll for Defts — The Enquête was not suspended
Mr Rolland for Plff — The Cause was suspended until the objection raised to the testimony of Plff should be determined —

№ 1599
Miller
vs
Essenhart

on Plffs — mn. to ex. Defts on fait & art.
Peck for Defts — There is a third person named in the Cause as the person interested against whom Plff ought to proceed & not as Defts —
Poth. Prop. № 298 — Rep. Dig. 8. Revendication 2d. p. 627. —

Mr

Mr Henshaw for Pltff. there can be no objections to ex. Defendt on facts Cases — as the party designated by Defendt may not be really the owners —

No 1830
Silvestre
Grégoire

On Defendt mo. to reject a pleading of Pltff as irregularly filed —

Mr Macdonell for ~~Defendt~~ Pltff

No 1894
Dubreuil
Porteous

on Defendt mo. to reject certain exhibits not filed by Defendt with his plea, but subsequently

L. Vigi for Pltff the plea filed 8th but certain exhibits filed the 9th — ought to be rejected —

Scott for Defendt cites case of Debarb v Guy — where exhibits were allowed to be filed as the party had done no diligence to further the Defendt — here no diligence of this kind was done by Pltff — Can give a reason why there was a misunderstanding as to the Duty of the Court on Defts mo. for delay. —

Mo. on part of Defendt — that exhibits filed in one Cause should be considered as filed in the other —

L. Vigi in reply — case of Guy & Debarb does not apply — agrees to mo. for exhibits filed regularly that they be considered as filed in both Causes. —

No 1704
Mc Tier
&
1 another dup

Defts motion granted —

No 1865
Levy
vs
Chaloup

on Defend: mo. to discharge Inscription as cause has not been set down for Enquete

Sweeny for Plff action is founded on an authentic act — Defend. has pleaded a general plea of payt — cause was inscribed on the particular Roll d' Enquete of Defr moved to discharge, ~~but Court rejected the Motion and the Enquete closed~~ which motion was granted. — Refers to rule of Court 11th Dec.

Rollin for Defend — the plea of payt is an affirmative plea —

No 1783
Carter
vs
Cassels

on Plff mo. for closing the Enquete — Pelton for Plff — the cause was inscribed for Enquete on 11th when Plff Enquete was declared closed & Defend produced no witnesses —

Bleury for Defr — on his motion, the 10th — the cause was struck from the Roll of the 10th & was now replaced by Plff for the 18th —

No 1667
Ex parte
on Petition
of Selby Ld
Dwrs & Offs

Bidard's mo. to rectify a Dismissal given in this Cause — by striking that entered on 18th Oct. 1826. & causing it to be correctly entered the 20th of that month —

№ 1473
Stern
vs
Cate

O'Sullivan for Defendt — Cites Dig. 47 bk 1 tit. 23. de popularibus actionibus — actions to be brought by any person, & 3d Law says he who had a private action was preferred to any other — but he cannot obtain any gain by it if private damage be asked in a popular action they are inconsistent & the one destroys the other — where being a public injury, must be remedied by the Criminal law — as private injuries must give way to the public remedy — 4 Bl. Com. 167 —

Borton for Pltff — if the injury arise from a nuisance it becomes a part of the remedy that the nuisance be removed — 4 Fremantle p. 413 —

Blu. Com. 3 p. 220.

~~Ld Chancr~~ — grant. 29 — where action is given to any individual — see also 3 Bl. p. 226. & p. 5. —

222 469.

p. 421 — Fremantle — to see how reasonably the law was imposed as to keeping the mouth open — and even of turning the Current of the River — Fremantle 222. & 469. —

№ 245
Card
vs
Adm —

action on a foreign Judgt

O'Sullivan for Pltff — the Defendt took the benefit of the Bankrupt laws in that Country whereby his person was ever after discharged from any arrest — cite Johnson's Rep. Mathews vs Bush. Vol. 16 — upon to support insolvent acts from April 1813 to present day —

The Defendt was here arrested on Capias
& pleads that his person should be held free
from all arrest — after the cause was fixed
for argument the Defdt produced a new
discharge not only from the Arrest, but also
from all his debts under another bankrupt
act of the State of New York — This has been
allowed, & the parties come now to be heard on
the merits — The Plff was entitled to his Ca.
ag Defdt — as the cause of the Jurisdiction when
the suit is pending — cites. 5 Cranch — Decker Nelson
5 East. 124. As to the discharge now pleaded by the Defendt —
is not sufficient & cannot be admitted, having been
obtained with fraudulent views & contrary to
Bankrupt law of New York — particularly that of
1813 — for no property has been assigned by the
Defendt to his Creditors, it appearing on the face
of the act that Defendt had neither real nor
personal estate to transfer —

Cites. Doug. Reps. Le chevalier v Lynch — to show
that assignee could not move money attached
under process of a foreign Country —

The Discharge of Defendt has not been
regularly brot before the Court — it does not
appear that the officers acting under their Bankrupt
laws had Jurisdiction — not stated by the Defdt
that his petition was presented with the consent
of 2/3 of his Creditors — Pleader 2 G. 16. —
Raymond 1262 — cites case 2 Johnson Reps.

Ivery v Baron. 7 Vol. p. 74—

Mr Scott for Defendt— The additional plea is sufficiently clear and positive—

The assignment made by the Defendt— under the act of 1819— contained all his Estate & effects, and amounts why there remained no Estate to be assigned on his petition under the act of 1813.—

1 Doug. 6 This Court will not set aside the order of the Judge in Newyork in discharging Defendt— without great cause— cite 1 Doug. P.— as apparently all the acts required by law ~~appear to~~ have been complied with 4 Johns Rep. 185— 5 East. 130— Reed v. Moor— at Three Rivers in 1819— in 1821—

Argt. contd till to morrow

Tuesday 14th. October

Present

Ch. Justice & Justices Fletcher Porter & Smith

No 461
Domegani
&
Domegani

On Petn ors. to reject certain answers to Interrogatories & that Defendt be held to answer over.—

Rolland for the Defendt says, that the answers are sufficient—

No 1498
Cardinal
&
Cardinal
&
Lemarguerite
Oppt

On Petn ors. that Defendt be condemned to pay the costs on oppn of both Petr & Defr have admitted the opposn—

Blenny for Pltff – the proceedings are no longer before the Court, an order having gone for sale of the property subject to the Dower claimed by the Oppost –

No 1712
McCallum
vs
Hart –

On Pltffs mo. to reject Defdts plea of – as appears as pleaded too late –

Mr Blenny for Defdt – The mo. cannot be granted – the plea is filed as a plea to the merits and contains facts on wh the parties must go to proof –

No 1883
Hays dat
vs
Gerrard

On Defdts mo. to reject Pltffs opposition for cause being tried by a Jury –

Mr Sol. Genl for Pltff – the action is founded on a promissory Note, & the Defr now represents the late D. David, who was a Merchant, & at the time when the Note was made it was a commercial transaction between the parties –

Mr Ross for Defdt – it is not stated that the Note was payable to order, nor that the Defdt is a Merchant –

No 461
Donegani
vs
Donegani
&
No
Wagner
vs
Donegani
vs
Donegani

On Pltffs mo to reunite these 2 Causes –
Bedard for Pltff, the property of the Estate seized is claimed by the parties in both Causes

Rolland for Dfft objects to the motion –
moves for delay to answer to Opposts Plea –

№ 245
Card
Astor

Argument continued. —

Mr Sol. Gen. for Defd — The plea secondly pleaded by the Defd — that is sufficient — in pleading a foreign law, it is requisite only to state it generally —

1 Raymond 693 — where a plea of puis d' arrein continuance was pleaded, which was considered as a waiver of the first plea — but here the Defd reserves the right to maintain his first plea — But the answer of Ruff admits the regularity of the Plea, & contends only that in point of law it is insufficient —

The discharge here is sufficient under the laws of the State of New York, and legally made among to that law — There appears no fraud — The Recorder has granted the discharge, of which nothing can be now urged here —

Mr. Sullivan for Ruff. in answer — both the pleas cannot stand — if the first plea is adhered to, the Cause must be tried by it — the plea of d'arrein Continuance is a particular plea & must be made under a particular form — the Defd calls it a supplementary plea — a name unknown — 4. Dallas' Reps. 250 — this plea must be pleaded under a particular form — a discharge under a bankrupt law —

4. Dallas 502

The Ruff must be presumed to have known nothing of this discharge to Defd — as it does not appear that any notice was given to the Creditors to come in & oppose it — The property must be delivered up to the ~~Commissioners~~ Recommended by the ~~Commissioners~~ Petitioners — This was not done here

No 1220
Montarville Bédard & Allyon Gat

on law pleaded by Garant
Bédard for Gat — action for Lods & Ventes
on 2 acts — The 1st a promesse de Vente
the 2d. is an acte de resolution — The
action cannot be maintained the 26 April 1823
is not an act of Sale & carries no Lods & Ventes —
the act may appear as a Sale, but it never was
carried into effect, no location of the property ever
having taken place under it —
Proof ordered

No 1675
Andrews vs Crooks

On Defendr mr. to quash attache
as no true copy of Saisie was left
with the guardian a Defendr
Pr. Verbal of

M. Adams for Pltff — the proceedings are
regular, and the appointment of the guardian
is specially mentd in the Sheriff's return —

No 1458
Salaberry & Bédard vs Foretier Gadua & Hamel mis en Cause

On Pltff's motion for conclusions for Dft
as mis en Cause —
Rollin for mis en Cause — The Pltff must
first shew an Expn & Saisie of the Lease
in question — There is no regular writ of
Expn — no Procès Verbal of Saisie —

№ 1607
Dervieux
Dejean
&
Hurley Exr

on action by Exr thereof — Dft pleads —

№ 1424 & № 968
Atkinson
Patterson
&
Sam.l & Sam.l
&
Belamy

on report of Arbitrators —
Stanley for Defts moves for homologn —

№ 125.
Mc Intosh
Chaffers
&
Econtra

On report of Arbitrators —
Mr Beaubien for Defts prays Dft on report

№ 320
Dubord
&
Donegani

On Law
Dfts coll for Defend — has pleaded a demurr
that not stated that former suit was not
determined, and also an exception of litispendence
Dyer Rep. 284.a Car — Yelverton 117 — Gilbert Cases 163
Comyns Reps. 109 — 1 Salk. 15 — Doug. 215 — Wentw
250. note (a) — 1 Espinasse Rep. 79 — Bac. ab.
Action on the Case Letter L. Com. Dig. Action on
Case. Conspiracy Ch. 5 — 2 T. Rep. 225. 232 —
1 Sanders 228. 229 — Johnson. v Gardner —
1824. —

No 1830
Sylvestre
&
Grivois & ux

vers

No 1528
Lewis.
Mire.

on Law —

action to recover portion of lot of land in poss^n of Defr

Borton for Plff — the Defend^t sets up a claim under a deed of sale from Lalanne, who at the time had no property in the land Poth. No 476 — Vente — the only right the Defr argued was a right of action to obtain the land — Poth — ob. No 62 & 152 — The Defend^t has claims improvements — but he was a possessor de mauvais foi —

62

M^r Buchanan for Defend^t — tradition only gives the right of property — in Defr John Davis, before transactions in question the Defend^t was in — poss^n of the land — by the subrog^n undertaken in March 1827 M^r Lalanne was to give a title in one year — but the previous possession must carry the property in favor of Defend^t — The Plff might have brot. an action under subrogation, but in his own name he has no title — Dig. 44^th. bk. 3. law 6. 6^th law. 2^d tit. 9^th §. 4 — Code 3^d bk. tit. 32. law 15 — Poth. Vente. No 319 — Lavaux vo Vente — 5^th Dec. No. 16 — Poth. Prop. 326 — Rep. Revendication — Brod. Mont. Letter A No 13. §31 — Instit. au le Convention p. 132 —

Then authorities shew that the 2d purchaser w. had thus becomes proprietor —

The ameliorations made by Defr — have been made in good faith —

Boston in reply — the plea is contradictory — he first states a sale — & then a promise to sell — By the agreement of 9th June 1827 — it would appear that Lalanne was then proprietor

No 57
Rex
Rossdal

On retrocession for removing Defr of home of a Proces Verbal of Ge Voyer —

Lavoie for Plff — The formalities in the publication & notice of the petition at the Church door of Pte aux Trembles & Rx. des Prairies — Rogers does not sign as Inspector — the certificate of publication at Rx. des Prairies — is made by the mark of Christin — attested by some of the parties interested — The certificate of the public of the P. Verbal is also defective — The Certificate of Christin is also mountain, being interlined & erased in several places — The Ge. Voyer is bound to depose at Office 8 days before the day of homologr — how after this deposit was made some days, that the Ge. Voyer deposited some papers after this period — Qr. Plff moved before Court of Qr Se to have rejected — but this mo. was overruled On the part of Defendt he complains of the R.V. as he having already another public road on his land, the value of the 2d road on his land should be paid before being opened — act 2 act of 1825

Sec. 3 — refers to art 14 of Act of 1796 —
Mr L. Vigé for Plff — The parish of Repentigny is also included in this P.V. of which no notice is taken, nor any notice given at this parish — The Isle Bourdon is comprehended within the parish of ~~Lassomption~~ Repentigny by the ord. of the King dividing the limits of the different parishes — The Inhabitants of Isle Bourdon are therefore not bound by law —

The Grand Voyer had not the power to call any part of the Inhabitants of one parish to go into another to do work on a public road — the art 15 of Law of 1796 — is the only part of the Law which authorises this, and this does not apply to the case here —

Mr Griffin for Defend — The Grand voyer has complied with all the requisites of the law for the different publications thereby required — The certificates are all regular and correctly made —

Mr Lewell for Defend — the form is the only thing this Court can look at, as the merits wholly belongs to the Gr. Voyer — There has been no second road established on the property of the Plaintiff — The ground taken for the road lies on the public reserves — The Procès verbal is not in the form as required by Law —

There

there is no sum mentioned in it — nor is it taken in this Cause — refers to a P. Verbal made on 27 Novr — whereas the Certiorari refers to a Procès verbal of 21 Novr —

Pelletier in answer for the Plffs —

No 1580.
Wilson
v
Thomas } action for house rent —

No 1201
Parent
v
Tremblay } action pétitoire —

Blenny for Plff — Defendt has denied the facts in the declaration — an order for a Survey was given & the report is now before the Court — It now appears that the Defdr took poss. of the lot of land in question without any title or authority — The Ruisseau St André divides the lands of the parties — the Defdr has no right to any land on the S. E. side of the sd Ruisseau — his title mentions none — all the titles of the same range on Plff extend to this Ruisseau —

Mr Roy for Defendt — The Plff purchased a small piece of land opposite that of Defendt — To this action the Defdt have pleaded prescription of 10 years with title, & they have proved

the Surveyors have made a Survey & Land Certificate & have made their report — By the deed of Concession of the Plff's land it appears that it has only 30 arps in depth — & the whole superficies to consist of 90 arpens — the excess of these 30 arpens were purchased by the Plff — who bring this suit to establish a right to a portion of Land for which their Seller had no title — all the lands are not bounded by the Russeau St André — & the P. Verbal of a Cours d'eau directs that all those whose lands extend & are bounded by this Russeau shall work there & the others are exempted — among them are Le Leroy & Lafontaine who represents the Plff

Wednesday 15th October ...

Prest —
All the Judges.

No 531

Benj. Hart
Kidd Curl

action to set aside a fraudulent sale by a Debtor

M. Buchanan for Plff one M'Nabb became insolvent & Kidd purchased the estate. the sale of wh is now sought to be set aside on 10th Feby 1826 — Kidd after the insolvency

Kenyon

known of McNabb purchased a potash established from him, & thereby paid the debt McNabb owed him to the prejudice of the other Creditors of sd McNabb To this action the general issue is pleaded - & also that he had a lien on them works for house rent - & that the whole was done in good faith -

The public insolvency of McNabb is fully proved and also that Kidd had a knowledge of it on Ryan's testimony - all the parties live at Lapraire when the fire happened &c - give rise to the insolvency of McNabb -

cites - N. Dig. vo Fraudulent conveyance aux Creanciers 1st Sec. - Pupt. Edit on the Digest. liv. 42. tit. 8. - Toullier's Droit Fr. 6. Vol. p 317 - No 344 - 345. 7. 8. 9. 352. 355 - - when the Defendt does not demand the discussion of the Debtors property & thereby his insolvency must be considered as admitted - When the transaction would have been set aside had it taken place a short time before the insolvency - Instit. au les Conventions p. 406. 407. - There is no presumption of this action in this Case - The opinion of Domat may be cited but it is controverted by Dunoy. above cited p. 77. - 5 Toullier p. 71. No 77 - 1 Parsons on the Code. p 693. 7 law lib. 75. No 10 - 7 law liv. 42. tit. 8 - The last

Boston for Defendt - The sale here was advantageous to all parties, & in good faith by the Defendt - the Defr has allowed all the Insurance money to go into the hands of the other Creditors & contented himself with making the purchase in question - That after the fire McNabb continued to do business up to 23d Sept. 1826

Eight

eight months after the Sale — when he made an assignment of his property for the benefit of his Creditors — of this property no account is rendered, or how far it may have gone to satisfy the debts of his Creditors — The Defd has had a lien on the property for the rent under a lease, & gave him a right to retain the property till paid — The fraud must be proved, and a connivance shewn — The Defend. tenders the property on getting back his money — The insolvency must be ~~publicly~~ known to the party — A. Denz. & Banqueroute, says it made 10 days before it is valid — 1. Pigeau 124 — & p. 439 — 461. — 464 — Poth. Ob. N° 153. — Domat. liv. 2. tit. 10 sec. 1. art. 3 & art. 5 —

M. Buchanan for Pltff — There is no law in force in this Province nor in the Common Law of Lower by w^ch the action to rescind a fraudulent transaction between a Debtor & Creditor to the prejudice of others — but the transaction here took place long after the insolvency —

N°1677
Harris
vs
Mower

Trial by Sp. Jury — action of defamation
Verdict for Pltff 10^s — damages —

Thursday 16th October.—

Present

No 1998
Papineau & Chartrand

No objection made by ~~Deft~~ Pltff to the motion of the oppt—

No 2121
Lavigne & Sarrault & Sarrault ope

on oppn — notes said —

No 2501.
Hitchcock & Wm Foster

On Report of arbitrators & on merits —
Driscoll for Pltff The receipt produced by Defts has not been connected with the Pltffs demand —

Mr McMillan for Defendt — The Pltff was in the habit of selling goods to the Defendt — who gave notes of hand to Pltff on each purchase & when Defts paid money they took receipts — these receipts exceed the amount of the notes to the amount of £154 — for which an Incidt demand has been made —
1 The Arbitrators have awarded a greater sum to Pltff than that demanded by the declaration —
2 The arbitrators did not proceed to determine within the time allowed by the Courts —
Old Denizt. Vo arbitre —
Domat. Liv. 14 Tit. 2 —
3 The Report was made & afterwards changed — The Reports are contradictory —
The last report is dated in June 1828, & not filed till this Term —

№ 240
Solomon
v
Dorge —

action & damages for trespass —

McCord for Pltff — Pltff. had poss^n of certain premises under lease. the contest is in regard of one Ice house & Vault &c — Defend^t contend were never leased to Pltff — The Pltff. had held poss^n of the Ice house from May to the fall & filled it with Ice, & enjoyed it up to Jany. 1827 when the Defend^t forcibly took poss^n of it — This Ice house from the general words of the lease must be presumed to form part of the premises belonging to the dwelling house let to Pltff

M^r Rossiter for Defend^t — The words of the lease can leave no doubt, as they express particularly all the objects leased — at the time of this lease the Ice house was in the possession of other persons under a prior lease — The possession taken by the Pltff. was a wrongful possession — 1 T. Rep. 701 —

№ 89.
In Petition
of Bridget Kinnon

on Petition en destitution de Tutelle — because the Tutor has failed in performing the Conditions of his appointment

Sol. Gen^l for M^r G. Pell the Tutor — has demurred to the petition, as the grounds of complaint are not set out in it —

Petitioner allowed to amend

№ 1118 & 764
Ralte
v
Brosnan
&
Morin Gut

Draw Jug

№ 993
Cotton
v
Murdock

Action for price of sale of a land —
Issues on Law —

Mr Sewell for the Defendt — The title set forth in the declaration shews no sufficient title & conveyance of the land to the Defendt. The lands lie in the Township of Hinchinbrook — There is also a count in the declaration on a Lease rendered aft. a Curator representing Defdt — This is irregular, as the demand should have been to demand the upon of it — but the declr. concludes for the whole with the price of the land — The Defendt has also pleaded non est factum the title upon the Oath saying no title — The Act of 6 Geo. 4. ch. 59. sec. 8 — has changed the whole nature of Common remedy — 2 Bl. Com. p. 305 — a deed can be made only dealing — also delivery is necessary without which it is void

305

Mondelet for Plff — The Statute spoke to is a new law introduced into the Country, subsequent to the passing of the deed on wch the action is founded — Therefore the antient laws of the Country will apply It is not consistent with the due interpretation of a Statute to give it a retrospective effect — The Stat. 31 Geo. 3. does a reference to the institutions of the Country in regard of lands in Fief & Common Soccage — The

Canada

Canada term act refers only to the effect, & not to the form of the acts to be passed in regard of their lands —

Then is sufficient in the obligation of the Defend. here to compel him to pay the money demanded without enquiring into the title —

If there was error in this respect it was the Common Error of the whole Country, as lands have always been conveyed in this manner Rep. v. Ermes — Ld. Denys. v. Ermes — N. Denys v. Ermes — Ld Denys v. Leblanc cite an instrument of a will made by a Notary out of his Jurisdiction 1 Morris. tit. D. p. 906 —

Rolland on same side — To give a law a retroactive effect, it must be expressed in such terms as not to doubt of its intention — The Stat. 6 Geo. 4 is evident a law contemplating the future conduct of parties as to lands in Low Canada —

No 1458.
Salaberry & Benoit & Foretier al —

On motion by the Gardien of the mis en Cause to compel him to return a Cause be removed from the Pross. of the gardien under Security —
Dest. as to Costs —

№ 1246 & № 1370
Gates
Beaudry
&
Garants

In these actions unites the actions en Garantie Buchanan for Pluff – the claim on 1st – it is demanded to set aside the sale by Bellish Sanburn to Bellish & assignment by Sanburn to Gates – The property of Lafore were sold and certain sums of money to be pd to heirs when they came of age – Bellish Lwife transferred what was coming to them to Sanburn – Esther Lafore wife of Bellish expects that her interests were injured & the sale took place when she was a Minor – but Pluff objects that all parties to the original Contract are not before the Court. & it cannot annul it as to some of them only – Dy. 4 Inv. tit. 4. Law 13.e & 42 Inv. tit. 1. law. 47 the Prets never set aside any instrument unless all the parties were called before him. – Bouchel Trans du Droit Fr. v. Restitution. part 3. ch. 4. 3e Vol. Merlé Minorité. Ch. 14. № 5. p 486 – & p. 142. Traité de Majorité – here the heirs of Bellish are not in the Cause & the entire restitution cannot be made –

Mr Le Vicé for Esther Lafore & Alexis Gauvin her second husband – In 1823 a sale was made of a property of late Lafore to Beaudry, & a sum of £280 was to remain in the hands of the purchaser till the age of Majority of Esther Lafore then married to Bellish – Bellish Lwife purchased a lot from

from Sanburn & transfered to him in pay^t
the above sum of £280 in the hands of Beaudry
In 1825 — Sanburn transfered this sum to the
Assp^s Gale & C^o — Beaudry put Esther Lapan
in the Cause as Garnish — and Esther ~~Lapan~~
Lapan brings her action agt Sanburn to rescind
the transfer made to him by her & her husband —
the ground of her action is, that she was a
minor when this act was made & her property
sold & the injury she has sustained thereby
& demanding restitution agt all the acts passed
Esther Lapan has renounced to the Community
between her & her first husband — It became
unnecessary to put the heirs of her husband
in Suit, to entitle her to her action — all the
parties with whom she has any contest are before
the Court — if any of the parties mean to have a
recourse agt the heirs of Belisle, they ought to put
them in the Cause, as Esther Lapan has
no contest to raise with them —

Buchanan — the act cannot be set aside
in part & left to subsist in part, which
shews the necessity that all the parties to the
act should be before the Court —

—

No. 170.

Deschamps
&
Ledue
&
Deschamps
&
Lachine Canal

On Pltff's mo. that a Jury be summoned to assess the Pltff's damages in this case under the Judgt in the Court of appeals. —

Mr Scott for the Commissioners, says, that there are no longer any Commissioners of the Lachine Canal, as the law under which they were constituted is expired. —

No 2322

Molson & al
vs
Mattard & al

On Pltffs mo. to close enquete, allowing Defendt to ~~close~~ examine a witness whose deposition is not yet perfected —

Mr Doutre for Defendt objects to the Enquete be closed until all his witnesses shall be examined as he has done diligence to adduce them before the Court. —

Friday 17th Oct

Prest

All the Judges

No 2
Johnson
Lagrange
Anderson
opp.

on hearing on objections to testimony of a Mulatto produced by Plff, being the brother of the Defdt — it being objected that he has an interest in the Cause —

Mr Lowery for oppost — says, that the Wit is interested as appears by his answers on the voir dire examination —

Bouree for oppt — the refusal of Wit to answer to a question to gt — he was not bound to answer is no ground of objection to him —

No
Alsop
Buck

on Plffs mo. to discharge Defdt under act of June 1827, as Defdt has not pursued Remedy —

Mr Lowery for Defdt — moves for continuance of the Rule —

No. 124
Solquin
Solicam
Boyer opt

on mo. of Gardiner to be discharged

Mr Brunea for Plff — objects to motion the Cause is now under Enquête — there has been no laches on part of Plff

Mr Guy for Gardiner — is entitled to his discharge —

№ 1312
Franks
vs
Yarker

On Pltff's mo. to discontinue on pat. of Costs. —

Boston for Defdt — he is intitled to a Ladgt. on the award —

№ 1196
Brisco
vs
Hart

action of assumpsit for goods sold

Mr Scott Cnsl for Defdt — an Incidental Pltff demand has been set up by Defdt — The Pltffs rely on the evidence of their agent as the proof of their act — but by the letters of Mr Brisco himself he has made himself responsible to Defdt By comparing the letters, it will appear there has been a misapplication of the Invoices, as what was ordered from Wm Brisco has been shipped & charged by the Pltffs —

Mr Scott for Pltff — By the evidence of Healy it will appear that Defdt promised to pay the bal. of the Pltffs acct — The ashes shipped by Defdt — have been credited to him by Pltff — On the Incidental demand the Defendt has filed 3 letters of Wm Brisco —

№ 567
Bouchette
vs
Chandler

action of debt on deed of Sale —

Sol. Gnl for Pltff — many writs have been examined & it appears the lands are in Lanaudiere

this to meet the Defendts plea —

Mr Fr Brunian for Defendt — The line was commenced by Wm Sap, but never finished — he established a new line & would give the 1100 acres of land will fall within this Province — The authority Sap had to draw this line is not sufficient to establish a boundary line between the 2 Provinces —

No 521

Campbell
vs
Robinson et al

action for rent on lease —
on Law —

Wallace for Pltff — this is a similar exception to that already dismissed by the Court on another Case between the parties —

Adams for Defdt — The plea here made is in better form than the former — This action is founded on a Verbal lease — but Defdt never had the possn promised to him — Pltff having entered upon the premises and disturbed Defdt in his enjoyment — When necessary repairs are made, the rent only is to be diminished. Poth Locap. No. 77 — the Defendt claims only liberation from the rent, & no damages — Poth. Dr. No 22. 175 —

Mr —

Mr Walton — plea here is the same as the former — must meet the same fate — here no special damages can set out by Dfts reply to the arguments had on former occasion — as to form of pleading see 1 Chitty 310 — cite authorities margin —

Doug. 690.1
Kingston
1 T. Rep. 645
Willis Rep. 156
Comi Dg. Pleader
C. 54. 55. 56
6 T. Rep. 573
2 Bl. Rep 1312. —
Poth. Ob. No 138 & 146
Powell: contracts 131. 132 —
332. 1 Chitty Pleads.

Adams in reply. Louage. No. 139 —

No 1079.
Rolland
v
Donaldson
} on Plffs. mo. that Defend. answer over on Interrogs on fact cert.

No 1140
Pothier
Miranda
v
Roy. Gat
} action on prom. for Lods & Vents Roi for Plff — Defd has put in mad Cadieux as his Garant, who contests the Cause Our Brunet purchased from Cadieux in 1818 & then gave back the land to Cadieux who sold it to the Defend — The action is for the Lods & Vents on Sale & remise between Cadieux & Brunet The question here is whether the Lods & Vents are due The promesse de vente from Cadieux to Brunette was here a complete sale — as it was followed by actual possession. See Dard, v. Promesse de Vente Repert. col. 1. par. no 1 Bourg. p. ~~288. 28~~ 272. No. 9. 1 Fonmaun. p. 196 — After this Cadieu takes back the land — on this Lods are due — Fonmaun 209 — Contract

need

need not be in writing & besides the Seigneur not being a party had no other means to prove it than by verbal testimony — The reprise by Cadieux, who after some years of possession of Brisset who had made considerable improvements on the lot & who abandoned them to be quit of the arrears he owed to Mr Cadieux —

Rep^re 10 Lods & Vents. 710 — 2 Fonmaur. p. 138. 139. Boutaric 196 —

Cherrier for the Garant — the transaction here was founded on a Verbal Contract, no act of it being produced — there is no legal proof even of this transaction — Rep^re v^o Lods & Vents p 604 — S. 4 — verbal testimony not being admissible — Moves to reject it. — The only writ — Mand Brisset, shews the transaction was merely a Conditional Sale, & was never carried into effect — & therefore no Lods —

Boutaric p. 178 Vents Considerable

On the question reprise — depends upon the first transaction — Where the reprise for want of pay^t no Lods are due 3 Hervé. p 67. — 3. Guyot Fiefs. 293 — 489 — 2^d maxim — le defaut de paiement, does not give right of Lods & Vents, when the remise is made on that account — Id. 499 — Poquet de Livonière. p. 218. N. 5 — 2 Fonmaur p. 196. N^o

3 Hervé p. 15

Roy in reply — verbal testimony must be admitted here, as the best the Seigneur could obtain —

№387
Forchet
&
Lacroix

action to recover monies from the Defendt who was the Agent of one Olivier —

Buchanan for Pltff — action is brot by the Residuary Legatee of the late Mr Olivier — the Defendt rendered a final acct on article of qst — occasions the present action — on this Justice wise granted a discharge to Defendt — but in this they were in error as to the amount rendered — as to the receipt of 1179 ℔ to be paid for them at Quebec — & therefore now brings this action to recover that sum, qst had not been so pd for them — the evidence shews that the money was never paid — Mr Lacroix says he got a receipt from Mr Perrault for the money qst he delivd to Defendt — now Defendt — ought to be held to produce it —

Mr Beaubien for Defendt — This is not a commercial transaction — in qst case Mr Perrault cannot be a witness — the evidence of Lacroix is in the affirmative — Perrault's in the negative — therefore Lacroix's testimony the best —

№1779
Sutherland
vs
Devereux

action on protested bill —
on loan —

Mr Morin for Defendt — the Pltff demands as well the Costs of a protest — to qst he is not entitled — as not flowing from the premises — the protest not produced nor filed. Pothier. Change № 150. —

№ 1427
Cameron
vs
Cameron

action on acknowledgment —
McMillan for Plff — says he has proved the handwriting of one of Defts by two witnesses that of the other by one Wit & has issued facts & articles on him to wh he has not appeared to answer, moves to have them taken as duly confessed —
Lowry for Defr has shewn the illness of the Defr & inability to attend

№ 173
Hays &al
vs
Lawrop

action on a Promy note to take D. Davis
Sol. Genl for Plff — Defr has pleaded prescription — on his oath he admits that he has pd only a part of it — This is proving a partial payt — & Defr cannot be admitted to prove this — the principle is if the oath is admitted ~~Rapr vs Chaup~~ to the principle that the whole was paid — nothing dem Rapr vs Chaup p. 139 — The 8e art. of the Statute is positively to this effect — Rapr same page cites a case Bornier art 21. title 5. code de commerce — By pleading prescription Defend — admits the note & partial payt cannot be admitted —
Beauchien for Defr contends that the

note

Note must be considered as satisfied in so far as the payment is stated on Defendts oath —

Dom Rex
&
Gale et al

On Certiorari —

Blenny for Pltff — action for Collusion & this presumption was pleaded — upon to 39th Sec. — Conviction confirmed —

No 679
Carter
&
Cumberland

On Report of arbitrators —

Pyl for the Defendt — the Inscription here is irregular — & it is to plead on the merits —

Saturday 18th October.

Prest
all the Judges.

No 473.
Rolland & Pothier & al. — Interlocutor.—

No 1420.
Clarke & Young & al & & Contra — Judgt on awards

No 1222.
Dorions & Forbes — X Defts exception maintained

No 944
Godue & Meunier — action dismissed — the Court considering the deed in question to be a deed of Sale —

No 1410
Ex parte On Petition of Sr. Dupuis — Rule abt by Petitioner as to the Inspectors for an attachment discharged

No 1516
Smith & al & & McGill & al — X action dismissed —

№ 1506
Algar v Sanburn } W Action dismissed —

№ 1696.
Rex. — v Vaughan } W Conviction confirmed

№ 492
Monjeau & Charron x Opp.t — } Rule for dismissing Opposition, absolute. —

№ 993
Galton & Murdoch } W Defend.t exceptions dismissed

№ 1320
Dubord & Donegani } W action dismissed

№ 1433
Franks & Parker } W On Plff's mo. to discontinue on pay.t of Cost after award of Arbitrator filed. —

№ 180
Russell & Slack — } On Demurrer decision submitted by Plff to Defr

Monday 20th October.

Prest.

All the Judges.

No 346 Gates & al v Millar & al	W	Defendts exceptions dismissed Ryan
No 837. Hays & al v Lacroix.	W	Judgt for Pltffs for balce of Note.
No 1370 Davis &c v Gates & al	W	Action dismissed
No 1265. Lang. v Watson		Pltffs mo. to discontinue without payt of Costs.
No 1196 Briscoe & al v Hart.		Judgt.
No 1667. Ex parte On Petition of Geo & Wm Selby & Divers Opps		Petitioners motion granted for correcting Judgment.

JUILLET. Le ☽ entre au ♌, le 22, à

☾ le 4 à 1h 7m matin, | ☽ le 19 à 11h
● le 11 à 8 35m matin, | ○ le 26 à 5h 2

L.	MOIS.	SEMS.	FÊTES.	
b	1	Mardi	*Octave* de s. Jean Baptiste, *Incip.*	
b	2	Mercre	Visitation de la B. V.	2M
†+	3	Jeudi	De l'Octave des Apôtres.	
†+	4	Vendre	De l'Octave.	
†	5	Samedi	De l'Octave.	
r	6	DIM.	6. Octave des Apôtres.	M
r†	7	Lundi	*Oratio Fidelium*,	
b†	8	Mardi	ste. Elizabeth, reine,	
r†	9	Mercre		M
†+	10	Jeudi	VII Frères Martyrs	M
†+	11	Vendre	s Pie, pape, mart.	M
b	12	Samedi	s. Jean Gualbert, abbé.	M
b	13	DIM.	7. DEDICACE.	M
b	14	Lundi	s. Bonaventure, évêq. doct	M
b†	15	Mardi	s. Henri H. empereur,	M *Incipit*
b	16	Mercre	N. D. du Mont Carmel,	M
†	17	Jeudi	s. Alexis.	M
	18	Vendre	s. Camille de Lellis, conf.	M
	19	Samedi	s. Vincent de Paule,	M
	20	DIM.	8. Oct. Dédicace, sol s Jacq.	M
,	21	Lundi	s. Anaclet, pape, mart. (13)	M
b	22	Mardi	ste. Magdeleine,	
r	23	Mercre	s. Apollinaire, év. mart.	M
b	24	Jeudi	s. Jérôme Emilien, *Vigile*, (20)	M
r	25	Vendre	s. Jacques, apôtre,	
b	26	Samedi	ste. Anne,	
b	27	DIM.	9e. sol. Ste. Anne,	M
†	28	Lundi	ss. Nazaire, &c. martyrs.	
†	29	Mardi	ste. Marthe, Vierge,	
+	30	Mercre	ss Abdon & Sennen, marts.	
b	31	Jeudi	s. Ignace de Loyola.	

AOUT. Le ☽ entre à ♍ le 23, à minuit

☾ le 2 à 10h 44m mat. | ☽ le 18 à 9h 5zm mt
● le 10 à 11h 48m mt. | ○ le 25 à minuit 34.

L.	MOIS.	SEMS.	FÊTES.	
	1	Vendre	s. Pierre aux Liens,	
	2	Samedi	De la Ste. Vierge,	M
*	3	DIM.	10. après la Pent. 1 D. Aug. *Inc*	
	4	Lundi	s. Dominique,	
	5	Mardi	N. D. des Neiges,	
	6	Mercre	Transfig. de N. S.	M
	7	Jeudi	s. Cajétan,	M
†	8	Vendre	ss. Cyriaque, Large, &c. marts,	M
†	9	Samedi	Inv. de s. Etienne, (3) *Jeûne*	M
	10	DIM.	11. s. Laurent, diacre, mart.	M
†	11	Lundi	De l'Octave.	
	12	Mardi	ste. Claire, vierge,	M
†	13	Mercre	De l'Octave,	
†	14	Jeudi	De l'Octave, Mes. de la Vigl.	M
	15	Vendre	Assomption de la B. V. Marie,	
	16	Samedi	s. Hyacinthe, Jeûne,	
	17	DIM.	12 Oct. s. Laurent, Sol. Assemp.	
†+	18	Lundi	De l'Octave,	
†+	19	Mardi	De l'Octave,	
	20	Mercre	s, Bernard, abbé,	M
	21	Jeudi	sie. Jeanne de Chantal,	
,	22	Vendre	Octave de l'Assomption,	
	23	Samedi	s. Philippe de Béniti,	
	24	DIM.	13 s. Barthélemi, apôt. sol s Louis	
	25	Lundi	s. Louis, roi.	
	26	Mardi	s. Joachim, (17)	M
	27	Mercre	s. Joseph de Calasantz,	
	28	Jeudi	s. Augustin, év. doct.	
	29	Vendre	Décollation de s. Jean-Baptiste,	
	30	Samedi	ste. Rose de Lima, vierge.	
	31	DIM.	14 s Raimond Nonnat. D 1 Sept	M

SEPTEMBRE, Le ☽ entre à ♎ le 22,

● le 9 à 3h 39m matin, | ○ le 23 à 9h
☽ le 16 à 6h 32m soir, | ☾ le 30 à 4h

L.	MOIS.	SEMS.	FÊTES.	
b†	1	Lundi	s. Gilles, *Or. Fid.*	M
†	2	Mardi	s. Etienne, roi,	
r†	3	Mercre		
r†	4	Jeudi		
†	5	Vendre	s. Laurent Justinien,	
†	6	Samedi	De la Ste. Vierge,	
b	7	DIM.	15 après la Pentecôte, Sol. Nat.	
b	8	Lundi	Nativité de la B. V. M.	
b†	9	Mardi	De l'Octave,	M
b	10	Mercre	s. Nicolas de Tolentin, évêque,	
b†	11	Jeudi	De l'Octave,	
†	12	Vendre	De l'Octave,	
†	13	Samedi	De l'Octave,	
r	14	DIM.	16 Exaltation de la Ste. Croix.	2M
b	15	Lundi	Octave de la Nativité,	
r†	16	Mardi	ss. Corneille, &c. mart. *Incipit.*	
b	17	Mercre	*Jeûne* 4 *T.* Stigm. s. Franç. *Dupl.*	M
b	18	Jeudi	s. Joseph de Cupertino,	
r	19	Vendre	*Jeûne* 4 *Ts.* ss. Janvier, &c. mrt.	M
r	20	Samedi	*Jeûne* 4 *Ts.* ss. Eustache, &c.	M
r	21	DIM.	17 s. Mathieu, apôtre,	M
†+	22	Lundi	s. Thomas de Vill. *Incipit.*	M
†+	23	Mardi	s. Lin, pape martyr,	M
b	24	Mercre	N. D. de la Merci.	
b	25	Jeudi	St. Nom de Marie, (14)	
†	26	Vendre	ss. Cyprien et Justinien, mart.	
†	27	Samedi	ss. Côme et Damien, mart.	
b	28	DIM	18 Sol. s. Michel, *Dom.* 1 Oct.	
b	29	Lundi	s. Michel, archange,	
b	30	Mardi	s. Jérôme, prêtre,	

OCTOBRE. Le ☽ ent. au ♏ le 23, à

● le 8 à 7h 24m soir, | ○ le 22 à 8h
☽ le 16 à 1h 53m matin, | ☾ le 30 à 11h

L.	MOIS.	SEMS.	FÊTES.	
	1	Mercre	s. Rémi, évêque,	
	2	Jeudi	ss. Anges Gardiens,	
†	3	Vendre	s. Vinceslas, mart. (28 Sept.)	
	4	Samedi	s. François d'Assise,	
	5	DIM	19. Sol. du s. Rosaire,	2M
	6	Lundi	s. Bruno,	
†	7	Mardi	s. Marc, pape, *Or. Fid.*	M
	8	Mercre	ste. Brigite, veuve,	
†	9	Jeudi	ss. Denis, &c. martyrs,	
†	10	Vendre	s. François de Borgia,	
†	11	Samedi	De la Ste. Vierge,	
	12	DIM.	20 après la Pentecôte,	
†	13	Lundi	s. Edouard III. roi,	
	14	Mardi	s. Callixte, pape, mart.	
b	15	Mercre	ste. Thérèse, vierge,	
†	16	Jeudi		
†	17	Vendre	ste. Hedwidge, veuve,	
	18	Samedi	s. Luc, évangiliste,	
	19	DIM.	21. N. D. de la Victoire,	M
	20	Lundi	s. Jean de Canti, *Incipit.*	
b†	21	Mardi	s. Pierre d'Alcantara, (19)	2M
†+	22	Mercre		
†+	23	Jeudi		
†+	24	Vendre		
+	25	Samedi	*Jeûne* De la Ste. Vierge,	M
†	26	DIM.	22 Sol ss. Simon et Jude, Apôt.	
†	27	Lundi	*Jeûne*, De la Vigile.	
	28	Mardi	ss. Simon & Judes, apôtres,	
+	29	Mercre		
†	30	Jeudi		
	31	Vendre	*Jeûne* De la Vigile.	

NOVEMBRE. Le ☽ ent. ♐ le 22, à

● le 7 à 10h 10m matin, | ○ le 21 à 9h
☽ le 14 à 8h 54m matin, | ☾ le 29 à 8h

L.	MOIS.	SEMS.	FÊTES.	
,	1	Samedi	TOUSSAINT, (*d'Obligation*)	
b	2	DIM.	23. Messe du Patron, *Incipit.*	M
ir	3	Lundi	Trépassés,	
b	4	Mardi	s. Charles Borromée, archev.	M
†	5	Mercre	}	
†	6	Jeudi	} De l'Octave,	
†	7	Vendre	}	
b	8	Samedi	Octave de la Toussaint,	
b	9	DIM.	24 Dédic. Basiliq. Sauv.	2M
†	10	Lundi	s. André Avellin, *Incip.* D. 3 N.	
b	11	Mardi	s. Martin, év.	
†	12	Mercre	s. Martin, pape,	
†	13	Jeudi	s. Didace,	
†+	14	Vendre	*Oratio Fidelium*,	
b	15	Samedi	ste. Gertrude, vierge,	
,	16	DIM.	25. D. 3 Nov. *Incipit.* D. 4 N.	
†	17	Lundi	s Grégoire Thaum. év.	
b	18	Mardi	Dédic. Basili, ss. Pierre et Paul,	
b	19	Mercre	ste. Elizabeth, 2M *Inc. fer.* 3	
b	20	Jeudi	Félix de Valois, *Inc. fer.* 5 6 *et Sab*	
b	21	Vendre	Présentation de la B. V.	
,	22	Samedi	ste. Cécile, Vierge,. m.	
,	23	DIM.	26 s. Clément, pape, mart.	2M
b	24	Lundi	Jean de la Croix. M *Inc.* D. 4 *et fer.* 2	
,	25	Mardi	ste. Catherine, vierge, mart. *Inc.*	
†	26	Mercre	St. Pierre d'Alexandrie, *Incipit.*	M
†+	27	Jeudi	*Incipit.*	
†,	28	Ven're	*Incipit. fer.* 6 *et Sab.*	
†	29	Samedi	*Jeûne.* de la Vigile de s. André,	M
*	30	DIM.	1 De l'Avent, Sol. s. André,	

DECEMBRE. Le ☽ entre ♑ le 21 à 2h 2

● le 6 à 11h 20m soir, | ○ le 21 à 1h 34m
☽ le 13 à 4h 45m soir, | ☾ le 29 à 5h 47m

L.	MOIS.	SEMS.	FÊTES.	
,	1	Lundi	s. André, apôtre, (hier)	M
†	2	Mardi	ste. Bibiane, vierge, mart.	M
	3	Mercre	s. François Xavier,	
	4	Jeudi	s. Pierre Chrysologue, év. doc.	
†	5	Vendre		
	6	Samedi	s. Nicolas,	
*	7	DIM.	2. De l'Avent,	
	8	Lundi	CONCEPTION, (*d'Obligation*)	
†	9	Mardi	De l'Octave,	
†	10	Mercre	De l'Octave,	2M
†	11	Jeudi	s. Damase, pape,	M M
†	12	Vendre	De l'Octave,	M
	13	Samedi	ste. Luce, m	2M
*	14	DIM.	3. De l'Avent,	
	15	Lundi	Octave de la Conception,	M
†	16	Mardi	s. Eusèbe, év. mart.	
†	17	Mercre	*Jeûne* 4 *Tems*,	
†	18	Jeudi		
†	19	Vendre	*Jeûne des* 4 *Tems*,	
†	20	Samedi	*Jeûne des* 4 *T.* M. Vig. à la Messe,	
*	21	DIM.	4 Sol. s. Thomas, *Ant. Nolite.*	
	22	Lundi	s. Thomas, apôtre, (hier)	M
†	23	Mardi	*Ad Bened. Ant. Ecce completa.*	
	24	Mercre	*Jeûne*, De la Vigile,	
	25	Jeudi	NOEL, (*d'Obligation.*)	
	26	Vendre	S. ETIENNE, 1 mart. } *Dévotion.*	
	27	Samedi	S. JEAN ap. évangilst. }	
	28	DIM.	ss. Innocents, martyrs,	3M
	29	Lundi	s. Thomas, év. martyr,	4M
	30	Mardi	De l'Octave de Noël,	4M
	31	Mercre	s. Sylvestre, pape,	4M