Kings Bench Montreal.

Civil Pleas.

February Term. 1829.
April Term. — "
June Term. — "
October Term. — "

1829.

JANVIER. Le Soleil entre au Verseau le 20

Nouvelle Lune le 5 à 10h 58m matin, | Pleine Lune le 19 à
Premier Quartier le 12 à 2h 24m matin. | Dernier Quartier le

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
H.M.	H.M.				
7 39	4 21	b	1	Jeudi	CIRCONCISION, *d'obliga*
7 38	4 22	r	2	Vendre	Octave de s. Etienne,
7 38	4 22	b	3	Samedi	Octave de s. Jean,
7 37	4 23	r	4	DIM.	*Vacat.* Oct. des ss. Innocen
7 36	4 24	b	5	Lundi	De la Vigile,
7 36	4 24	b	6	Mardi	EPIPHANIE, *Oct., d'oblig*
7 35	4 25	b	7	Mercre	du 2d jour }
7 35	4 25	b	8	Jeudi	du 3e jour } dans l'Octave
7 34	4 26	b	9	Vendre	du 4e jour }
7 33	4 27	b	10	Samedi	du 5e jour }
7 33	4 27	b	11	DIM.	1 ap. l'Epip. *Incip.* 1 *Cor.*
7 32	4 28	b	12	Lundi	De l'Octave,
7 31	4 29	b	13	Mardi	Octave de l'Epiphanie,
7 30	4 30	b†	14	Mercre	s. Hilaire, év. *Suffragia.*
7 29	4 31	b	15	Jeudi	s. Paul, hermite,
7 28	4 32	r†	16	Vendre	s. Marcel. pape mart.
7 27	4 33	b	17	Samedi	s. Antoine abbé,
7 25	4 35	b	18	DIM.	2. s NOM DE JESUS,
7 24	4 36	r†	19	Lundi	s. Canut roi, m. *Inc. D.* 2
7 23	4 37	r	20	Mardi	ss. Fabien & Sébastien. m
7 22	4 38	r	21	Mercre	ste. Agnès vierge, mart.
7 21	4 39	r†	22	Jeudi	ss. Vincent et Anastase, m
7 20	4 40	b†	23	Vendre	s. Raymond de Pennafort,
7 18	4 42	r†	24	Samedi	s. Timothée, év. mart.
7 17	4 43	b	25	DIM.	3. Conv. de s. Paul,
7 16	4 44	r†	26	Lundi	s. Polycarpe év. mart. *Inci*
7 15	4 45	b	27	Mardi	s. Jean Chrysostôme, év.
7 14	4 47	b	28	Mercre	Ch. s, Pierre à Rome, (18)
7 13	4 48	b	29	Jeudi	s. François de Sales év. *Inc*
7 12	4 49	r†	30	Vendre	ste. Martine, vierge, mart.
7 11	4 50	b	31	Samedi	s. Pierre Nolasque,

FEVRIER. Le Soleil entre aux Poiss

Nouvelle Lune le 3 à 9h 37m soir, | Pleine L
Premier Quartier le 10 à 2h 29m soir, | Dernier

Lev.	Cou.	Cl.	MOIS.	Sems.	FETI
H.M.	H.M.				
7 8	4 52	b	1	DIM.	4. Sol. Purificatic
7 7	4 53	b	2	Lundi	Purification de M
7 6	4 54	r†	3	Mardi	s. Ignace, év. ma
7 4	4 56	b	4	Mercre	s. André Corsin,
7 3	4 57	r	5	Jeudi	ste. Agathe, vier
7 2	4 58	r†	6	Vendre	ste. Derothée, v.
7 0	5 0	b	7	Samedi	s. Romuald, abb
6 59	5 1	b	8	DIM.	5. s. Jean de M
6 58	5 2	r†	9	Lundi	ste. Appolline, v
6 56	5 4	b	10	Mardi	ste. Scholastique
6 55	5 5	vr†	11	Mercre	
6 53	5 7	vr†	12	Jeudi	
6 52	5 8	vr†	13	Vendre	
6 50	5 10	vr†	14	Samedi	*Homil. et Missa*
6 49	5 11	vl	15	DIM.	SEPTUAGESIME,
6 47	5 13	vl†	16	Lundi	2. *Or. Fid. Ad.*
6 46	5 14	vl†	17	Mardi	
6 44	5 16	r†	18	Mercre	s. Siméon, ev.
6 43	5 17	vl†	19	Jeudi	
6 41	5 19	vl†	20	Vendre	
6 40	5 20	b†	21	Samedi	De la Ste. Vierg
6 38	5 22	vl*	22	DIM.	SEXAGESIME, s
6 37	5 23	b	23	Lundi	Ch. s. Pier. à A
6 35	5 25	r	24	Mardi	s. Mathias, ap.
6 34	5 26	vl†	25	Mercre	
6 32	5 28	vl†	26	Jeudi	*Ad.Mag.Ant.Se*
6 30	5 30	vl†	27	Vendre	
6 29	5 31	b†	28	Samedi	De la Ste. Vier

MARS. Le Soleil entre au Bélier le 20 à 3h

Nouvelle Lune le 5 à 7h 43m matin, | Pleine Lune le 20 à
Premier Quartier le 12 à 4h 55m matin, | Dernier Quartier le

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
H.M.	H.M.				
6 7	5 33	vl.	1	DIM.	QUINQUAGESIME
6 6	5 34	vl†	2	Lundi	*Or. Fid. Missa sine Tractu.*
6 4	5 36	vl†	3	Mardi	*Feriâ 2, 3 et 4, ad Mag.ant.pro*
6 2	5 38	vl	4	Mercre	Les Cendres, M
6 1	5 39	b†	5	Jeudi	s. Casimire, conf (hier) M
6 19	5 41	vl†	6	Vendre	
6 18	5 42	b	7	Samedi	S. Thomas d'Aquin, doc. 2
6 16	5 44	vl*	8	DIM.	1 du Carême,
6 15	5 45	b	9	Lundi	ste. Françoise, veuve, M
6 14	5 46	r†	10	Mardi	Quarante Marts, M
6 12	5 48	b	11	Mercre	4 *Tems*, s. Jean de Dieu, (8) M
6 10	5 50	vl†	12	Jeudi	s. Grégoire, pape doct. M
6 8	5 52	vl†	13	Vendre	*Jeûne des 4 Temps,*
6 7	5 53	vl†	14	Samedi	*Jeûne des 4 Temps,*
6 5	5 55	vl	15	DIM.	2 Sol. s. Joseph,
6 4	5 56	vl†	16	Lundi	
6 2	5 58	b†	17	Mardi	s. Patrice, év. *Lect. fid. serm.* M
6 0	6 0	vl†	18	Mercre	
5 59	6 1	b	19	Jeudi	s. Joseph, 1. *Clas. Credo.* M
5 57	6 3	vl†	20	Vendre	
5 56	6 4	b	21	Samedi	s. Bénoit, abbé. M
5 54	6 6	vl	22	DIM.	3e du Carême,
5 52	6 8	vl†	23	Lundi	
6 51	6 9	vl†	24	Mardi	
5 49	6 11	b	25	Mercre	ANNONCIATION, *d'obl.* M
5 47	6 13	vl†	26	Jeudi	
5 46	6 14	vl†	27	Vendre	
5 44	6 16	vl†	28	Samedi	
5 43	6 17	vl	29	DIM.	4e. du Carême,
5 41	6 19	vl†	30	Lundi	
5 40	6 20	vl†	31	Mardi	

AVRIL. Le Soleil entre au Taureau le 20 à 4

Nouvelle Lune le 3 à 5h 27m soir, | Pleine Lune le 19 à
Premier Quartier le 10 à 9h 13m soir, | Dernier Quartier le 2

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
H.M.	H.M.				
5 39	6 21	vl†	1	Mercre	
5 37	6 23	b	2	Jeudi	s. François de Paule,
5 35	6 25	vl†	3	Vendre	[vert
5 33	6 27	b	4	Samedi	s. Isidore, *Ces. suf. Croix co*
5 31	6 29	vl*	5	DIM.	De la Passion,
5 30	6 30	b	6	Lundi	s. Vincent Férier, (hier)
5 28	6 32	vl†	7	Mardi	
5 27	6 33	vl†	8	Mercre	
5 25	6 35	vl†	9	Jeudi	
5 24	6 36	b	10	Vendre	N. D. de la Pitié,
5 23	6 37	b	11	Samedi	s. Lêon 1, pape,
5 21	6 39	vl	12	DIM.	Des Rameaux,
5 20	6 40	vl	13	Lundi	
5 18	6 42	vl	14	Mardi	
5 16	6 44	vl	15	Mercre	
5 15	6 45	b	16	Jeudi	Jeudi Saint,
5 13	6 47	noir.	17	Vendre	Vendredi Saint,
5 12	6 48	b	18	Samedi	Samedi Saint, *Ant. Reg Ca*
5 10	6 50	b	19	DIM.	PAQUES, *An. coas. E*
5 9	6 51	b	20	Lundi	Seconde Fête }
5 7	6 53	b	21	Mardi	Troisième Fête } de dévoti
5 6	6 54	b	22	Mercre	}
5 4	6 56	b	23	Jeudi	} De l'Octave,
5 3	6 57	b	24	Vendre	}
5 1	6 59	b	25	Samedi	}
5 0	7 0	b*	26	DIM.	1. Quasimodo,
4 58	7 2	r	27	Lundi	s. Marc. év. (25) *Abst. Pr*
4 57	7 3	b	28	Mardi	s. Anselme, doct. (21)
4 55	7 5	r	29	Mercre	s. Pierre, martyr,
4 54	7 7	b	30	Jeudi	ste. Catherine de Sienne, v

MAI. Le Soleil entre aux Gémea

Nouvelle Lune le 3 à 3h 3m matin, | Plei
Premier Quartier le 10 à 2h 42m soir, | Der

Lev.	Cou.	Cl.	MOIS.	Sems.	FE
H.M.	H.M.				
4 53	7 7	r	1	Vendre	ss. Philippe et
4 52	7 8	b	2	Samedi	s. Athanase, é
4 50	7 10	r	3	DIM.	Inv. ste Croix,
4 4†	7 11	b	4	Lundi	ste Monique,
4 47	7 13	b	5	Mardi	s Pie V. pape,
4 46	7 14	r	6	Mercre	s Jean Porte L
4 44	7 16	r	7	Jeudi	s Stanislas, év
4 43	7 17	b	8	Vendre	Apparition de
4 42	7 18	b	9	Samedi	s Grégoire de
4 41	7 19	b	10	DIM.	3. Ste Famill
4 39	7 21	r	11	Lundi	Fidèle de Sig
4 38	7 22	r†	12	Mardi	ss Nérée, &c.
4 37	7 23	r†	13	Mercre	s Herménégil
4 36	7 24	r†	14	Jeudi	s Soter, &c. m
4 35	7 25	r†	15	Vendre	s George, ma
4 34	7 26	b†	16	Samedi	s Ubald, évê
4 32	7 28	b	17	DIM.	4 s Paschal E
4 31	7 29	r	18	Lundi	s Venant, ma
4 30	7 30	b	19	Mardi	s Pierre Célc
4 29	7 31	b†	20	Mercre	s Bernardin,
4 28	7 32	r	21	Jeudi	ss Clet, &c. p
4 27	7 33	b†	22	Vendre	s Antonin, év
4 27	7 33	b†	23	Samedi	De la Sainte
4 26	7 34	b	24	DIM.	5 après Pâque
4 25	7 35	b	25	Lundi	*Rogations*, s C
4 24	7 36	b	26	Mardi	*Rogations*, s P
4 23	7 37	b	27	Mercre	*Rogations*, ste
4 22	7 38	b	28	Jeudi	ASCENSION
4 21	7 39	b†	29	Vendre	De l'Octave,
4 20	7 40	b†	30	Samedi	De l'Octave.
4 19	7 41	b	31	DIM.	6 du Dim. da

JUIN. Le Soleil entre à L'Ecrevisse le 21 à 1

N. Lune le 1 à midi 55m | P. Lune le 17 à 1h 21m mt. | N. L
P. Qr. le 9 à 8h 29m mt. | Dr. Qr. le 23 à 8h 3m soir, | 51m s

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
H.M.	H.M.				
4 19	7 41	b†	1	Lundi	De l'Octave,
4 18	7 42	b†	2	Mardi	De l'Octave,
4 17	7 43	b†	3	Mercre	De l'Octave,
4 17	7 43	b	4	Jeudi	Octave de l'Ascension,
4 16	7 44	b†	5	Vendre	
4 16	7 44	r	6	Samedi	*Jeûne* de la Vigile,
4 15	7 45	r	7	DIM.	PENTECOTE,
4 15	7 45	r	8	Lundi	Seconde Fête }
4 14	7 46	r	9	Mardi	Troisième Fête } de dévotion,
4 14	7 46	r	10	Mercre	*Jeûne* 4 *Temps*,
4 14	7 46	r	11	Jeudi	De l'Octave,
4 13	7 47	r	12	Vendre	*Jeûne* 4 *Temps*,
4 13	7 47	r	13	Samedi	*Jeûne* 4 *Temps, Salve Regina,*
4 13	7 47	b	14	DIM.	1 STE. TRINITE', M
4 13	7 47	r	15	Lundi	s Barnabé, apôtre, (11) M
4 13	7 47	b	16	Mardi	s Norbert, év. (6) *Incpit.*
4 1	7 48	b	17	Mercre	s Jean de Facond (12)
4 1	7 48	b	18	Jeudi	FETE-DIEU, (*Obligation,*)
4 1	7 48	b	19	Vendre	ste Julienne vierge, 2M
4 12	7 48	b	20	Samedi	De l'Octave, M
4 12	7 46	b	21	DIM.	2 sol. Jean Bapt. *Process.* M
4 12	7 48	b	22	Lundi	De l Octave, M
4 12	7 48	b	23	Mardi	De l'Octave, M. Vig.
4 12	7 48	b	24	Mercre	s Jean Baptiste, M
4 1	7 48	b	25	Jeudi	Octave de la FETE-DIEU,
4 13	7 47	r	26	Vendre	ss Jean et Paul, marts. M
4 13	7 47	r	27	Samedi	*Jeûne*, s Antoine de Pade (13)
4 13	7 47	b*	28	DIM.	3 après la Pen. M [M.Vig.
4 13	7 47	r	29	Lundi	ss PIERRE & PAUL, (*d'ob.*)
4 13	7 47	r	30	Mardi	Commén. de s Paul, ap. 2 M

A.

Andrews — & Crooks — 3 7 47 164
Archambault — & Seamot — 16 196
Amiot — & Bruno — 22
Archambault & Fontaine — 25 46 108 213
Ackley — & Languedoc — 35
Alsopp — & Buck — 36 161
Allard — & Lacombe — 48
Alger — & Brunet — 59
Ayr — & Leach & opp[t] 66 136
Ackley — & Thomas — 116
Ayr — & Smith & al — 149
Ayr — & Bomhower & al 163
Andrews — & Crooks — 203

B.

Beaudry, P[re] & Petition of — 1 4
Bedard — & Chaput — 28 231
Barnet & al[t] — & Molson & al — 39
Ball — & M[c] duffie — 39
Bouchette — & Chauvette & — 46 128 161
Bent — & Spragg & al[t] — 60 69 173 183
Benoit — & Dezery — 68 206 207
Brandon — & Harrison — 69
Bedard — & Durand — 71
Bouthillier — & Famuf & Gar[t] 74
Burton — & Gibson — 83 101 136 162
Bistodeau — & Coursolles & al 99
Bostwick — & Morehouse 102
Bagg — & Boue & op[t] 102 219
Belanger — & Archambault & al 103
Byrne — & Johnson — 104 181
Bellamy — & Dixon — 106 131 193
Brown — & Hoyle — 118
Boissoneau — & Camyré & op[t] 125 178
Bell — & Stuart — 134
Boutin — & Hebert — 135
Beaudouin & Langellier — 136
Brousseaux & Allen — 164
Bedard — & Lemai — 165
Benoit — & Vallieres — 182
Beaulieu — & David — 183
Bent & al[t] — & Spraggs & op[s] 185 240 244
Boston — & Cuvillier — 211
Burton — & Desrivieres — 219
Brecault — & Deshautel & al 240

C.

Chaffers	Boutillier	4	9	13	23	
Connel	Halpin	19	135			
Champeau	McDonell & ors	21				
Cartier	Courtemanche	21				
Chaffers	Boutellier	24				
Cuthbert	Delanaudiere	27	51	59	120	
Chinic	Languedoc	31	47			
Cantin	Forestier	33				
Courselles	Villemer	36				
Charbonneau	Pillet & Garant	40	75	96	210	
Cameron	Cameron & a	42				
Card	Astor	45				
Cartier	Jaret & al'	54				
Côte	Hayne	62	69			
Cartier	Telle, Cui	64	122			
Cardinal	Cardinal	67	191			
Cartier	Marchisseau	68	108			
Clergy Reserves	Clarke	73	97			
Cartier	Hubert & ors	77				
Catton	Murdoch	95				
Cutting	Cutting	113				
Cuvillier	Boucher & ors	123	182			
Champion	Henshaw	129				
Campbell	Wilson & al'	131	167	202		
Cameron	Beaudet	134				
Cameron	Etna Insce Co	137				
Clarke	Young & ors	157	162	190		
Crevier & al'	Monarque	172	185			
Chapman	Foucher	196				
Clergy Reserves	McMillan	201	240			
Cattaford	Delisle & al'	220				
Chapman	Com. Lachine Canal	223				
Cuvillier	Omeara	224				

D.

Denaud	Ermatinger	4	109			
Dubreuil	Porteous	5	47	87		
Dabin	Jackson & ors	10				
Doucet	Guildry & ors	21				
Digby	Brooke	25	149			
Dalrymple	Laing & al'	33	46			
Duncan	McDonald & al	42	96	101	218	
Dufaux	Dupesne	46				
Drolet	Guertin & ors	65				
D'Août	Dandurand	67	110			
Darpentigny	Toupin	84				
Davis	Byrne	90				
Davenport	Curtenius	104				
Donegani	Dubord	128	166	177		
Driscoll	Driscoll	199				
Dupuis	Richardson	201				
Delisle	Alliance Fire Co	204	243			
Donegani & al	Walker	210	240			
Dumouchel	Boyer & Bender	230	242			

Filion	Simpson & opp.	223			
Forbes	Gilbert	208			
Frost & al. (No 644)	Wurtele Jr	205	241		
Frost & al' (No 645)	Wurtele. Jr	205	241		
Ferrier	Hamilton	16			
Flaherty	Cameron & ano.	19			
Fisher & al'	Grant & ano.	21	31		
Forctier	Christin	34	119		
Fortier	Lacroix	45			
Fraser	Stevenson & opp.	56	213		
Fisher	Farley	56	61	71	
Ferguson	Harrison	57	124		
Freeland	Harkness	73			
Fraser & al'	Cuvillier	74	161		
Finchley	Consigny &	91			
Frost & al'	McKenzie	105	131		
Fraser	Maillard & opp.	148	220	224	
Freeland	Bridge	165	242		
Foster	Stevenson	168			
Ferrier	Mmaster	188			
Foley	Donegani & opp.	188			
Ferrie & Co.	Mmaster	192			
Flatherty	Forctier & al	197			
Fisher	Grant & contra	199			

Gamelin	Kerr	25	102	163
Guy	Paiement & al	32	199	
Gravelle	Dubreuil & al	39	46	
Green	Hilton	41		
Goguet & al'	Lamoureux	48		
Girard & al	Girard	50	125	
Gale	Stafford	83		
Grant	Grant	83	131	
Guichaud	Devins, Cur' & al	92	122	138
Guichaud	Bowker	94	121	
Gale	Sewell & opp.	94		
Gregory	Lyndsay & al	108		
Gillespie & al	Spragg & hus	116	132	217
Guichaud	Jones & devers	121	138	
Gillespie & al'	Shipley	164	219	
Gay	Bingham	171		
Green	Hilton & al'	203	243	
Giroux	Robert & ux	204		

Hitchcock	Streeter & cont.	3	15	46
Huntoon	Hall	5		
Hall & al'	Sleib & opp't	32	46	
Hubut	Carlier	33		
Hart	Kidd & al'	45		
Henry	Gagnon	61	63	
Herrick	Hope	70	73	89
Holt	Carr	84		
Harrison	Nickless Cu'	97		
Harris	Mower	105		
Hutchinson	Nichols	114		
Hollingsworth	Haight	137		
Hall	Coward	165		
Hart	Bouron & Gar't	189		
Hubbard	Mc dougald & al	196		
Hayes & al'	Gerrard	209		
Hayes & al'	Logan &	223		
Henderson	Proctor	237	241	

Johnston	Harkness	102	163	
Jacobs	Bender	111	148	217
Jones & al'	Wood & al'	138	150	239

K.

Kemp	Salls	62
Kemp	Conroy	200
Kensler	Dumont & op^{t}	213
Kung	Devins, Cur^{t}	235

L.

Lukin	Classon & al	2	19	
Leclaire	Manuel	29		
Leach	Leach	40	50	112
Lewis	Lalanne	40		
Leduc	Nixon	44		
Longueuil	Gray, Cur^{t}	44		
Levesque	Levesque	49		
Lacasse	Blanchette	74		
Lacroix	Vannier & op^{t}	75		
Leslie	Shaw	88		
Low	Lang	90	96	
Labruere	Papineau & al	100	179	
Lynch	Smith	106		
Legault	Quesnel	119		
Lacroix	Vannier & op^{t}	124		
Lamb	Rodier	126	161	
Lemieux	Maillet	137		
Leroux	Cardinal & Gon^{t}	171	216	
Lecavalier	Cartier	189	208	
Langlois	Lauzon	237		

M.

Marcoux	Jones	8	58	66	102
Marchisseau	Cartier	14	26		
McCuaig	Montgomery	17			
Midgley & al	McKenzie & al	29			
McGennis	Cartier & al	41			
McGillivray	Stanley & al	41			
Moffat	Hallowell & al	68	72	76	85
Martigny	Beauchamps	70	97		
McKenzie	McGill & al	86			
Monpetit	Sauvé	99			
McCallum	Halfpenny	101			
Molson	McGill & al	104			
Mills & al	Nimmo	115			
Melliss & al	Armour & al	120	161		
Marié	Marié	125			
McNaught & al	Hart	132			
Massue	Buchanan	143	162		
McKenzie	Carter & opp.	149			
Molson & al	Maitland & al	153	158		
Molson	Himsworth	168			
McCallum	on Petition	170			
Mills	Gerrish	180			
McRae	Donaldson & op.	183	193	240	
McTeer	Lacombe	195			
Morin	Moreau & al	214			
Molson	Himsworth	232			

N. O.

Noxen	Campbell & contr	74		
Nixon	Knower & Fuligh	88		
Nelson	Hubert & al	129	161	
Nicholson	Bogg	181		
Ogden	Dumont	33		
Olivier	Belanger & al	45		
O'Sullivan	Solomons	221		

Plante — + Bousquet & cont 5 103
Panet & al' — + Lorin & al' — 7 15
Pinconneau + Laplante & cont 22
Phillips — + Mallet — 22 47
Pothier — + Hall — 23 47
Pichet & ux + Managre — 25
Pilon — + Cedilot — 37 117 149
Pothier — + Marandas & al 45
Plante — + Bousquet — 55 61
Provost — + Porteous — 61 106 113
Papineau — + Charland & al 62 121
Pothier — + Metsler & opp^t — 65
Pierson — + Tufts — 67 78 169
Pothier — + Kinsler & Gar^t — 72
Phenix Bank + Pearl — 87
Pellier — + Chaput & op^t 88
Peddie — + Gordon — 92
Pothier — + Lovis & op^t 95
Porteous — + Deschamps — 107 117 226 223
Plamondon + Laplante — 110 217
Pothier — + Hurdle & Knopp 113 122
Pothier — + Huntoon — 135 239
Pothier — + Robertson — 135 239
Pillet — + Hority & cont 199
Palsgrave — + Porteous — 201
Philips & al' + Bagg & others 206 241
Pichet & ux + Maninger & op^t 220

Quackenboss + Quackenboss 44
Quesnel — + Johnston — 90

Rolland — + Donaldson & al 11 18 107 194
Rolland — + Boast & al — 17
Rolland — + Bedard — 20 96
Rolland — + Pothier — 26 120 121
Roi — + Provendier — 39 58
Roi — + Tracy — 44
Roi — + Coates — 50
Rodier — + Colclough — 54
Roi — + Kauntz — 55
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February Term 1829.

Monday 2d. February.

Pres.t—

Ch. Justice Reid
Mr. Justice Boucher
Mr. Justice Pyke
Mr. Justice Uniacke.

On Petition of Pre Beaudry & al

Mr. Lacroix on behalf of Pre Beaudry & others Opposants to the homologation of a certain Proces Verbal made and returned into the Court of Quarter Sessions by the Grand Voyer of the District, & by the said Court homologated and confirmed on the 30th day of April 1828, moved to be permitted to give security as required by the Stat. 13. Geo. 2. ch. 18 in order to obtain a Writ of Certiorari to bring the proceedings and Judgt. thereon rendered before this Court — stating also that he had given due notice to the Justices of this application —

Mr Sewell on behalf of the Justices, stated, that the application was made too late and could not be granted, that the six months allowed for applying for the Certiorari had expired in October last, as the Judgt. of homologation was had in the Qr Sessions on 30th April cita 5 T. Reps. 279. 80 — 4 T. Reps. 281. —

Mr Lacroix in answer contended, that Mr Sewell could not appear for the Justices in this stage of the Case, nor had they any thing to say as to his application which was a matter of course — That a former Certiorari had been withdrawn in October Term last, & he could not sooner make his application for another in this Court before this day. —

Tuesday 3d February 1829.

Prest.

Ch. Justice Reid.
Mr Justice Foucher.
Mr Justice Pyke.
Mr Justice Uniacke.

No ~~1269~~ 1694
Lukin
Classon
& Dupuis
Adjudn

On motion of the adjudicataire for a folle enchere —
Mr Boston for Adjudn — states the great irregularity in the Seizure & Sale —
Mr Franc. Bruneau opposes this as great delay has already accrued, and no reasons in writing are necessary —

No 1596.
Stephenson
Roi —

On Pltff. mo. to discharge the inscription made by ~~Defendr~~ Pltff on the Role d'Enquete —
Bleakley for Pltff — action of debt on deed of Sale. —
rejected

No 1757
Sawyer
& Moore —

On Defendr. mo. for discharging the enquete —
Mr Nye for Defendr — has filed a plea of abatement — to which no answer was made — but cause was inscribed for enquete by Pltff —
Mr Bleury for Pltff. has also moved to reject the Plea of abatement filed by Defendr according to 11th Sec. of rules of Prac. & the decisions of the Court — this was a preliminary plea sought to have been filed within the 24 hours after the appce of Defdt — cites case of Mr Cullum v Hart — considering this plea irregular, the Pltff inscribed

inscribed his Cause for enquete —

Mr Boston in reply, while the plea was on record the Pltff could not inscribe his cause — this was in vacation and the rule is there different — as instead of 3 days, the party had 15 days to fyle a plea of any kind — altho' in term it ought to have been filed in the 24 hours. —

No ~~959.~~ 2501

Hitchcock v Streeter & E Contra

On Pltff. mo. to name another arbitr. in the place & stead of Wm Hallowell, Defdts arbitrator —

Mr Driscoll for Defdt — there is no affidavit before the Court nor any thing to warrant this application —

No 1629

Wher v Hill

On Defendts mo. to reject a part of the Pltff's answer to Defendts plea —

Adams for Defendt — the Defdt demurred — & to the this part the Pltff has put in no answer — this part Defdt now moves to reject —

Nye for Pltff — the demurrer is of a nature that Pltff was not bound to answer — Pltff filed a Repr to plea which was suffte — and no further pleading is admitted and a demurrer could not afterwards be filed — & now moves to reject it —

Mr Adams — the Repn contained new matter, & was no answer to Defendts plea — this was irregular & therefore the Defendt demurred to it —

No 1675

Andrews v Crooks

On Pltff's mo. to reject a part of a plea filed by Defendt to qt — no answer has been put in —

Mr Nye for Defendt. moves now to fyle his answer to the demurrer —

On the petition of Pre Beaudry vab } The petitioners motion rejected, the application not being made within the 6 months allowed by the Statute. —

Wednesday 4th February. —

Prest

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Pyke. —
Mr Justice Uniacke

No 1757.
Sawyer vr Moore — } Judgt. dismissing motions of both parties — see J. Pykes note on case —

No 456
Denaud vr Ermatinger } On Defendts mo. for delay to plead to 1st April
Rossin for Defendt agrees to a reasonable delay — but contends it ought not to be extended beyond the term —

No. 1736.
Chaffers vr Bouthillier } On Plffs mo. to put off trial & that same be had on the 13 inst — and the same being summoned to attend & try the Cause —

Mr Roi for Defendt has moves that Costs of the trial fixed for this day be first paid. —

over till to morrow —

No 1146.
Plante
Bousquet
& Econtra

On Pliffs mo. for a Com. to ex. Wit. resident at more than 30 miles distance from this Court —
Bleury for Pliff — application founded on Ordn. of 1792 —

No 1836
Stanley, Cur
Hudon,

On mo. of Pliff's counsel for distraction de frais
Boston for ~~Defendt~~ Warwick & Co says. he brot. an action agt Stanley & made an attacht. in the hands of Hudon — who made his declaration that he owed a sum of £17. to Stanley — the Pliff having obtained a Jugt agt. Hudon, moves for distraction de frais, which will be taking so much money from Warwick & Co —
Mr Bruneau for Hudon —

No 1340
Huntoon
Hall

On Pliffs motion to dismiss cause for want of security for costs — Over till to morrow —

No 1894
Dubreuil
Porteous

Hears on Law —
L. Vigé for Pliff — action on a lease — for 1 years rent.
Sewell for Defendt — The exception pleaded, are 1st That Pliffs are not the proprietors of the land — and have a right only to certain portions of the land — That it is not alledged in declaration that Defendts were ever put in possession — this is a defect for which the action must be dismissed —

Mr Cherrier for Pliffs the pleadings are here contradictory and the exception set up by Defendt is wholly insufficient — The want of allegation of possessn could have only

only have been ground of exception à la forme — but on a contract between the parties it was unnecessary that he should allege any possession, as this was a personal obligⁿ on part of Defendᵗ to take possⁿ unless prevented by the act of Pltff. he is bound —

As to the ameliorations alledged by Defendᵗ to have been made on the land, the Defᵗ. not allowed to make. Poth. Louage. Nº 131 -

Mr L. Vigie of counsel for Pltff — The exception, that the Pltff are not the proprietors is no ground of exception here when action is founded on a special contract — he alledges no trouble or disturbance on the part of other persons — The Pltff on the Grounds of the Defendᵗ in this respect: — That it was here unnecessary to allege that Defendᵗ had taken possession of the property — for had the Defendᵗ had never chosen to take possession, he would be still bound to pay the rent, unless he can shew some obstruction to obtaining that possession —

The Plea of compensation, is not made by way of Incidental demand — it cannot be set up here, it is an unliquidated debt — it is a plea of payᵗ not founded —

Mr Dowell in reply. The Defendᵗ may be liable to pay the rent to the real owners, & therefore Pltff if not owners cannot have this action —

Thursday 5th Febry 1829.

Prest
Ch. Justice Reid
Mr Justice Foucher
Mr Justice Pyke.
Mr Justice Uniacke.

No 1675
Andrews v Crooks

On Pliff mo to ~~be permitted to fyle an answer to demurrer~~ reject part of Defendt plea demurred to & to which Defendt has not answered

Adams for Pliff — The Defendt not having answered to Pliff's demurrer, in the three days, the same must be dismissed

No 1711
Panet & al
Lorin & al

On Pliffs mo. to reject Defendt plea as not filed within time prescribed —

Guy for Pliff. the Pliff gave notice on 14 Nov. and the plea filed only on 21st —

Mr Roi for Defendt act. ret. 17 Oct. & he filed his plea on 21 Novr. which was within the time —

Mr Guy in reply, says the practice has been different

No 599
Walsh v Tibbits at & Intervs

On mo. of Mr Walker for the Intervs party to prolong the return of the Com. Rogn to 1 June next —

Mr Rossiter for Pliff opposes the motion — as no diligence has been done on the Com. —

Mr Walker for Intervs party produces an affidavit to shew the reasons of delay —

Wher v Hill —

mo. for Com. Rogn — objected — issue not complete — & if complete — party too late in his application —

No 1813
Marcoux
Jones

action for a malicious arrest —
on demurrer

Walker for Defendt — The ground here of the action is that the Pltff was not about to leave the Province — The objection taken is, that it is not stated that these proceedgs were taken falsely & maliciously & the dec. is besides is insufft as it does not disclose the circumstances under which the Process was sued — It is necessary that the proceedings in such a case must not only be malicious, but false — this is not alledged — the presumption always is that every process is regularly sued out — till the contrary is made to appear — In all actions of this kind there are material facts to be traversed, & particularly debt due & flight from the Province —

2 Chitty 284 In cases of this kind the injury must be laid as committed falsely & maliciously, see form 2 Chitty. 284 — & auth. referred to — p 289. & 290 — 8 Went. Pleads — p. 324 & 350. —

Com. Dig. title action on the Case for conspiracy — title (C) No 3 — the act must be false & malicious. — no action can be maintained for a merely malicious suit —

2 Wilson 305
4 Burr. 1792 3 T. Rep. 183 — the
1 T. Rep. Sutton v Johnson where many authorities are referred to —

Mr. Boston for Defendt — The Pltff has mistaken the form here. gt might be good for having instituted a wrong action agt Pltff — but this is an action for an arrest of the body — ~~but~~ when the proceedings under gt the process was sued out are stated they must be alledged to be false — because without this malice alone is not suffte to maintain the action — But the foundation of the injury here is not set out, the taking the affidavit on which the process regularly issued —

Mr Driscoll for Pltff — The allegation of the capias being sued out without reasonable or probable cause, is tantamount to its being falsely done — The general demurrer ought to have been a special one & filed within the 24 hours —

Mr Walker in reply — Pleff confounds actions of trespass with actions on the Case — the trespass is for a thing manifestly illegal — action on the Case, is for a wrong use made of a legal proceeding — here the whole is supposed to be illegal qt. is not the Case — The proceedings in Case, must be shewn not only to be malicious but to be false — it is the affidavit alone can be impugned as false — the taking out the writ is merely malicious — case cited from Comyns applies the distinction — here the affidavit is not brot. in contemplation not stated & no proof touching it or whether Pleff was about to leave the Province or not could be received, but merely the writ of Ca. qt. he says was sued out —

No 1736
Chaffers
v
Bouthillier

On Pleff mo to bring up the same Jury already struck to try Cause on 13e inst —

Walker for Pleff — this is consistent wt. constant practice in England — previous to Stat. 7 & 8 Wm & Mary — the party might sue out writ to compel appce of Jurors — who did not attend on first process —

2 Tid. P. 792. The Stat. 7 & 8 Wm & M. applies only to common Jurors — but Sp. Jury once struck must be the Jury to try the Cause — 5 T. Rep. 453 — Cooper 412 —

5 T. R. 453

Mr Grant for Defendt — a venire has already issued & returned — when Case goes off for want of Jurors, the same Jury must be called again to try it — but this was not the Case here — The Case of Perry cited, is a Case where the King was a party — & the King is not bound to sue out a new venire —

Differ between practice here & in England — The Jury here are summoned at a fixed day, & if the Case does not then pass, the power of Jury is expended —

The Stat of Geo. 2. does not prohibit the sunny out a new Venire — see observations on Parry's case by Sr Raymond

3 Geo. 2. ch. 25 sec. 16 — Walker in reply refers to Stat 3. Geo. 2. ch. 25. sec. 16 — provides specially for a case when Special Jury is struck for trial of the Cause —

Friday 6th February.

Prest

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Pyke
Mr Justice Uniacke.

No 1312
Dabin
vs
Jackson &c
&
Divers oppts

On report of the Surveyor —
Mr Pelletier for Ant. Marie Gouzeon consents to the homologation —

Mr Rossiter for Jackson — objects to the Costs occurred as Brodie the Oppost — did not proceed regularly — objects to the claim of the Seminary as not founded and they have shewn nothing to support their demand —

No 135.
Webb
Clarke —

On Defendt mo. that Pltff declare whether he means to make use of exh. filed —

Boston for ~~Defendt~~ Pltff contends that mo. ought to be dismissed as irregular & inapplicable in this case —

No 1361
Wurtele & Napier

On Pleff mo. to ex. wife of Defd on faits & articles —

Mr. McCord for Defend — Pleff does not alledge enough to entitle him to obtain the examination of the wife, Pleff ought to have alledged that there was a Communauté between Defd & his wife — Repn vo Interrogn
1 Jousse 117. — Inrbert. in ~~cases~~ ch. 38. No 4. Note 7. —
Poth. Proc. Civ. p. 68 — 1 Pigeau 136 —

No 1079
Rolland & Donaldson et al —

On question as to competency of a witness produced by the Pleff

Rolland for Pleff action to set aside a sale of two lots of land in ~~his~~ Pleffs seigniory which belonged to Pleff & not to Defend — Donaldson —

The Pleff has produced sundry documents as a commencement de preuve par ecrit — 1o a declaration of Donaldson exh. No 7 produced by Pleff at enquete — it is a proces verbal for a cours d'eau — in a cause in which Donaldson was pleff. to shew the locality of this P. V. Pleff has filed a plan in gt it is laid down — In this P. V it is stated that the Cours d'eau should cut the lands of Donaldson, & the lands No 96. & 97, 98 & 99 as belonging to Sir John Johnson, & from that point to cut the rest of the domain not then conceded — Donaldson obtd a procuration of Sir J. Johnson to obtain the homologn of this P. V. gt was homologated in consequence Donaldson was appointed Syndic & under his direction Sir J. J. did his share of labour on these lands his property under the direction of Donaldson —

2o The book of Receipt of the Defend by gt Pleff will shew that in 1818 D — no longer possessed these lands No 98 & 99 —

98 & 99

Defd. possessed five lots as mountain lots No 75. 94. 96 ~~97~~ as appears by the deed of concession — the lots No 96. & 97 Defd had retroceded to Sir J. J. Cong before 1818 — It appears that in 1814 the Defdr. pd only for 3 lands — & 74 95 & 94 he pd only one sols of cens — the Defd then possessed 5 lands — for the other he pd the ordinary rent — in 1819 it appears a settlement of accts for 3 remaining lots — still he held 5 lots —
In 1821 a balce settled on 1 lot — he had then 3 lots, but two of them pd only one sol — because the other lots 98 & 99 he then held them no longer — In 1822. he pd. for one lot only No 95 — In 1824 rent pd. only for one sol — also in 1825 rent pd only for one lot —

John Johnson is brt. up as a witness to prove that in 1818. the lots 98 & 99 were given back to D — for other lots conded to him 1 & lot. No 109 — in the Terrier there is a memdn. of the handwriting of the Wit. to this effect — the wit. was going on to state the nature of the exchange when he was stopped by the Defdr.

Cites. Rep. vo Commencement de preuve. p. 46 —
Old Denizt. vo Com. de preuve. No 1 & 2 —
Supellon ordr. tit. 20. art. 3 —
Old Denizt vo Preuve. No 19. —
No Denizt vo Com. de preuve — the ordre is contrary to the Common law & not to be extended —
Poth. Obl. No 801 —
Bornier. tit 20. art. 3 —
Danty — addn. on Ch. 1re p. 586 — commt. de preuve —
Disquiron. —
589 Danty — on cases of fraud — p. 589 —

Mr Driscoll for Defendr. cites Danty — p. 244 — on
244 the note — 7 Rep. 657. vo Fraude —
13 Rep. p. 584. 1 col. vo Preuve — par. 3 & 4 —
3 Guyot Fief. 233. §. 1. 2 & 3 & 5 —

The enonciation of the lands belonging to Sir J. Johnson in the P.V. cannot affect the rights of the Defendt in the land –

Chaffers & Bouthillier } The Court rejected the Pltffs motion for bringing up the same Jury already summoned for the trial of this Cause on the 4th instt

1st Because there was nothing to shew that a Jury had been summoned to try the Cause,

2d Because the Pltff having discontinued the rule for the trial of the Cause on the 3d and before the return of the venire, the Court had no power over the Jury, who were thus dispensed to attend, nor was the Venire returned, so as to enable them to proceed thereon –

3 Because

Saturday 7th Febry.

Prest.

Ch. Justice & Puisne Judges.

No. 135.
Webb
Clarke

On Defendt. mo. that Pltff produce a power of Attorney to maintain the action, as he is a foreigner

Boston for Pltff, the Defendt. has waived his right by moving in the Cause — & moves that Pltff be admitted to proceed ex parte.

No. 267
Marchisseau
Cartier

On Pltffs mo. to reject Defendts. plea of prescription —

Mr Cherrier for Pltff — the plea consists of two parts one of non-assumpsit — & 2dly Prescription — which is inconsistent the prescription is besides insufficiently paid

Mr Ross for Defendt. the pleadings are regular —

No. 1389
Terrien
Dupras & ux

On Pltffs mo. that Defendts. be held to produce the minute of an act filed by them —

Mr Cherrier for Defendt. the Defendt. last term obtained an order that Pltffs should declare whether they meant to use a certain procuration filed in the Cause — & as this was found insufficient a further delay was given & another power of Atts produced, qt was found equally insufficient & it was finally ordered that a further delay be given to the 20th Oct. to make a new declaration — & on 20th Oct the Atts a further delay to 1st Febry — in the vacation a new power of Atts was filed, but no declaration made in consequence —

Mr Bleury for Pltffs — the power of Atts has been filed and no new declaration was necessary —

No. 1711.
Panet
+
Lorin
&
Malbeuf

On Defdr. mo. that his plea be allowed to remain on the record, inasmuchas no delay has been incurred, he having filed his plea before the enquete.—

Mr Guy for Pltff — Although the Attr of Defendr — was in error, he cannot be allowed to come agt the Judge of the Court rejecting his plea —

No 2501
Hitchcock
&
Streeter
&
E Contra

action on promy notes —
Driscoll for Pltff — The receipt for £300 — produced by Defendrs is not connected with any transaction between the parties here — and evidently ~~made~~ set up subsequent to a settlement of accounts ~~of~~ acknowledgmt made at Clamp's Coffee house —

Mr. McMillan for Defendr — action on 3 promy notes for £160 — notes given under particular circumstances — Defendrs were farmers & Copartners in Lumber trade & Pltff furnished them with their supplies — When advances were made the Defendrs gave notes & when monies were paid the Pltff gave receipts — & neither party knew the amount of their respective accounts — But the Defdrs have pd money to Pltff to amount of £700 ~~dr~~ upwards — Pltff says, that he lost a receipt out of his possn.—

No 1415
Jos. Vannier
+
Hypt. Denau
Hyt. Denau
+ 1415
~~Raymond~~
&
Raymond
+
Vannier
sup —

on law — on action in Garantie —
Cherrier for Defdr. Vannier gave considerable property to ~~Pltff~~ Martin Lux on a rente & pension viager — Martin & wife disposed of this property & it came to hands of Pltffs who made a transaction with Vannier & wife — by gt they consented to discharge Pltffs from all obligations of the original donation. The Pltffs having made over the property to Denau who had a claim agt Vannier & wife who owed money to Denau —

on this the present action is brot. by Jos. Vannier agt Denau, this Jos. Vannier was the Creditor of Bt Denau the Donors by Obligation — Here the Defends say they discharged the land as to all the obligations due to them personally & but this was no discharge as to the obligation of paying monies stipulated to be paid to third persons & particularly to the Pltff —

Mr Bleury, for Pltff — this case depends on the interpretation of the acte between the parties of 25 Augt 1825 — the coord personellement, here must in law apply to all the obligations contained in the original deed of Donation by the Defends to Martin. —

Mr Ls. Vigé for Defendt in reply — the discharge given by Defendt to Raymond did not extend to that demanded by Pltff in the original action, as not being the personal debt of the Defdt but a debt due to another person — In this case the Defendt could have maintained no action agt. Martin for the Debt he undertook to pay to Jos. Vannier, & therefore this was not a personal debt of Defdt —

No. 1761
Ferrier
v
Hamilton

action on a promissory note & cont on law —

Rossiter for Defdt the breach in declaration is that Defdt has not paid the said several sums of money & only one sum demanded —

Mr Terroux The declaration is suffl

—

~~No 1694~~
No 175
Archambault
v
Jeannot & Lachapelle

action to obtain decouvert from Defend his neighbour —

Bourret for Pltff. on hearing the Court ordered experts to make a report of the slot of lands —

the

the Experts have differed in opinion — cite Judgts in Country

Mr Lo Vigé for Defendt — The law of decouvert cannot be applicable to the present state of the lands of the parties the Pltff. states that by law & the Customs of the Country he is entitled to the decouvert from the Defdt his neighbour The Defdt has alledged that there is no such law — and if there were, that the land in question of both the parties was but one Concession & has since been divided among Coheirs, from whom the Defendt holds a portion of that land, the Defendt now possessing one half of it — Refers to Fournel traité du voisinage. p. 192 to & p. 206 which applies only to trees planted by the parties too near to the line of division. — Denizt. vo arbre. —

Mr Bourré in reply — contends that the rule must apply as to decouvert in this case, to the extent demanded. — the object is to enable the parties to cultivate their lands. —

No 1920
McCuaig
v
Montgomery

action of separation — on law

Mr O'Sullivan for Defendt — contends that there is not sufficient statement in the declaration to maintain the action —

No 1080
Rolland
v
Boast
&al

action for breach of Contract —

Rolland for Pltff. action for recovery of damages on a contract made by Defdt Boast to construct a windmill for the Pltff, & agt the other Defendt as his Caution — the Defendt failed in his Contract, & the parties into a Compromis submitting certain matters to the opinion and award of ~~the~~ Experts and the extent of the injury — An award was made, and deposited with a Notary, but it

it is so informal that the Pleff has not brought his action on it – but on the original Court. –

The Plea is not indebted – and on this plea the parties have gone to proof –

Cite. Poth. obl. No 420 – & 425 –

Mr Driscoll for Defendt – The injury which happened was to the flange from its insufficiency – The Defendt was only to compleat the Mill & set it agoing – he was not bound to reconstruct any part what was already done –

It appears by the opinion of the Experts that the flange was too light, this was the Pleffs fault, it was his flange –

No 1361
Wurtele
v
Napier & ux

Pleffs mo. granted – on the principle that a Communauté must always be presumed to exist between husband & wife, and that the Defendt. ought to have shewn the contrary had he meant to avail himself of that fact on this question –

Sed quæ? – May not the wife in certain cases be examined on facts & articles, even where there is no Communauté – & where she is no party to the suit – as where she acts as the agent of her husband – or in regard of domestic Concerns? –

No 135.
Webb
v
Clarke

Defendts motion rejected – the proof a promy Note must be made according to the laws of England –

No 1079.
Rolland
v
Donaldson
& al –

Pleffs application granted, & testimony of Wits allowed, as there appeared sufficient to shew a Commencement de preuve par ecrit in the Cause

Monday 9th Febry 1829.

Tuesday 10th " —

Wednesday 11th " — Enquete days

Thursday 12th Febry.

Presd

Ch. Just. & Puisne Judges

No 1377.
Connell
v
Halpin

On Defendr mo. to ex. Pliff on faits & articles
Rossetta for Defendr there is an affidavit in support of the motion —

Mr Walker for Pliff no notice of affidavit — submits it

No 1665
Flaherty
v
Cameron
&
E contra

On Defendr mo. to discharge cause from the Role d'Enquete, as the issue is not complete —
Boston for Pliff — there is a principal & incidental demand — the cause at issue on the principal demand & the party ought to proceed on the incidental demand — That the plea first pleaded by Pliff to incidental demand is sufficient —

No. 1694
Lukin
&
Classon
&
Dupuis
&
Classon

on Pliffs mo. to dismiss the Intervention filed by Classon the Defendr
Mr Bruneau for Pliff — this Intervention is founded on the

the party of the Defendr, and cannot be admitted to be set up in this way a second time —

Boston for the Intervs party — the proceedings ought to be suspended until the previous proceedings had by Defendr to obtain possn of the land sold shall have been adjudged upon — That the description of the land as seized and advertised for sale is erroneous & at variance in the whole of lots No 43 & 44 are advertised as seized & for sale, whereas only a portion of them was so seized —

No 387
Rolland & Bidard

action for Lods & Ventes —

The Pliff. The plea here is that the property was purchased à faculté de reméré & therefore no Lods & Ventes are due — This principle cannot hold in this Country — where property is increasing in value every day, and the presumption is ag the Defendr that this faculté de reméré was merely a means of defrauding the Seignior. —

Dumoulin. on Fiefs p. 176 — & 178 —
3 Guyot. 296 — Fiefs — 8. 4. ch. 5 —
Poth. Fiefs. p. 145 —
O. Denizt — vo Lods & Ventes. No 78 —
3 Hervé — p. 6. & p. 123.
1. Fondmain — part 3. ch 11 — No 357 & dec. is of a different opinion — & No 382 — which however he admits to be contrary to true principles
Repre vo Lods & Ventes p. 649. & seq. —
1 Duplessis 96 & 97 — Boutarie 166 —

Mr Bleury for the Defendr — in the case the faculté of reméré has been exercised within the 9 years, no Lods are due — while the faculté exists, the purchaser is not the real proprietor — The authors are divided. —

1 Bourg. sec. No 2 p. 282 — Livonière. sec. 3. p. 161. 2. 5. 6. 7

N

The sale here may be considered as a conditional sale.—

1. Fonmain. No. 382. p. 320

2 Henrys. p. 240—

Repr. vo Lods & Ventes. sec. 14 — vente sous faculté de remeré.— refers to an arrêt de Bardet — where the Seignior was bound to repay the Lods he had received —

Rolland in reply — refers to authority cited from Livonière.

No 1297
Doucet & Guildry & Guildry T. S.

action in separation de biens —
L. Vigé for Defendr. The Pluff is not entitled to her action & not proved — the property in question was given to the children of the party —

Champeau & McDonell & McDonell

Grant for Pluff demands Judgt for balance due —
Bleury for Defdr has offered a small balce altho' nothing is due —

No 1793
Fisher & al & Grant & E contra

Fisher for Pluff prays Judgt on principal demand having filed a retrait for the ~~monies~~ credits to be allowed on incidental demand —

No 679
Cartier & Courtemanche & E contra

On Report of arbitrators —
Brunian for Pluff, asks homologn only question as to costs —

L. M. Viger for Defendl altho' the arbitrators have not sd how much has been allowed on each demand, yet the Pluff's demand has been much reduced — & costs ought to be divided —

No 1839
Amiot
Bruno — } action ~~for~~ on deed of sale —
Chorrier, Defendt can be condemned to pay only £9 — qt is the only balance due —

— Bleury for Pleff — the only sum to be deducted is £3. 5 —

No. 484
Pinsonneau
Laplante
& Econtra } action on obligation —
Roi for Pleff — the difficulty is only on the Incidental demand —

Bleury for Defendt — the Incidental demand is proved to the full extent —

Roi for Pleff — In 1822, the parties settled their accounts & Defendt acknowledged to be indebted to Pleff, by his obligation — & in it, the Defendt consents to lodge & board the Pleff, & for which the Incidental demand is made —

No 1739
Phillips
Mallet } (on Law)
action on a notarial act for £
Day for Pleff — plea consists of 2 parts, payt & usury — The plea of tender is insufficient, no tender being really made — as to plea of usury — contends that plea is insufft — as it is not set out in a way to shew what the usury was —

Rep. v° usure, p. 417 —
The pleading here is made to the exhibit filed by Pleff qt is irregular —

Guy for Defendt — The Defendt tendered the balce he owes as to Usury it may be proved by Thrk — & is sufficiently —

No 94
Pothier
&
Hall

Action for arrears of Rente Constituée, & of Cens et Rentes.—

Roi for Plff— action founded on a deed of Concession made to Defendr in 1811—

Borton for Defendr— a portion of the deed on which the Plffs action is founded has been declared false and rejected.— Moves in consequence that the copy of the deed now produced be rejected, as not being a true copy of the deed between the parties — That it appears that the deed declared on by the Plff, is not the deed which was executed between the parties—

Chalfers
&
Bouthillier

In this Case, Cath. Henri Blanchet the wife of the plaintiff moved to intervene in this cause inasmuchas her character was implicated in the accusation made agt the Defendr, and contending that the present action could not be maintained unless she were a party —

The plaintiff on the other hand moved to reject the Intervention filed by his wife, as wholly inadmissible in this Cause —

Friday 13th Febry 1829.—

Presl

The Ch. Justice & Puisne Justices.—

Intervention of Mrs Chaffers dismissed.—

Chaffers vs Boutellier } Trial of Case of Crim: Con: before Sp. Jury

After several witnesses had been examined and it being stated that Pliff had several others to examine, and finding from the late hour that the Case would occupy a considerable portion of time, the Court adjourned the trial until to morrow at nine o'Clock and with the consent of the parties directed that the Jury should be committed to the charge of the Sheriff to be kept in some convenient situation, and that necessary refreshments should be allowed them.—

Saturday 14th Febry.—

Presl

The Ch. Justice & Justices Foucher & Uniacke

Chaffers vs Boutellier } The evidence being closed and the Jury charged by the Court, they withdrew, and after deliberating for an hour and a half brought in a verdict for Pliff £25— damages & Costs—

Monday 16th Febr.

Prest.

Ch. Justice & Justices Foucher & Umacke. —

No 53.
Digby
v
Brooke

On Pltff. mo to refer cause to experts —
Walker for Defendt the facts contested cannot be referred to experts —

No
Pichet sux
v
Marraigne

On rule for obtaining new execution —
M Ross on behalf of Defendt says, he is not instructed, not having authority to appear for him —

No 1828
Gamelin
v
Kerr —

On Defendts mo. for a Com. Rogr to ex. Wits at Kingston & Rochester in U. States

Driscoll for Pltff states that the transaction took place at Kingston & accedes to the mo. for a Com. Rogr to that place but there is nothing to warrt issuing a Com Rog. elsewhere —

No 1891
Archambault
v
Fontaine

Action for indemnity for value of a Coup de bois on a land sold by Defendt to Pltff. but not declared —

Rollin for Pltff — The Pltff was deceived & was obliged to purchase the Coup de bois from the owner.

L. M. Vigé for Defendt — The Pltff has made no proof nor was any made by the Defendt — The Defendt was no party to the transaction between Pltff & Jeffrs Fontaine & not bound thereby —

~~The Pltff has~~

Rollin for Pltff, there is sufficient proof of the servitude and its value — if the value was over-rated the Defendt ought to have shewn it —

No 473
Rolland
v
Pothier

On acct. rendered by Defendt —

Rolland for Pltff — question as to interest — the Defendt was in demeure to render his acct. & it appears when action was instituted there was a balce due to Pltff the interest of an rente, of Dower & of an account due by an accountant — are due from the day of demand —

Repr. vo interets — where interest due on interest —

Lacombe vo interets, where interest allowed on Dower —

Objects to the charge of £3. 10 for drawing supplementary account —

Bidard for Defendt The acct. here consists of interest qt. accrues tails on the principal — The Defendt could not tender any balce to Pltff, owing to objections raised by Pltff — he can owe the interest only from the time the account is liquidated —

Furgole. 4. vol. p. 173

Born. on reddition de Comptes —

The balce here consists of interest, except a small sum for a rente constituée —

Rolland in answer. cites. Repr. 467. vo interets — the authority from Furgole is clear that interest is due from the day of demand ~~from~~ when the demand is by action in Court —

No 267,
Marchisseau
v
Cartier —

On Law

Cherrier for Pltff — The plea of prescription as here pleaded is insufficient, as no specific prescription is set out

McRoss for Defendt — The Cause was heard on the question & Judgt. given — the present argument is founded on the same grounds — That the plea is perfectly sufficient. —

No 1182.
Cuthbert & Delaundiere

Beaubien for Pfff. action on bornage between the Seigniories of Lavaltrie & Lanoraye — action is founded on agreement between the auteurs of the parties of 1 & 2d Octr 1790 — under this agreement two Surveyors drew the line of division as appears by their P. Verbal — The line line in N. W. direction as all the Seigneuries on that side do except Seigns of Lake of 2 Mountns — this line was to be parallel to the line of sepn between the Seigs of Lanoraye & St Sulpice — refers to P. V. of Plamondon & Desglandons — Here it was the intention of the parties that their Seigneuries should be separated by a line running N. W — the first Interlocs Judgt. given by the Court directs the line to be drawn according to the P. V. of Plamondon & Desglandons The Surveyors Dignan & Turgeon who drew the line did not agree in their report, Turgeon inclining in favor of the Defendt — This line was not in the direct line N. W — it wanted 20' — Dignan shews that the line he drew ~~was~~ corresponded with the anciens travaux — Laforce's P. V. made 4 July 1741 — refers to materials put under the boundary marks he planted being, Old french pottery —

The Court ordered on 19 Oct 1826 that Surveyors should verify their respective operations — this was done & another report made signed by both Surveyors — they declared the line drawn by Dignan correct, but the Defendt objected to any boundries being placed on the line so verified. —

The Court ordered a third operation by the nomination of a third Surveyor — under this order Stevenson was named, it was directed that he should verify if the line drawn by

Dignan

Dignan & Turgeon was the true line as established by Lafrance & on default of his finding this to be the Case, to establish this line — The Surveyor has misunderstood the order of the Court, and proceeded in a way to give a crooked line — The Surveyor has not taken any testimony to ascertain any part of the line between the parties, but between Daillebout and the Seigneory of Kildare — which was required — he also has given his opinion by the testimony he has received, the line between the parties never existed —

Contd. to 2d. April.

No 2342
Bedard
v
Chaput

on Report of Practicians —
Mondelet for Pltff — asks for hom. of Report —

Cherrier for Defendt — the rule of practice does not apply to reports of practicians — The Pltff caused a clause in his marriage Contract not usual, that he should be preserved in all the rights of succession of the father & mother of his wife The father & mother desirous of making a settlement of their Suc. during their lifetime made a disposition of it to gt Pltff consented — so that there remained only the Succession of the mother, of gt she disposed by Will The father & mother gave a sum of money to Pltff in consideration of gt he renounced to his rights in his marriage Contract — but it is held that this is not binding on him —

The objections to Report

1st The Practicians without proof could not augment the value of the effects stated in the Defdr account —

2d article 100th for apparel of Madr Dubuisson —

3 do — same observation —

4 do 388.8. this ought not to be allowed, for the parties were not prohibited by the clause to dispose of their property inter vivos Repn. vs Instit. Contlle p. 400 —

art. 7th the most essential — the old persons had created certain rentes in their favor — this cannot be granted in this manner even if the Pltff had right, he must bring a special action to set aside the donation —

art 8th objected to
art. 11th — do — do 12. 13. 14 — same objections —
art 15th — account to be rendered of some sheep —
The 16th art, is the most essential & is a question of importance The Pltff was a party to the act on qt the sum of 12,000, is here demanded, and consenting thereto — This act was a kind of anticipated partition of the succession to qt the Pltff was a party —
The Defendt cannot be held to pay Costs here —

Mr Mondelet for Pltff. The clause in the marriage contract is binding on the parties and the old people could not by any act weaken their succession — As to the acts to qt Pltff was a party concern only the real Estate, whereas the account demanded is only for the moveable property — As to the objections made for want of proof, it is not founded, the avowal of the party or the view of the practicians might easily determine the value — This applies to all the items — as to the 7th art. the Pltff does not claim any thing contrary to the act, but an indemnity for the property alienated by the act —

No 1686
Leclaire
&
Manuel } action on Promy note
Bruneau for Defdt — note given for a mare sold ~~by~~ to Defendt ~~by to~~ Pltff wh was unfit for service —
~~Bowen Bru~~ Lacroix for Pltff asks Judgt

No 429
Medgley
McKenzie
& al — } action of assumpsit for goods sold —
Rolland for Defdt The demand not proved —
Holt the agent is the witness, but agents are admitted in law only from necessity — but to prove signatures, & usages of trade they

they are not the best evidence — The agent here is the real pliff instructing the Attorney in the Prosecution — There is a contest here as to a part of the goods — there is no evidence of any sale of goods sold & delivered — they were taken by Defendrs on a joint adventure — and on an agreement of this kind it would require a special ~~contract~~ action, it cannot be maintained on the general Counts in the declaration, qh is not supported by proof —

As to a sum of £82. 19. 11, it was never recovered by the Defendrs as McNider & Co failed — & these monies were never had and received

An objection has been taken to a charge of Commission of 5 ℘ cent —

Premium of Exch. 10 ℘ Ct is also objected to

Mr Walker for Pliff amt £230. 10. 9 Cy claimed — The agents & factors are legal Witn — and speaks to Vouchers qh he himself obtd from Defdr — There is no proof of goods sold & delivered — but the contract entered into is proved by Holt. to show Defendrs could not charge for Commission —

The monies in the hands of McNider & Co were accounted for by them to the Defendrs before their failure —

The commission charged is for the balce due by Defendrs qh they never paid & consequently cannot be allowed

No 2150
Barnette
vs
Molson
&
Bibaud
oppo

On opposition afin de distraire —

Mr Stanley for oppost — The oppost acquired a share in the property sold & is entitled to have his portion & share in the property —

Mr Grant for Pliff — the action here is by the mechanics who built the theatre — & under a special contract under which the Defdrs are vested with the property —

Cont. Doc. No 198 —

No 1793
Fisher & al
Grant
&
E contra

On Incidental demand

The Defendt accepted the amount allowed by Pltff in his retraxit wt Costs —

Fisher, the produce here was given by another person on acct. of the note & Defendt here could not have recovered on this demand for goods sold and delivered. —

No. 1503.
Duncan
McDonald
& al

On law —

over till to morrow

No 1070
Chinic
&
Languedoc

On law —

Buchanan ~~for~~ on 2 promy Notes — the Defdt has set up a plea of compensation for an unliquidated debt and cannot be admitted — the plea does not even conclude to render an account qh is his only remedy were his demand founded

Boston for Defendt contends that plea is sufficient in form and substance —

Tuesday 17th Febry.

Prest.

The Ch. Just. & Justices Foucher & Uniacke. —

No. 1748.
Guy
v.
Paiement
&
Snowden Intervs

On Pliffs mo. to reject the intervention of Wm. Snowden ~~offered~~ made in the Cause yesterday —

Greece for Intervs party — the Intervention was filed in time, & this is the only objection made to its being filed

No. 790.
Hall & al
v.
Steib
&
Steib oppt

On Pliffs mo. to reject opposition as made contrary to law — & that a contrainte do issue agt. Defendt. for amt. of his adjudication —

Grant 1 Pyrau 782 — Poth Proc. Civ. 587. in 8vo —

Mr Beaubien for oppost. — the writ was irregularly issued the Defendt. had no notice of the motion for the suing out that writ —

The opposition here is not claiming any interest in the land, but setting up a nullity in the proceedings —

That the ~~ord~~ Prov. Stat. of 41 Geo. 3. has abrogated the Contrainte par corps, allows only the dole by folle enchere of the parts —

By the first art. touching contrainte par corps all contraintes are abolished except those specially named Tit. 34 —

Mr Grant for Pliff — The Defendt. was a party in the Cause & held to answer, on the motion made for the folle enchere —

The Contrainte has not been abrogated

No 782
Ogden
v.
Dumont

On action en bornage —
on law
Mr Buchanan for Pluff the Defendr contend that there are other parties who ought to be called in for drawing the lines demanded —

Mr Rolland for Defendr — The ~~Lake~~ Seigniory of the Lake of the Two Mountains intersects that of Defdr — and carries off several thousand acres of Defendr Seigniory —

No 1557.
Hubert
v.
Cartier

Mr Rolland for Pluff asks for Judgt — on the evidence before the Court. —
No person appeared for Defendt —

No 781
Cantin
v.
Foretier

action hypothecaire —
Bourré for Pluff. action for arrears of rente & pension viager — To this action Defendr has pleaded that there is a Dower on the land — this is denied, and there is no proof of the fact — Moves to reject the testimony of Wife to prove death of Gauthier —

No 1732
Dalrymple
v.
Laing —

action for wages —
Walker for Pluff. cites old Denizt. vo Prescrip: p. 737 — the Curator wh his plea of prescription must add that the debt has been paid — Repn vo Prescrip. p. 347.
Fisher for the Defendl — The law makes a distinction between the original debtor, and the heirs or Curators — Dum. on his treatise on Usury — only gives the right to a Pluff to require Defendr oath, if he thinks fit — In this case the

prescription

prescription applies — as to an heir a Curator, he can know only what is stated on the record — The Curator here says he has no knowledge of the Debt — For. Com. on 127e. art. — The ordce. of 1673 — Poth. Obl. No 720 — Denizt. vo Gages. p. 144 —

Walker The parties ought to go to proof before adjudging

No 1444
Foretier
Christin
& E contra

Action on a Contract for building a house
Lacroix for Pltff — There has been a Report of Experts of which Pltff demands the homologation —

Sewell for Defendt — objects to the report — The person of Chevallier was rejected as an Expert in the Cause yet the Experts have chosen him as Their Expert before any difference in opinion between them — The Experts were sworn before a Magistrate in the Country — the rule says nothing on the subject —

Denies that the Experts visited the work in question the window Shutters were not at the house at the time & were not seen by the Experts —

The Solvaux are 7 by 9 — instead of 12 by 12 — And they say, that from the moderate price allowed, the work is sufficient —

The Experts set aside the Contract & say that the Pltff shall not finish the work —

Mr. Lacroix for Pltff — The Experts are respectable men and no imputation can have weight agt him — The Defdt here produces the affidavits of the same persons who were already wrts for him — But the operation is regular — The last Interlocutor refers to the former as to the manner of proceeding of the parties, and the Experts were regularly sworn before a Magistrate. —

No 115.
Wilson
v
Spencer
&
Pierce —

Question as to payt of costs on proceeding agt Pierce

No 494
Starnes
v
Milliard

Action for goods sold —
Roi for Pliff. The Defendt undertook ~~undertook~~ to deliver a quantity of beer ~~for~~ in payt of a punction of rum sold him —

Mr Bruneau for Defendt moves to reject the testimony offered in support of demand, as it is an undertaking to pay the debt of a third person — The rum was sold by Pliff to one Fremont — after his death the rum came to the hands of the Defendt — ~~and~~ ~~to~~ the Pliff recd from Defendt who was agent for Mr Fremont 12 barrels of beer, as Pliff was in the habit of selling beer for Mr Fremont in town — Testimony of Mr Gennis is contradicted by the other witnesses. —

Mr Roi for Pliff — The Stat. of frauds does not apply here this is an action on the personal undertaking of the Defendt to pay his own debt —

No 301
Ackley
v
Languedoc

Action for labor as a Surveyor
Buchanan for Defendt — Plea not entitled to more than £10 — gt were pd before the action — The Pliff has not made out his case in evidence — The only labor the Pliff had to ~~to~~ was to make extracts from a plan, in gt he was employed about a month — The Attr Genl produces a receipt for £15 gt he says was more than he was entitled to — There is a copy of a letter from Defendt filed in the Cause and admitted gt shews Pliffs agrees to receive 25 Dollars for his services ~~in~~ the field, gt were for 4 or 5 days —

Boston for Pliff — The evidence shews that Pliffs services cannot be limited in the manner stated by Defdt —

No 329
Courselles
v
Villemer

On law —
Bleuny for Defdr Decl. insuffc not stated who refused to pay, nor who takes the conclusion whether Pluff or Defendr —

No 86
Scott & al
v
Miller —

On Defendr mo. to quash the process —
Walker for Defendr contends that the affidavit & writ issued thereon are irregular & insufficient, it is not issued on the principle that the Defendr was about to defraud his Creditors, but only on the principle of a privilege on the goods — It does not appear that the goods were in the same entire state as when sold, but were broken — cites Gr. Cont. 176. 177. art. No. 19. p. 1326 — 1327. — p. 1339. No 4 — 1344 — No 4. — No 1323. 2

Mr Driscoll for Pluff — The affidavit contains all the necessary requisites to entitle Pluff to his attachment in this Cause — The privilege will attach on the goods whether broken or not. 1. Pizzan. p. 465

No 381.
Alsopp. &
v
Buck. &

action petitoire —
Buchanan for Pluff — Defendr has alledged ameliorations, in which an Interlocutor was given to estimate the improvements — Pluff did not acquiesce in the Judgt. & the Court named for him — the Report is now made, and the Pluff moves to set aside. — the land here is in free & common, and the Defendr cannot claim any privilege he now sets up for his improvements — whoever builds on the land of another, he loses all his

materials

materials which belong to the proprietor of the land and more especially when the parties knew, as the Defd did here, that the land belonged to another & that he had no title to it —

Under the Com. law of England the Defendt has no privilege. Co. Lit. 4 letter (a) 1 Cruise. p. 19. — Cokes Rep. 4th part. p. 87. — 2 Peere W. 367 — Equity Cases abridged Vt Hypothecation — 2 Kents Coments 271 — 3 Atkyns 134 cited by Kent. —

Mr Grant for Defendt — The Court has said that the Defdt shall have his improvements — the law of England will not apply here — Contends that the fruits & revenues ought not to be allowed to the Pluff. as they are the produce of the Defendt labor — at all events such portion of them ought to be allowed as have accrued since the institution of this action Poth. Prop. No 341. Droit de Domaine —

No. 751.
Pilon
Cedilot

Action of account on Law —

O Sullivan for Pluff. has put in several pleas — 1st That he has accounted, 9th acct. was accepted by the Pluff. — 2d another account rendered — & 3d an offer to render an account — The acct. rendered, the Pluff contends that it was illegal, as the Pluff was then a minor & the subsequent confirmation was illegal and null, as it could not contain what was due to the Pluff, and was not accompanied with the necessary documents in support of it — The acct. here rendered does not possess the necessary form which a Comptable is bound to render — The Defendt not only charges interest on monies he received, but charges a large sum for his trouble

Bibaud for Defendt — Plea — that Defdt has accounted — The acct. was rendered à l'amiable among relations, & the same strictness not necessary, and when not demanded —

The Chief was not then of age, but in 1825 when he came of age, he took communication of the amount received and was satisfied with it — he confirmed —

Wednesday 18th Febry 1829.

Prest.

Ch. Justice Reid & Justices Foucher & Uniack

No. 289.
Gravelle
Dubreuil
Labelle & ux
gars

On the motion of the garants to be admitted to adduce verbal testimony in support of their plea —

Bleury for Garants. cites Dantz — p. 743. to 753 — in speaking of Receipts, quittances — The Pliffs here have admitted several payments which the Garants have alledged to have been made to them — cites case Hebert & Pelotte — in this case the debt is of old standing —

Rollin for Pliff. ~~the~~ verbal testimony cannot be allowed in this case — there is not least appce of written proof in the Cause of the fact —

~~No. 38~~
No. 1929.
Roi. —
Provendier

On Defendrs motion to reject certain papers filed by the plaintiff

Bleury for Defdr a certain act of donation was filed at the enquête, contrary to the Consent of the Defendr as he was in default & could not make any motion to reject it — There is no service of notice on Defendr in vacation to fyle his plea —

~~Un~~ 3 depositions are in the handwriting of the Attorney of the plaintiff —

No. 1290
Ball
Mr Duffie

On Defendrs mo. to set aside the proceedings taken by Pliff ex parte agt the Defendr

Mr Sewell for Defendr states that the parties were about settling

settling and agreed to continue the Cause to the present Term

Mr. Peck for Pltff. The delay agreed on between the parties was to Feby Term, and the Atts gave notice to Defdrs Atts to fch his plea, this he promised to do next day — but next day the plea not having been filed, the Pltff proceed to foreclose the Defr by proceeds ex parte agt him —

Sewell for Defdr. admits that Pltff asked him for a plea gt. he promised to do, but the papers happened to be mislaid —

No. 119.
Charbonneau
Pillet
Pillet. Gart

On Pltffs mo. to refers matters to Experts —
Mr Roi for Pltff. the Garant has pleaded that improvts have been made on the land, which they agree to submit to Experts — The only difference between the parties is as to the rule to be made for this purpose —

Mr Brunneau for Garant, contends that the rule he proposes is more detailed than that proposed by Pltff —

No. 483.
Leach
Leach

On Defendrs mo. that the Defendr be liberated from his confinement, as no copy of the writ of Capias has been served upon him

Mr Adams for Pltff — the motion is made too late & not according to the rules of practice — That the service has been regularly made —

Mr. Peck for Defendr. the return is not true —

No. 1546.
Lewis
Lalanne

On Pltffs. mo. to ~~refer matters~~ set aside rule of Reference to arbitrator, & parties allowed to proceed before the Court —

Mr Day for Defendr. no proof that the Arbitrator ever refused —
over to 19th

No. 384. & 385.

McGinnis & Cartier fils & P. Commette

On rule obtd agt Defendt & Gardien why a contraint should not be granted agt them, for abstracting & concealing some of the effects seized

Mr Bourré for Defdt & Gardien, it does not appear by the P. Verbal of seizure that any other effects were seized besides those which were sold. — except a Cariole robe that the Gardien has been discharged by the Bailiff from his garde —

Mr Rollin for Pltff. That there are several articles mentioned in the P.V. of Saisie which have been concealed that if the Defendt had any proof to make it ought to be in a summary manner —

No. ~~Fraser~~ v ~~Stephenson~~ &

No. 148
Green v Helton

Action for wages — on law —
Adams for Pltff — the plea is double, not a plea of prescription, nor to merits, and Pltff has demurred to it — The plea denies the facts in the decln & cannot stand as a plea of prescription. Poth. Proc Civ. p. 28. n 12. Forbes. v Atkinson. Pyke's Rep. —

Mr Fisher for Defendt the plea here is a peremptory Exceptn the denegation in the first plea is merely protestation — and the plea is a plea of prescription, & with it the Defendt has pleaded a plea of payt. & tenders his oath. —

No. 594
McGillivray v Stanley Cur & Turgeon & McKenzie

The oppt. became adjudicataire of a lot of land & house but finds there was no house, the Court ordered the house to be valued, agt they did & state value at £12. —

No. 434.
Spinks
v
Botterell

On Report of arbitrators.—

Rossiter for Pliff the 3d arbitr. being sick his separate report not before the Court — the proceedings of the other arbitrators are irregular, as they heard Wit. without being sworn — There is a sum of £26 — gt. Defendt. received & for gt. he is accountable to Pliff

No 1427
Cameron
v
Cameron
&
Econtra

Action on a promy note —

McMillan for Pliff — Promy note, not joint & several — a sum of £3. has been received on acct of one of the Defendts Ewen Cameron, who has made an Incidental demand & in it claims this sum as part of it —

McGrant for Defendts There is no Incidental demand in the Cause — The principal demand must be dismissed as the note is not proved by 2 Witnesses — the hand writing of Ewen Cameron is proved, but not that of John Cameron — The Pliff cannot avail himself of the Interrogatories, as they refer to a note not annexed to the Interrogatories — That there can be no Jugt. rendered agt Ewen Cameron, as the contract as laid has not been proved 1 East. p. 52. Sheriff v Wilkes &al — Gray &al v Palmer & Hudson. 1 Esp. Rep. 135 — Chitty. p. 488. 5th Edit Doug. Rep. 667. — Bristow v Wright —

No 1503
Duncan
v
McDonald
&al —

Action for work & labor in constructing a bridge on Law

Roi for Defendts The Pliff contracted with the Inspector and Sousvoyer of the parish, & in that capacity,

the

the Defts are no longer acting in that capacity and his action cannot lie against them, but against those who represent the public —

L. M. Viger for Defts — Sous voyers — who plead the same defense — The parishes in this Province are Corporations, and the sous-voyers named therein annually represent that parish, and on their going out of office the parish is represented by their successors, who are to be considered also as a Corporation, and are not bound in their private characters, for what they contract or undertake in their public character — cites the Case of the Commissioners of the Lachine Canal, at. whom the Court refused to sanction any proceedings, as the act under which they were named, had expired — refers to the provincial Statute under which sous-voyers are named and bound to carry into execution the orders of the Grand voyers — The Defts have no longer any power or any means to compel the parishioners to pay the expenses of the bridge — this can be done only by the sous-voyers in office —

W. Rossiter for the Pltff M. Roi has pleaded to the insufficiency of the declaration — This plea must be dismissed — The other exceptions of Defts must also be dismissed Polk. Ob. N. — The Defts have contracted as a public body, and are bound by their Contract — Obl. 266. 7 — p. 108 — That obligation is joint & several & solidairement obligés. — That the Pltff must always look to the persons with whom he has contracted —

~~No. 786.~~
No. 1496
Leduc
Nixon

Action of damages for trespass &c
Bleury for Pluff — refers to the testimony adduced as substantiating the voie de fait complained of and estimates his damages at £500.

No. 1421
De Longueuil
Gray ~~[illegible]~~
Cur

Quest. as to a right of set off set up by Defdr

No. 1347.
Quackenboss
Quackenboss
et al

action of debt on oblign
on Law
Henshaw for Defendt has filed a plea of Exception to the action — It does not appear that Defds ever even parties to the obligation — has not put in all all the heirs of the late Quackenboss —

No. 1577
Roe
Tracy —

Mr. Ryan for Defendt — The Defendt — was arrested, at suit of Pluff. on qui-tam action on a Judgt — for a fine for £20 — The action here brot is only for the half of the — Motion withdrawn —

Thursday 19th February

Prest.

The Ch. Justice & Puisne Justices

No. 531. Hart vs Kidd et al	✓	Action dismissed as to Kidd, & Judgt for Pltff agt McNabb
No. 1141. Pothier & Maranda & Roi. Gart.	✓	Action dismissed
No. 1988. Olivier-Belanger & Belanger Op.	✓	Opposition dismissed
No. 1473. Stem vs Hatt.	✓	Judgt for £50 damages & Costs.
No. 245. Card & Astor		Action dismissed
No. 587. Foretier & Lacroix		Action dismissed

No. 1653. Dufaux & Dufresne	Action dismissed —
No. 567. Bouchette & Chaulette & E contra	Interlocutor ordering the division line between the Province of U. S. & Canada to be drawn —
No. 289 Gravelle & Dubreuil & Garants	Motion of Labelle, the arriere garant disallowed —
No. 1891. Archambault & Fontaine	Interlocutor ordering value of the Coupe de bois to be ascertained by experts —
No. 790. Hall & Steib & Steib opt	√ Rule for Contrainte made absolute —
No. 1752. Dalrymple & Laing, Cur.	√ Plea of prescription maintained —
No. 494. Starnes & Milliard	Action dismissed —
No. 2501. Hitchcock & Streeter & E contra	Judgt for Pleff on both demands, w sauf a se pourvoir, on Incidt demand

No. 1675 Andrews v. Crooks.	Judgt on motion — see Judge Pyke's notes on Case —
No. 1895 Dubreuil & Porteous	Defendts pleas of exception dismissed
No. 1739. Philip v. Mallet	Defendants plea rejected — see Judge Pyke's note on Case
No. 1070 Chinic & Languedoc	Defendts plea of exception rejected
No. 94 Pothier & Hall	Judgt for Pluff

Friday 20th Febry. 1829.—

Pres.t

The Ch. Justice & Puisne Justices.—

No. 495.
Allard
&
Lacombe

Defendts mo. to proceed on the inscription en faux, after cause discontd. rejected—

No. 78.
Goguet.—
&
Lamoureux

The Inscription en faux made by the Plaintiffs, dismissed with Costs.—

April Term. 1829.

Wednesday 1st April.—

Prest.

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Uniacke.

There was no business, except the ordinary motions, before the Court.—

Thursday 2d April.

Prest.

Ch. Justice Reid
Justices Foucher & Uniacke

No 1844
Leveque dt
Lesieur
vs
Levesque pce

On ~~Pliff~~ Defds mo. to declare the enquête closed—
Mr Stanley for Pliff— the evidence for Defendt is insuffte and ought not to be admitted— action for a promissory note & no evidence necessary on his part— ~~which he~~ ought to be allowed to produce the promissory note—

Bleury for Defendt— The action is founded on a note, plea payt— & Defds charged to prove it— to support it, he has produced a receipt for a part & also a general quittance given to one Cisard for the very note in question— he has closed his Enquête— & it appears at the last Enquête day, the Pliff had no witnesses—

No 483
Leach
Leach — } On Pltff. motion to amend declaration —
Peck for Defendt. This amendment will change the nature of the action — it concludes for money but the amendment is that the Defendt be condemned to deliver up certain articles instead of money — The parties are at issue & an Incidental demand filed — a capias has been sued out, & if this amendment is allowed the action cannot be maintd —
Mr Adams for Pltff, contends that he is entitled to amend on payt of costs — the action is clearly an action of deposit —

No 527
Roi
Coates } On Defendts mo. to set aside proceedings on the Enquete as having been irregularly fixed the Defendt not having had sufficient notice of the inscription — it having been given only 2 days before the inscription which ought to have been given 14 days before —
Mr Roi for Pltff — this question has been already determined — The Enquete has been regularly made & closed —

No 1629
Wher
Hill — } On Defdts mo. to discharge rule for Com. Rogs a Pltff has done no diligence —

No 46
Girard & al
Girard } On Defendts mo. to dismiss action for want of diligence — and on Pltff motion for a continuation of the rule for ex. of Wits —

Salmon

Salmon for Defend^r the Pluff did not produce any Wits before the Commissaire on the day appointed — & if a further day be given, it ought to be on pay^t of expences by Pluff —

Mr Bleury for Pluff — It was by a mistake that the witnesses of Pluff came to Montreal instead of going to before the Commissaire —

No 1182.
Cuthbert
Lassandière
& al^t —

on action en bornage

Mr Beaubien for Pluff — Pluff's Seigniory has 3 leagues in front by 2 leagues in width, & running to the River Lassomption in the rear — By the last operation made by Stevenson there appears to be a difficiency of 26 acres in width of Pluff's Seigniory — In 1790 the fathers of Pluff & Defend^r caused a certain operation by q^t they acknowledged a certain boundary — hereby planted by Laforce ~~was planted~~ q^t divided their Seigniories, q^t line should run N. W. perpendicular to a line N. E. on the front — Stevenson has set aside this line, as encroaching upon the Seigniory of the Defend^r — The Defend^r plea acknowledges the boundary on which the line ought to be drawn — The Wits ex^d before Stevenson ascertain the place where the boundary on the River Lassomption stood — from the marks still subsisting — The true line was ascertained by Tingwon & Dignan, when they unite on a revision of a former operation that the line as drawn by Dignan was correct — Stevenson has put a wrong interpretation upon the last Interlocutory order of the Court, and has assumed a power of establishing a line of his own without adverting to the directions laid down by the Interlocutor —

Stevenson's operation — says he begun his operation at B — the line between B & C he says, was 34°. 40'. this ~~angle~~ direction is incorrect in being less than 45° — and therefore to the prejudice of the Pltff as the line ought to be due N. W — q^t would require the line to be of 45° —. The affidavit of Dignan produced by P^o Aff shews in what respect the Surveyor Stevenson is in error —

That the line C. D regards only the Signing of Dartlebout but can constitute no direction for the line in question

Stevenson admits the line drawn by Dignan & Turgeon to be straight & correct in conformity to the order of the Court, which is sufficient for this Court to ~~confirm~~ it, and the reasons given by Stevenson cannot be admitted as of any avail ag^t a principle which has been adopted by the Court as the course of the line of division between the parties —

Cont^d till to morrow to hear Defd^s

Friday 3^d April 1829.

Pres^t

Ch. Justice Reid
Mr Justice Foucher. —

Cuthbert & Lanaudiere & al } Rolland for Defend^s — objects to the plan and report of Dignan & also to his affidavit, as improper and not admissible — & moves to reject them —

The 2 boundaries are considered as too near for giving a certain direction to the full extent of four leagues —

— The line between St Sulpice & Lavaltrie must be considered as good — no proof to the contrary — if so the line between Lanoraye & Lavaltrie ought to be parallel thereto — the line of St Sulpice is in the direction is 34°. 50' — leaving 16' in favor of Lavaltrie

which ought to leave the profondeur of the Seigniory of Lavaltrie larger than ~~the front~~ his concession, but the contrary is the fact, it is much narrower —

The line of division is known & ascertained in the depth as well as in front & it is only necessary to unite the lines by the action between Mr Panet & Mr Cuthbert & Judgt thereon, the Surveyor Plamondon, who verified the boundaries in front of the Pliffs Seigniory, wr Deglandons — it is stated in their proces verbal, that this line was to be parallel to that of St Sulpice & to run in direction N.W. The same Plamondon in 1802 was called to draw the line between Mr Cuthbert & Mr Panet — and in doing so to come to the point of the line of division between Pliff & Defendt — The Pliff who was a party to that operation must be bound thereby — the point C. is ascertained by Plamondon as the line of division — this boundary cannot be recognised as the boundary of Laforce, but is presumed to be so the Pliff is bounded by the continuation of this line at diffnt points with the Defendts and recognized in the separation of the Township of Kildare — The last Interlocutory Judgt directs the attention of the Surveyor to the line between Mr Panet & Mr Cuthbert —

Two men who have spoken of the boundary of Laforce in the rear of the Seigniories, are men not to be credited, it is true that the faillance francaise was found in the place but there is nothing to ascertain that it was the boundary of Laforce —

It is stated by Stevenson, that by prolonging the line of the Township it will fall in a line with the boundaries in the front —

No. 1566.
Cartier
Jarret & Vincent
& Archambault

On opposts motion that opposition be held as admitted, no objection having been made thereto —

Mr Greece for Oppt — The claim here has been filed upwards of 10 days required by rules of practice the objection now made, is that the Sheriff has not returned his P.V. of Seizure — this is of no moment on this question — this cannot operate any injury to the Oppnt —

Bruneau for Pliff — The Sheriff's return is not complete and until complete he was not bound to answer — there is no process Verbal of Seizure annexed to the return —

No. 1803
Rodier
Colclough

On Defdt mo. to quash writ, as being in the French language —

Cuthbert
Lanaudiere
& al —

Mr Beaubien in reply — charges Surveyor w/ partiality

Stands over title to morrow

No. 756
Laparre
Hubert
Cartier T.S.

The T.S. — over to 6th —

No. 323
Webb
Bellamy

action on 2 Promy notes — hearg on law

Adams — The Defendt has demurred to the declaration

declaration as it does not shew that Pliff is entitled to the action, as the notes were made to Webb & Co who alone can maintain the action —

see 2 Starkie N.P. Rep p. 29 — Willis v Barrel Willison —

Chitty on Pleads p. 6. 7. Chitty on bills p. 3. 35 — 2. T. Rep. Graham & al v. Robertson 282. —

Mr Nye for Pliff, the Words & Co are here mere surplusage there was no other person had an interest but Pliff there being no other concerned w. Pliff as a Co —

No. 1809.

Roi v. Kauntz } On Trial by Special Jury for defamation —

Verdict for Pliff 1/- damages. —

Saturday 4th April 1829.

Prest.

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Pyke

Plante & Bousquet } On Defendr. mo. to reject the testimony taken before the Commissioners —

Roi for Defendr — the proceedings of Commissr. are irregular

1 The Commissioners have made a return detached from the writ & appear to have no reference to it —

2 The answers of the witnesses are irregularly taken

3 The Commissioners refused to hear Defendr. Witnesses, because they appeared without subpœna. —

Mr Bleury for Pleff — admits there are irregularities but they are not of a nature to reject the testimony taken before the Commissioners —

No. Fraser & al ~ Stephenson & Oppr

On motion of Smith, oppor. in Doas — order — motion that the pleading filed by Maitland & al. be rejected as irregular as it combines law & fact —

Bourret for Maitland & Co — contends that the pleading is regular —

No 614 Fisher ~ Farley —

action on a bill of Exchange —

Mr Driscoll for Defendt moves to reject the application for trial by Jury, as Defendt is not a trader a Mercht in the contemplation of law —

Mr Boston for Pleff — The transaction here is of a Commercial nature — The case when a promy note payable to order ~~was~~ has been considered as not of a commercial nature so as to give the contrainte par Corps in satisfaction of the debt. Pykes Rep. & cases referred to but a distinction is to be taken as to Bills of Exchange — This is allowed by ordre 1667. tit. 34. art. 14 — Minors even are contraignables par corps for drawing a bill of Exch as being a mercantile transaction — Demzt no Contrainte par Corps — this case in France was triable by the Jurisdiction consulaire —

Driscoll for Defendt — The ordre states particular words of Traders & merchts so reputed & understood — which must refer to the general pursuit in life of the parties —

No 1180
Shedden
v
Simpson

On hearing on law

Mr Driscoll for Defendt — The proceeding here is irregular as the Pluff might have proceeded to sell all the goods of the Defendt under the writ of Vend. Exp. & could at the same time have seized any other goods that had not heretofore been seized — The Pluff states that there had been no return made to the writ of Vend. exp. when he sued out the present attachn — but this was his own fault — The Pluff should have alledged that since the suing out of Vend. exp Defendt had become possessed of new effects —

Walker for Pluff — The only question here is whether there be a sufficient issue of law before the Court to be previously heard as pretended by Defendt — The Pluff contends that there is no such issue & that proof must be first had.

No 560
Ferguson
v
Harrison

On law action for Breach of Covenant

Mr Boston for Defendt — The contract was made by the father of the Defendt then a minor, & this action is for breach of contract by the Defendt This action is wrong brought — it ought to have been agt the father, the person contracting — 57. Geo 3. ch 16. §6 — a remedy given to the Master, as well as to the Apprentice, under qt law alone any recourse could have been had agt the Minor — and there is a limitation of one month in such recourse — cites. 2 Chitty. 233 — form of action agt the Father — 2 Doug. 518 — French. v 8 Mod. Rep. 190 — 2 Croke 179 — Gilbert v Fletcher — 3 Croke. p. 494. — 1 Burn. Inst. 66. Rep. v Puissance paternelle 101. 109 139. — Poth. Ob. No 454 — Pigeau. p. 83. Repn 14. Vol. p. 139 —

Mr

Mr Driscoll for Pltff. An action may be maintained agt. a Minor for an act done by him, when action is brot. agt him when of age — a minor in certain cases may bind himself validly if for his benefit —

No. 1814.
Marcoux
v
Jones.
&
E contra

Action for goods sold — on law
Driscoll for Pltff — Defendr. has pleaded 2 pleas —
Pltff has demurred thereto — agrees that Demurrer to one of them be dismissed — but as to plea of payt — it is hypothetical — Over to Monday

No. 1929
Roi
v
Provendier

Action for damages — ex parte —
on Defendr. motion —

1. That deed of Donation be rejected as irregularly filed and being in possn. of Pltff when action was brought —

2. The Inscripn. irregular & all other proceedings irregular no order of the Court to proceed ex parte, nor any legal notice to put Defendr. in default — no service of the notice appears —

3. The depositions of 3 Witnesses ought to be set aside as being in the handwriting of the Attys of Pltff — & some of the Witnesses are interested in the pasture & maintaining the fences —

4 — Other Witnesses not summoned to appear at the day of Enquete, but called up afterwards — contrary to 27 Sec. of Rules of Practice —

There is nothing to shew that Pltff is Tutrix to her children nor any proof — nor any proof of damages —

The evidence applies only to Louis Provendier pere & not to the son, who is Ld Chs. Provendier —

Mr Barron in reply — the Donation regularly filed
2. That notice was given & served on Defendts Attys — & the service proved by Pltffs attys —
3 No objection was made to the attys taking the depositions.
4 — No proof of hetelle necessary —

No 620
Alger
v
Brunette

On Defdts mo. for delay to plead to 1 June next

Mr Day for Pltff. The delay cannot be granted without prejudice to Pltff, as it will carry the Cause over to October next —

Cuthbert
v
Lanaudiere
& al' —

Beaubien in reply — says, he has set down the Cause for hearing on all the different reports & surveys made by the several surveyors named in this Cause — which will lay before the Court the whole contest between the parties —

As to the plan & affidavit of Dignan, it is not very material whether filed or not, they only shew the irregularity of the proceedings of the Surveyor Stevenson — That Stevenson ought to have taken the testimony of the witnesses produced by the Pltff to shew where the line of Lafarce had been recognized and ascertained — this was a partiality in him. —

The allegation of the Surveyor that the 2 boundaries are too close to each other so as to extend a line to 4 leagues is ridiculous — the consequence appears that the Surveyor took only one of them —

The line between Lavaltrie & Lanoray is straight as stated by Dignan & Turgeon & all the former Surveyors, & therefore can occasion no injury to either party — & if any difficiency is found in the rear of Lavaltrie, shews that the lines had not been drawn straight or there would be no difficiency —

Monday 6th April 1829.

Presᵗ.
Ch. Justice Reed
Mr Justice Foucher
Mr Justice Pyke &
Mr Justice Uniacke

Bent & al
n
Spragg & al
&
Howard Intᵉ

On Pliff's motion for a reprise d'instance by Stewart Spragg as heir of his deceased brother —

Walker for Pliff action on a Saisie-arret — action returnable 1 June 1826. the process was served on both Defendᵗˢ — but before return of action Wm Spragg one of Defendᵗˢ died — Soon after the Intervention was made ~~between~~ by Miss Howards — The Pliffs joined issue with Intervˢ parties, & the cause was inscribed for evidence and witnesses were heard — but nothing done as to the decease of Wm Spragg — The real issue here is between the Pliffs and Intervening parties, and here the Pliffs are exercising the rights of the Defendants, and it was unnecessary to adopt any course as to the Defendᵗˢ ~~for~~ if the Intervening party succeeds that Saisie arret will fail — The Intervˢ party was the only one interested to call in the representatives of Wm Spragg, as the nature of the contest affects their rights The whole evidence here shews the property in question was the property of William Spragg, and they cannot here establish their claim unless the representatives of this Wm Spragg be called into Court —

That the declaration intimating the death of Wm Spragg was never served on the Pliffs or their attorney — which notification is required by law under ordᵉ of 1667 —

Rolland for the Intervˢ party — There are sufficient parties in the Cause to maintain the proceedings to Jugᵗ — The

action

action was intend in Court as one of the Defendts both were solidairement bound, & it was of no consiquence to call in the heirs of the deceased person — and in regard of the Intervening Parties it can be of no moment whether the heirs of Wm Spragg be in the Cause or not, the Pltff have seized their property and it is with them only the contest raised — There is no instance here even in existence of Wm Spragg, the Court never could exercise any jurisdiction over the late Wm Spragg — as he appears to be dead before the return of the Writ —

No 614
Fisher val
v
Farley —

Trial by Jury refused — Defendt mo. granted

No 1146
Plante —
vr
Bousquet
& Contra

Defendts mo: for quashing return of Commissioners granted —

No 480
Henry
vs
Gagnon

Defendt entered appe by Mr Bleury his Atts, at the return of Writ on 14 Febry last — No plea being filed the Pltff moved on 2d inst. for leave to proceed ex parte — at same time Defendt filed a petition praying to be admitted to make an inscription en faux of the obligation produced by Pltff

The Court rejected Defendts application as too late, the plea being due & ought to have been filed on the 1st inst — and granted Pltffs motion —

So held 9 Febr 1826. Ratté v Morin —

Provost
vs
Porteous

On Trial before Sp. Jury — action for defamation
Verdict for Pltff £5 — damages & Costs

Tuesday 7th April. 1829.

Prest.

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Pyke
Mr Justice Uniacke.

No. 1101.
Côte. v. Hayn

On Defendt. mo to quash process —

Mr. McMillan for Defendt. The Defendt. is a Germain & the greater part of the writ is in French

Mr Rodier for Pluff — the Defendt. has been summoned in the English language — the designation of the place where the seizure is to be made is in french, but this may be made in that language —

No 132
Kemp v. Salls —

On Defendts. mo. to dismiss the cause from want of proceedings —

Mr Bourret for Pluff states parties are arranged & a mo. in the record to dis continue the cause —

No 1998
Papineau v. Chartrand & Brunette

On opposn. of Claude Brunette

Mr Scott for Oppost. — sum of money claimed founded on an act of subrogation made to him by the Pluff — The oppost purchased a lot of ground from Defendt. & one condition was that he should pay a debt he owed to Pluff as Extr. of the Sugr. for Sugr. dues on the land now sold by Decret — for this debt the oppt

was

was to obtain a Subrogation in the rights of the Sugr under gh Subrogation the oppost now claims — the oppost claims the money, or that the other Creditors of the Defendt will warrant & guarantee the land he sold to the oppost —

Peltier for Opposs Brasseur claims as bailleurs de fond contest the opposn of Brunette, — The Subrogation here is not a suffte delegation & Subrogation to exclude the other opposts because the land here sold is not the same as that sold to Oppt — the delegation here is imperfect — the sale made by Defendt to Brunet is not suffte in a delegation there must be three persons consenting here Papineau was no party to this sale — The Subrogn here is not a legal one to give the effect contended for the effect of the payt to Papineau was merely to extinguish a debt gt Defendt owed to him, & its effect can go no further — If the Oppt were to get this money, he would not have paid any thing on acct of his purchase — Repn vo Subrogation. p. 434. 5. 6 & 7. —

Mr Scott for oppost The Oppt here will be materially injured if his claim be rejected — as he will lose his claim here & his land hereafter — the condition of the sale to the Oppt was that he should have the quiet possn of the land — & the only means to secure this was to obtain a Subrogation from the Sugr —

No. 480.
Henry
Gagnon } On Defendts mo. to rescind the order of the Court of yesterday. —

Mr Bleury, an Inscription en faux, is an exception

to

to the action of the Pliff — the Defendt now comes upon a principle that must be admitted, that at the time of making his motion on the 2d. intt. was not informed of the falsity of the act in question —

Mr Rolland for Pliff the demand now made is upon other grounds not offered at the time the former discussion was held, and qt. reasons he might then have offered the ~~Court~~ Judt of the Court cannot be rescinded without reasons suffit — there is no new requête, still Defendt wishes to make the conclusions in the old requête available But had there been a new requête, the reasons given are insufficient, because they might have been given at the same time with the first requête —

No 738
Cartier
v
Tetu, Cur

on acct. rendered by Defendt —

Rolland for Pliff, there are certain debats in Compte which the Pliff contends are right — the costs of Defendts. Attd cannot be allowed in this Case —

No 1415
Raymond
v
Vannier

On merits of action en Garantie —

Mr L. Vigé for Defendt parties are now heard on the evidence adduced of the facts stated in their plea to the action en Garantie — Contends that proof is sufficient —

Mr Blenry for Pliff contends that by the clause in the deed of sale, he is entitled to the action en garantie —

№909.
Dom. Rex
v
Mabbut

Con mo. of the Sol. Gen. to quash writ, as no sufficient security has been given —
8 T Rep. p. 217 Rex. Dunn —

№1136
Stanley
&
Hamilton
&
Coldough
Appts —

On Respts mo. to reject opposition as no affidavit accompanied it —
Mr Stanley for Respts the affidavit taken before Mr Justice Fletcher —
Mr Sol. Genl The Appts here has complied with the substance of the rule of practice, as the affidavit was made before Mr Justice Fletcher in whose district the Appts lived, & the Court never intended that the party should leave his district to come before the Judges of this Court to make his affidavit —

№635.
Drolet
v
Quertin
Quertin Apt

On opposition of the Defendt —
Mr Rolland for Respt — the Defendt has sworn that the debt has been paid, but not the costs — prays that execution issue for the costs
Mr Bruneau for Defendt — the opposition is right as the Sheriff had no right to proceed on the execution

№124
Pothier
Metzler
Metzler
Apt

on opposition afin d'annuller —
Stanley for Appt — the Judgt here not final, & no execution ought to have issued — the Execution has issued upon a commination of Judgt — no copy of it has been served on Defendt — the ordre of 1667, requires Service — & the practice here is so —

Roi for Pleff. The Defendts confessed Jugt. & on ygh the Judgt. is founded — The Jugt. is final — there was no necessity to serve a copy on the Defendt — the Ord. 1667. tit. 26. art. 7. — is express that no such service is necessary —

No. 1814
Marcoux
vs
Jones —

On plea of demurrer
Driscoll for Pleff. contends that plea of payt is insuffly pleaded, it neither specifies time or place when made, & therefore does not apply to the demand withdraws his objections to the plea of compensation The plea of payt is besides hypothetical & not positive

No 1797
Ayer
vs
Leach
&
Leach oppr

On opposition afin de conserver —
Mr Adams for Pleff. has filed a defense on fond en droit that opposn is insufficient the goods seized belonged to Defendt & were legally sold
Mr Peck for Oppost. the oppos. effects were sold & he is entitled to claim the proceeds —

Wednesday 8th April. 1829.

Prest.

All the Judges.

No 1498
Cardinal
v.
Cardinal

On defendts mo. to obtain a writ of possession
Mr Cherrier for the Defendt moves for delay to plead in writing —

No 1999
Pierson
v.
Tufts

On Defendts motion for security for Costs —
Walker for Defendt the Pleff resides out of the Jurisdiction of the Court altho' stated to be at Hull — has produced an affidavit to this effect —
Mr Adams for Pleff — states that he has filed an affidavit to shew that Pleff is resident within the Province.

No 1628
D'Aout.
v.
Dandurand

On Pleffs mo. to reject Defendts plea as irregular —
Mr Cherrier for Pleff. The plea begins by pleading a plea of Defenses & exception in same plea — The first plea is an exception & not a defense — he then pleads an excepn. peremptoire to the action — qt is a plea of prescription
Mr Greece for Defendt — The Defendt has pleaded an exception to the action qt he has called a defense & exception but every kind of pleading is a defense & may be thus rightly stilo —

Cartier & Marchisseau } On Defendts mo. to reject Replication — Mr Cherrier for Defendt the Replication is wrong, & he ought to have made an answer to the plea Ross for Pltff contends that plea is regular —

No 1448 Benoit & Dezery } On Pltffs mo. that Commissioners return the depositions of 3 Witnesses heard by them —

Cherrier for the Defendt the witnesses were the arbitrators agt whose arbitration the Defendt has complained as partial & irregular, and who therefore ought not to be heard in support of the regularity of their proceedings —

No 343. Webb & Bellamy } On Defendts mo. for a Com. Rog. to ex. Wits in United States

Nye for Pltff. the application of the Defendt comes too late — the issue was completed in last Vacation —

Adams for Defendt the issue was not completed till the 4th inst — & by 28 Sec. Rules of practice. art. 7. that where any question of law is raised, that must be first heard & determined —

No Moffat & Wm Hallowell & Selby & al opts } Mr Bedard for opposants moved to be admitted to amend his moyens d'opposition

Mr Rolland for Pltff opposes motion —

p. 326 —

No 1044
Brandon
v.
Harris &c.

on demurrer to declaration —
Driscoll for Defd. — first count of decl. states that the first of exch. was dishonored, but says nothing as to the 2d & third — therefore it does not appear that 2d & 3d have not been paid. 1. Chitty. 278. pleads — the condition suspension (note b) Fledds. Prac. 442. — Archbold on Civil pleads — p. 84 2. Chitty. 172. 174. — as to form of negativing different setts of bill — Chitty on bills ed. 1822, p. 570 — (note i) Bailey 1822. p. 312. No 9. — these authorities say that the principle is doubtful

Boston for Pliff — It is immaterial if it be stated that the sett presented was not paid, any more than the Pliff was obliged to present all three for acceptance & payt —

No 1101.
Côte
v.
Hayn

Pliff was allowed to amend his writ —

Bent &c.
v.
Spragg &c.
&
Howards Intd

Pliff allowed to make proof of the facts in his motion

No 1136.
Stanley
v.
Hamilton
&
Colclough
oppt

Affidavit of the Oppost — taken before Judge Fletcher held sufficient —

Thursday 9th April 1829

Prest

All the Judges —

No 1092
Snaith.
n
Wyatt

On Defendt mo. to be admitted to contest the allegations contained in the Pltffs affidavit

Mr Adams for Pltff. The affidavit here is suffit and ~~the~~ no contest ought to be allowed upon it — Here the Judge was satisfied that Defendt was about to leave the Province — refers to Stat. 9. Geo. ch. 8 —

Stanley for Defendt admits the sufficiency of the affidavit, but contends that the facts therein stated are not true —

Parkins
Jackson

No 1506
Herrick
n
Hope

On Pltffs motion that Defendt name another Guardian —

Stanley for Defendt. Brown is not the Guardian —

No 124.
Solquin
n
Jolicoeur
&
Boyer

On application of the gardien for payt of Costs —

No 232
De Martigny
&
Beauchamps

On action for Lods & Ventes & rentes Seigneuriales —

Cherrier for the Defendt The Defendt allege that the land is held in fief, but as there was an act filed by Defendt by qt he had pd Lods & Ventes

on

on the sale of 2 lands, one of which was that in question, the Court directed proof thereon in regard of which land the Lods & Ventes were paid the Defendt. have proved that the Lods were paid to the Agent of the Seigniory of Belœil — & not of the Seigniory of Pleff —

No 1341
Bedard
Durand

action for services done as the Agent & Attorney of the ~~Pleff~~ Defendt —

Bruneau for Pleff. After having employed Pleff. and obtained his services to a certain extent the Defendts withdrew their power of Atts — claims a sum of £50 —

Sol. Genl. for Defendt — there is only one Wit who speaks to a sum of £25 being due to Pleff

Bruneau for Pleff. The testimony is sufficient to maintain the demand —

No 614
Fisher
Farley

action on Bill of Exchange —

Driscoll for Defendt has demurred to Declaration as it is founded on a principle which cannot be maintained, and which was not in existence at the time the action was brought, to wit, such a sum as would purchase another bill at the same usance for the same sum — there is no conclusion for any specific sum of money —

No 1183.

Pothier
Kinsler
&
Cherrier
Gert.

On Pltff's motion that Jn Bt Homier fils, take up the instance of Hypolite Cherrier deceased —

Roi for Pltff. Jn Bt Homier is the universal legatee of the late Kinsler, who was represented by his Exeis Cherrier who is dead —

Mr Mondelet for Jn Bt Homier — This is an action en garantie simple, where Pltff is not entitled to call in any garant or obledge the parties to do it — By the testament of the late Homier, his widow is the ~~proprietor~~ legatee with power of alienation, & Jn Bt Homier is legatee in case only the widow does not alienate —

Moffat
Hallowell
&
Silby & al
opts

On the opposition —

Mr Bedard for oppost — The oppt. invokes the privilege he is entitled to under the marriage contract of the Defend's wife — But the property being property of the Community, must be considered as belonging to the Defend — he is now insolvent —

Friday 10th April
Saturday 11th " — } Enquête days

Monday 13th April 1829.

Prest.

Ch. Justice & Puisne Justices &c.

No 1506
Herrick
v.
Hope

On Pleff motion that Defendt name another Guardian —

No 157
Bechard
v.
Perrault

On Pleff mo. for a new execution
McRodier for Defendt — asked to 17th
granted to 18th

No 275
Clergy Reserves
v.
Clarke —

action for rent reserved on lease —
Boston for Defendt — There is a penalty in case of default of payt. of rent & this penalty only can be now enforced — The nullity of the letters patent. —

No 727
Freeland
v.
Harkness

action on a promsf note — on law
Boston for Defendt — The note described is a nullity, the note is payable to Estate of another person — and Pleff cannot give a discharge for it — Poth. ob. No 54. & seq.
Adams for Pleff, a promise to pay for value received — constitutes a sufft Promsf note —

No. 957
Bouthillier
&
Faneuf
&
others

action for price of a land sold — ments —
— Roi for Pliffs — The Pliff. sold to one Lachance
the lot of land in question — by another act
dated some day, Pepin transferred the land to Defendr —
wh. charge to pay Pliffs. qt — was accepted by Pliff
On this action the Defendr. put in Sint Pepin as his
garant on acct of certain Mortgages which he alledged
to be due on the land sold by Pliff — on this the Pliff
took fait & cause for Pepin & filed discharges of two
of the obligations complained of — and as to the third
obligation he has offered & produced an act of cautionnement

Mr. Mondelet for Defendr — The security here given
is given to Pepin & not to Defendr — who was no party
to the act & therefore can have no remedy upon it —

No. 1287.
Noxen
Campbell
&
E contra

On Report of arbitrators —
Mr Cord — the Incidental demand admitted
asks costs —

No 2092
Lacasse
&
Blanchette

action d'injures. —
Bleury for Pliff — words proved — asks damages —
Peltier for Defendr — The testimony is contradictory —

No 1014
Fraser & al
Cuvillier

On Defendrs mo to quash writ, as not being in
language of Defendr

Mr Sewell for Pliff — There is no legal proof of the birth
of

of the Defend^t — no extract baptistaire —

No 881.

Lacroix & Vannier & Durand & Gravelle & ux

On the Pliffs motion to rescind a certain Judge of this Court ordering the land seized to be sold subject to the Rente & pension, of Gravelle and that the land be sold exonerated from this charge —

Lacroix for Pliff — the right of Durand remounts to 1802, that of Gravelle only to 1828 —

Mr Boston for Gravelle —

The motion is irregular, being made in the name of the Pliff by the advocate & not by a party to the suit.

The ~~pliff~~ oppost has no right to this motion — the land was sold subject to payt of 2 Rentes & pension viagers by consent of the parties — the rights of the appost — are secured & she has no interest in the sale of land —

The Judgt here is a chose jugée & cannot be set aside in this way. —

The Judgt is a nullity — the costs are extravagant & proceeding from a cause in the Inferior Court —

No 119

Charbonneau & Pillet & Pillet, Gart

action hypothecaire. —

Roi for Pliff — Pliff is Cessionaire of 1/3 of 1000 of a dower — on Report of Experts as to the improvements made on the land by the Defend^t — There was a difference of opinion between the experts touching the extent of the land on qt the improvements ought to be estimated & the 2 Experts have rightly reported contrary to the opinion of the 3d Report in this respect —

Mr Casimir for Defendt. & Garant — moves that report of Expts the Pleffs & garant, be set aside as it is founded without having heard the evidence adduced — the Tiers Expert was not present at the time — This report is besides partial & does not include the whole improvements on the lot of land the number of feet of the lot is not here to be considered but the butts & boundaries, qt. appear to contain a few feet more than the little mentions — The 2 Experts do not give any detail of the objects on which they found their report. whereas Frottier explains fully his report in this respect. —

Moffat. vs Hallowell & Selbys. Opts

Judgt. dismissing opposition. —

Tuesday 15th April. 1829.

Pres.t

All the Judges

№ 709
St Julien
vs.
St. Onge

On Pltffs mo. to proceed ex parte —

Mr Grant for Defend.r — has made a motion to make an inscription en faux — the Defend.r did not proceed by requete, but by motion, that the Pltff should make his declaration whether he means to make use of the act filed — no authority filed, but Defend.r is ready to shew that he has authority —

Mr Mondelet for Pltff. the proceeding by Inscription en faux is rigorous, and the party ought to bring himself within the rule, and a procuration is one of the principal objects, and no Inscrip.n en faux can be made without leave of the Court —

№ 1674
Prevost
vs.
Portevin

on Pltffs motion for Judg.t on Verdict with full Costs —

№ 1642
Cartier dit
vs.
Hubert
&
Cartier S.S.
vs.
Garneau
Interv.g

On motion of the Intervening party to unite this & the Causes № 1640 — 1641 — 528 — & 1756. —

Mr Rolland for Pltff. The mo. cannot be granted the causes are between different parties —

No 1999.
Pierson
v.
Tufts.

On Defend^ts motion to set aside the mo. of Pltff ~~inscription of~~ to proceed in the Cause ex parte —

Walker for Defend^t was entitled to 24 hours to fyle a plea after mo. dismissed for costs or otherwise —

Adams for Pltff — the Defend^t mo. for security for Costs was heard only on 8th & discharged on 9th and on the 10th Pltff. moved to preclose the Defend^t as he legally might — a similar mo. to present was made & discharged, and the opinion of the Court being thus given, has become binding on the party —

Wagner
v.
Donegany
&
Donegany
opp^ts

On opp^n of Donegany, afin d'annuller —

Bedard for Opp^ts states that he is heir of his Grandfather the late John Donegani, & as such entitled to the property seized — That the Defend^ts knowing this, have by collusion w^t the Pltff obtained a Judg^t and thereon the seizure of the property in question in order to secure a title thereto — claims that the seizure be set aside as null & void & the property adjudged to Opp^ts —

Mr Rolland for Pltff. — The only question here is touching the right of property in the property seized — which the oppo^t claims — as heir of his grandfather whereas the Pltff contends that the Grandfather was an Aubain who can have no succession —

That the opposition on the principle of collusion is not valid, because it in nowise affects the rights of the oppos^ts —

The other exception is founded on claim of the oppos^ts as heir of an Aubain — there is no such thing as the succession of an Aubain — by English public law —

That by the English public law the opp.ts have no right by their own showing, as thereby an Aubain can possess no real property - 2 Bl. Com. 249 -

The Stat. 11 & 12. Wm 3. ch. 6 - this stat. was made during the revolution in England, when many subjects left England & had children born abroad, and whose children could not inherit in England - This statute applies only to cases when there was heritable rights to be claimed, where there was a right of ~~inheritance~~ property in the ancestor, from whom the grand-child could not claim, by reason of the father or mother being an alien -

By French law, an alien may possess property real & personal, but he cannot will away his real Estate - There is in France the succession of an Aubain which holds, when the droit d'aubain does not take place, as where the Aubain leaves Children, who succeed to their father - but when they succeed they succeed equally - and even in case the Aubain has made a will, the heirs are bound to comply with it -

Domat states that the question of succession is a question of public law -

N. Denizt. Vo. Aubains §6. No. 2 - refers to Laplanche Tr. Dom. Liv. 6. ch. 9. p. 157. - and p. 127. - as to testament - 1 Argou liv. 1. ch. 11. - p. 87.

Mr Bedard in reply contends that the allegations are material, as it shews that the whole proceedings here is carried on by the Defendant -

That the title of the Oppos^t. here ought to prevail both by the law of England & by laws of France — but it is a question whether this is a point of public law in regard of the right of succession —

The Stat. of Wm. 3. is very applicable to this case if the English law is to determine —

The Oppos^r here claim only their share as heir whereas the Defd^r. claim under the will all the property in Italy and 1/9 of the property in Canada, as heirs — But Defend^ts cannot claim as Legatees and heirs at the same time — Besides the testament made by John Dongani in Montreal in 1809 was revoked by a subsequent testament in Italy —

That although the French law where there is one of the children born a subject & thereby communicates a right of succession to the other children — yet this applies only where the other children are regnicoles, or residents in the Kings dominions

The Oppos^ts. as natural born subjects can avail themselves of the rights confirmed by the Stat. of 14 Geo 3 — as to civil rights — but the Defend^r cannot do so as being an Etranger. —

1801
Richardson
Gibbs — } action for exhibition of titles — on law

Mr Sewell for Defend^t — to this action Def^r has pleaded — that the Pleff does not set forth any specific number of years of possession of the Seigniory in question to entitle him to this action — He says merely that he has been and is in the possession of the Seigniory

The

2. The Pleff does not shew what Cens & rentes the lands are charged with —

3 There is no specific allegation in the declaration that the Pleff was ever legally appointed Curator to the Estate of the late Geo. Ellice —

4. There is no allegation even that Geo. Ellice ever had possession of the Seigneury in question —

5 — The demand made to exhibit all the antient titles is not founded — Pleff can claim only the title of purchase of the possessor —

6 That the Defendrs are not within the Seigneury of the Pleff —

The 20 art. of Custom of Paris, is that under which the exhib. of title is allowed, but this ought not to be extended beyond the letter, as it is contrary to the principle of law, that no man is bound to exhibit a title contrary to his own interest — it applies only to the Lettres d'acquisition — Fr. on this art. cites opinions of Charondas, Tournet & Joly — Dumoulin is of a different opinion — Tronçon varies from Dumoulin & says such exhibition is allowed only where it is to make a papier terrier, but not to obtain payt. of Cens & rentes. —

Conf. des Cout. by Guenois. tit. 11. des Censives — in fo. 304. B. — agrees wt — Tronçon — 1 Le Lannes. 295 — Rispre 1o Exhib. p. 209. 1st Col. —

2 Tonmaur Lods. p. 344. No 856 —

N. Denizt. 1o Exhib. de tit. p. 309. —

5 Hervé. p. 558. —

5 Pothier. 344. — sec. 3. §. 3 —

Mr

Mr Sol. Genl in answer – the mode of pleading of Defendt is to take by surprise his adversary, as he should have pleaded specially the objects he has here argued –

The Pluff states that he is the Seigneur in possession this is suffl to maintain his action –

2. It is not necessary for Pluff to state the Cens & rents they are different in different places, & it is only by the production of the titles that this can be ascertained –

3. The possession of Geo. Ellis is not necessary to be stated –

4. As to the extinction of the old titles, this point belongs more to the merits – as it is at best be only asking more than Pluff is entitled to –

D'argentré. –

Riccard on 73 art. Cout. Paris –

Wednesday 15th April 1829.

Prest.
All the Judges.

No 884
Gale
v
Stafford

On Defendt mo. for delay to plead —
Mr Scott for Pltff opposes the motion as no sufficient ground offered to support it —
Mr Kossiter for Defendt contends that the application is well founded —

No. 715.
Grant
v
Grant

On Pltffs mo. for delay to produce power of Attz —
Mr Grant for Defendt opposes the motion, & contends that Pltff is inexcusable if he means to insist on the action —

No. 879.
Todd.
v
Currie.

On Pltffs motion to preclose Defendt from answering to his demurrer to plea of Compensation. —

No. 1473.
Burton
v
Gibson

On Pltffs mo. that he obtain a rule on Defdt that on default of his paying the Debt & Costs Pltff should have the Contraint par corps agt the Defdt
Mr Sol. Genl as amicus curiæ, that the proceeding is not regular, no notice having been given to Defendt of the present application — the Judgt was given 18 months ago — cites case of Lyson v. McKinzie. —

No 52.
Chapman v. Commissioners of Lachine Canal } Desch^d

No 135.
Webb v. Clarke } action on prom^y note
Sweeny for Defend^t no power of atts proved

No 1227
Cuthbert v. Arbour } On action to be indemnified for a certain lot of land of which the plaintiff has been evinced on a sale made to him by Defend^t

No 2153
Holt v. Carr } On Pliff. mo. to reject certain depositions filed by Defendant —

Mr. Henshaw, the Defend^t has made proof of a novation of the debt, but has not ~~prov~~ pleaded it
Grant for Defend^t this an action on a prom^y note & proof is suff^t the Pliff never objected to evidence when produced —

No 1167
D'Arpentigny v. Toupin } action for rente & pension Viagere — hears on law on objection to plea —

Sweeny for Pliff —
Rollin for Defend^t The Defend^t has pleaded that Pliff has no right of action; as Defend^t has paid all he owed.

~~Selby~~
Moffat
Hallowell
Selby sal op

McBedard for Oppos^t Selby

The 30 Nov: 1824 - H. being in Com^n wch his wife sold a lot of land to Selby of the Community alone with promise to ratification by his wife

Q^h was made 25 Jany 1825 - on this sale Selby p^d £600 to Hallowell, & in consequence ~~had a right~~ was entitled to exercise the right of the wife ~~up to~~ from the day of her marriage -

By the ~~art~~ 282^d art. Contumes the husband & wife cannot benefit one another

That during the Com^ts the husband is master of all the property of the Com^ts - art. 225 - Gr. Com^ce during the Com^ts the wife has no right in the Community, the husband alone has the right & power over it -

Poth. Com^te No. 248 -

The husband alone bound for all the debts of the Community

~~The rights~~ During the Community the wife has no right on the property of the Community - Poth Com^te 497 -

When durs the Comm^ts the wife binds herself with her husband, it is in her own name & not as Commune

Poth. No 499 - That Mrs H. being the Debtor of Opp^t he has the right to exercise the rights of the wife, who contracted in her own name & thereby became the Creditor of her husband for the £600 - & had for this a Mortgage on all the property of her husband - as well those of the Community as all other property - & therefore the opp^t here has the same right as the wife - Here it is admitted that the Def^d is insolvent - Here the Community is dissolved by the seizure of the property of the Community - That if the claims of the wife here are not allowed, the money will go into the pocket

of

of other Creditors agt. whom the Oppt. can have no recourse – and the wife cannot by any act of her, injure the right of her Creditors, by accepting the Community –

That if the rights of the wife can extend only to one half of the property, then it must be admitted that the other half of the property belongs to ~~Wm~~ Hallowell & on gt. the Oppt. would have his privilege before Moffat –

No. 780.
McKenzie
v.
McGill & al

On Report of the Arbitrators –

Mr Rolland for Pleff. moves for a continuation of the rule of reference – and for communication of the books of account of Messrs. McGillivrays Thain & Co. –

Thursday 16th April 1829.

Prest

All the Judges.—

M'Naught vs Hart — } Disch'd

No. 709.
St. Julien
v
St. Ouge } On the pliff's motion to proceed ex parte.—
Mondelet for Pliff. the Defendrs has made application informally to proceed on inscripn en faux—
Mr. Grant for Defendr moves to amend.—

No. 1895.
Dubreuil
v
Porteous } On Pliffs motion for provisional Judgt to obtain possession of the land in question—
Sewell for Defendr states he has offered to give up the land, and that Pliff are in possession of it.—

No. 866
Phoenix Bank
v
Pearl — } on Defendrs mo. to be discharged from his confinement under Ca. Sa. inasmuch as there has been no discussion of the Defendrs goods & lands
Grant for Defendr the Pliff did not sue out his Ca. Sa. until 10 months after Judgt altho' he had been originally attached by Ca.—
Walker for ~~Defen~~ Pliff the proceedings are regular—

No 178
United States Bank & Peare — } similar motion

No 1881.
Valiere Sen & Cameron } On rule Nisi for Exon — submitted on Statement offered. —

No 279
Nixon & Knower & Frelyt Intros } On Intervention —
Mr Grant has he has proved his property & prays Ingt — noth'd d by other parties

No 1147
Leslie & Shaw — } action for trespass —
Grant for Pliff, Defendr — caused pliff's property to be sold & disposed of
Mr Cord for Defendr — It was the Pliff's wife who removed the property & had it sold — and the sale was made by consent of Pliff — who received his share of the proceeds of the sale —

No 1047
Peltier & ux & Chaput & ux & Farribault } On opposition of Farribault. —
Bourret for Pliff. the opposition is not founded — the property purchased by oppt opt was not subject to Dower, & af it were, yet as it is

is not yet open and may never arise — the purchaser buys at his risk — if such opposition were allowed, it might be made in every Case. —

On the opposition of Masta —
Bleury for oppt — claims on exchange with one Peltier on qt he has been obliged to pay hypothecary debts —

~~Bleury~~ Bourret for Pltff — the oppot shews no payt. nor title to shew them existed or that he paid any debt on the land in question — at all events Masta & wife cannot come agt their own act by which they warrant to Pltff the payt of their rente —

Bleury for oppt — he has alledged facts on qt the parties must make proof —

No —
Rolette & Durocher & E contra } action on note & Incidental demand heard on Incidental demand —

No 1506
Herrick Hope — } action for house rent — goods sold, &c
Plea of exceptn — to the Count for liquor drank at Pltffs house & for qt — no action can be had — Defendt also pleads compensation for goods sold to Pltff & also for work & labor qt is regular, but to which Pltff objects —

No 375.
Robertson & Beaubien & Beaubien oppo

For oppos^n afin d'annuller -
Roi for Oppt - objects that Pleff has seized the Defend^s lands before discussion of their goods & chattels -

Bourret for Pleff - The Pleff has discussed the Defd^s moveables - the lapse of time accrued since the Sheriffs return cannot change the case nor cause a new discussion of Defd^s moveables -

No 965
Quesnel & Johnston

action for money due on bal^ce on a note delivered to Defend^e

Rolland for Pleff - the Defend^e was notified before the action to produce any demand he had agt Pleff before the action - this Defend^e did not do - but after the action he brings up this demand - which Pleff has admitted - & the only question now is as to the Costs -

Stanley for Defend^e - contends that Pleff could have credited Defd^e with enough to bring cause within the jurisdiction of the Inferior Court -

No 380
Low & Lang -

action on note - on law -
Stanley for Defd^e - Defend^e -

No 801.
Davies & Byrne

action on deed of sale - merits -
Boston for Defd^e - mortgages on land - on different mutations of the land by sale - prays security -
Grant says that there are no rents or mortgages on land

Tetro. — & Meunier & Perrin opt

On opposition for house rent —

Roi for Oppt — The Pleff had lost his right of gagerie — the effects were transported into the house of the Oppt — and Pleff ought to have given notice of his attachment on the defds goods — from May 1828. until the present moment —

Mondelet for Pleff — The Pleff has done all diligence on his Judgt — agt the Defendr & caused the effects to seized under it — cites can 30 Juin 1824 — Deshautels & Shiller & Dechantal oppt — 2 Bourg. tit. 8. §. 2 — des Exons.

No 1832. & 1838

Finchley & Consigny & E contra

In two causes united — merits of both —

Bourret for Defendr — Action for board & lodging of their father & sisters —

matters referred to practiciens — Report made — Defendr — asks for the homologation altho' in many respects agt his interest — The Practiciens ought not to have allowed more for the maintainance of the old people than the amount of the revenue of their property unless they had been so authorised, Repn — vo Tuteur — p. 783. — this ought to be reduced by the Court to that amount — Contends that Pleffs ought to pay the Costs particularly by instituting two actions instead of one. —

Mondelet for Pleff — Two actions were necessary as there was question of two different successions in gt different rights were claimed. — The Court must confirm the Report in toto, or parties must go to evidence anew —

No. 729.
Peddie
v.
Gordon

On Defendr motion that Pliff file a bill of particulars —

Walker for Defdr The action is for various sums of money & on Money Counts & only a letter of Defdr filed — this letter refers to different objections contained in the letter & the cent Cmt therein referred to, is not produced —
Sol. Genl The letter is suffl statement. —

No. 1585.
Guichard
et al
v.
Devins, Cm
&
Hagar

Action en decbr d'Hypothèque —
Walker for Defdr — Three issues of law
1st as to sufficiency of action as stated
2 : Prescription —
3. have answers from fact —

1st The declaration defective — Action for 30 years arrears of rent — question, whether the grant here is a concession or a deed of sale — the late Dunn was then Seignior, and to induce persons to settle on land he sold the lands with a view of exonerating them from the feudal rights — The decbr states a grant — but the grant appears to have been a sale — for valuable consideration, and a mere nominal quit rent reserved — The impression is that Mr Dunn could not exonerate his tenants from this burthen in case of a sale of the Seigniors to another person, — The Defendr contend that Mr Dunn could not sell in this way but only in the usual course à cens & rentes, and therefore the deeds are null, and the lands the

Defr

Defendt now holds must be considered as holding directly of the Crown, to whom only the Defendt is accountable — That this sale by Mr Quinn is a demembrement de Fief, and void —

2. Plea of prescription. — The Defendt sets up a title under a sale to him in which no reference is had to the original deed of Concession, and that under this title he has held for ten years in a manner to acquire a good title — It has been objected that plea is not sufficient, as not stated in the language of the law, but considers the language used equal to that of the law

301. 8. 15. 16 Rep. vo Prescription. 301. 8. 15. 16 — 319. 363 — Hypotheque p. 667. to 114 art. Cout. 379. 387. 388. — 381. No 2, 6. 7. 8. 9. 10. 11 — Poth. Precip. 579. 590. No 37. — 591. No 38. 598 No 57. 58. —

Sol. Genl for Pleff —

The declaration here is sufficient, if the facts are made out — It can be no answer to the action that the lands was sold or conceded in a certain way — The only question here is the declaration suffte if the facts are true — the Defendt has other Exceptions in which the validity of the sale a grant will come in question —

2 In order to avail himself of the law of prescription he must bring himself within the language of the law, here the plea is defective — he does not state a possession as required — 2 Gr. Cout. p. 382. — Poth. Hyp. 271 — words. franchement & sans inquietation are necessary, but not stated in the plea —

No. ~~1720~~ 5

Solomons vs Jones — } On Plea of prescription —
Pastor refers to argument in above case

No 382

Guichard & Bowker } action hypothecaire — on merits

Walker for Defendt — first question whether a hypothecary action will lie on an ~~action~~ instrument such as that produced before the Court — 2d — Whether the instrument has been proved — & 3 The validity of the concession —

1. The Instrument produced is not an authentic act but a sous seing privé, deposited in the office of a Notary — The depot of the act is made at St Armand by consent of the parties — and the depot is made only in the presence of one Witness —

2. The instrument of not authentic, has not been proved — nor is it recognized by Defendt —

3. regards the validity of the Succession

Sol Genl for Pfff — The instrument may be considered as a sous seing privé — for after all the pleas, the Defendt has pleaded payment which admits the whole demand — & on the enquête certain payments have been made & admitted — & the only issue now to be enquired of is the payt.

Walker in reply — all the pleas of Defendt have not been dismissed — and the pleas must be taken up as they stand — & the plea of payt. must be taken sub mode —

Gale & Sewell & Mayrand & Dinon } On opposition of Mayrand

Mr Sewell says party has made no proof & opposn must be dismissed —

No 1880
Pothier
Lovis
Lovis opt

On opposn — hearg on law
Roi for Pltff. The opposition is not sufficient as the description of the lot on gt Defdt claims the reimbursement of the price, is not stated

Henshaw for Oppost contends that opposn is sufficient —

No 993
Catton
Murdoch

action on deed of sale — ex parte
Sewell for Defendt — The balce of £74.5 was to be paid in different instalments — for 1st Pltff obtd a Jugt and the action is premature as to the two other paymts as it was brought only on the principle that the Defendt was about to leave the province — but this is not a sufficient cause to ask for money not due — The Defendt here is stated to be mariner & his leaving the Province was only to follow his trade, but not to deprive the pltff of his debt — All that Pltff's can have is Judgt for £25 — but not more — there is no evidence to shew a fraudulent intention in Defendt to deprive Pltff of his right — Deed of Sale produced is different from that produced — the property belonged to Pltff's wife, & she must join in the sale gt she did, but stated to be made by Defdt alone —

Mondelet for Pltff — The exceptions pleaded by Defendt have been dismissed, and also the Defence au fond en droit. the only remaining plea is that the deed produced is not his deed — The fact of the Defendts being about to leave the province is sufficient to maintain the action —

Saturday 18th. April 1829.

Pres.
The Ch. Just. & Justices Foucher & Pyke. —

No. 375.
Robertson & Co. vs. Desrivieres. & Desrivieres opp.

The Court were of opinion to admit the Defendt to make proof of his having moveable property in his possession, as the Pltffs after the return on the first exon of nulla bona, had not done diligence to follow up their execution agt the real property of the Defendt having allowed 3 years to elapse. —

No. 380. —
Low vs Laing. —

Defendts plea of temporary exception dismissed, as the delay for payt was not stated to have been given on any consideration —

No. 1503.
Duncan vs Mcdonald & al. —

Judgt on exceptions. —

No. 387.
Rolland vs Bedard

Judgt for Pltff

No. 119.
Charbonneau Pillet & Pillet. Gar.

New rule of reference to the Experts —

No. 232.
Martigny. + Beauchamps & al' — Judgt. dismissing action. —

No. 135.
Webb v. Clarke — Judgt. for Pltff. — The Court did not require proof to be made by Pltff of the power of Attys filed by him sous seing privé, authorising the bringing of the action. —

No. 882.
Harrison v. Nickless, Cur. — Judgt. for Pltff. — Although the payts. sued for were not due when the action was instituted, yet from the evidence adduced it appearing that there was a failitte on the part of the Debtor, who had + abandoned the brewery and left the Country, the Court considered the action to be founded —

No. 275.
Corporation of Clergy Reserves v. Clarke. + — Judgt. for Pltffs. —

Tetro v. Meunier & Perrin opt. — Opposition of Perrin dismissed — it appearing that the Pltff had followed up his Judgt. as the Defendt. with sufficient diligence, so as to prevent the oppost. from acquiring a preferable right of priviledge on the goods and effects of the Defendt. for house rent —

June Term. 1829.

Monday 1st June.

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke.

No 716
Monpetit
Sauvé

On Pltffs mo. to reject plea filed by Defendt
Mr Roi for Defendt two defaults appear to have been entered agt the Defendt but it was by mistake ~~that~~ the appearance was not entered, ~~but~~ it was so intended by Defdt & he in consequence filed his plea on the 6th April last

Mr Bleury for Pltff the defaults appear to have been regularly entered

No 1211
Bistodeau
Cursolles
Vandandaigue

On Pltffs motion to correct Judgt entered in this Cause agt Cursolles

Mr Rossiter for Defendt the error was in the Tiers saisi not having made his declaration regularly in the 2 Causes The Defendt being in a state of faillite the monies in the hands of the tiers saisi ought to be divided between the Pltffs in the 2 Causes

No 1463
Robertson
Gagnon
Amedjo

On Garants mo. to dismiss action in Garantie for want of proceedings
Bleury for Pltff has made a motion this moral

Dela Bruere
&
Papineau
&
Beaubien

No 252.
Bellanger
&
Archambault
&
Garants

On Pleffs motion that Experts be held to make their report either jointly or separately —

The Court having heard the Experts in person & it appears that the report of Messrs Bordages & Lukin had been made without a previous consultation w^h Mr Lemai the other Expert — ordered that the Experts do meet to morrow morns at 9 o'Clock in the Magistrate room in the Court house to deliberate on their report & to file the same w Court on the 3^d. inst. —

over to 2^d —

Tuesday 2d June 1829

Prest

all the Judges. —

No. 1473.
Burton
Gibson —

On Defendr. mo. for delay to answer in writing

Mr Rossiter for Defendr. says the application here is for a Judge of contraint ~~in writing~~ for the payt of the debt & Costs — this is an unusual proceeding & requires consideration —

Mr Driscoll for Pltff — the application cannot be granted — nothing new has occurred to occasion any proceeding in writing —

No. 2434
McCallum sal
Halfpenny

On Defendr. mo. for security for Costs —

Mr Sol. Genl for Pltff — the affidavit not sufficient to shew that the Pltffs have left the Province — or where they now reside, or when they left the Province —

No. 551.
St. Aubin
Rice —

On Pltffs mo. to amend decln

Grant for Defdr. This mo. is to be permitted to add a new Count to the declaration — to the action the Defd pleaded Litispendence, in consequence of a suit in the Inferior Term — the Pltff has discontd his action in the Inferior Court wishes now to add that demand to his present action —

No. 1503
Duncan
McDonald sal

on Pltffs mo. to be permitted to adduce new evidence to rebut that made by Defdr.

Mr Roi for Defendr. objects to the motion — the course is irregular — nothing new has been adduced in evidence beyond what has been pleaded —

No 1814
Marcoux
v
Jones —
&
E contra

On Pltffs motion that Defendts Enquete be declared closed —

Walker for Defendt — The Pltff made no proof & Defendt not bound to proceed until Pltff had closed his evidence — That Defendt not bound proceed after 20c of month —

—

No 1828
Gamelin
v
Ker —

On Pltffs mo. that Defendts ~~mo.~~ enquete be declared closed —

Sol. Genl for Defendt — The Exh. annexed to the Com. Roy. & Defendt could not proceed until the exhibits are returned —

No 1088
Bostwick
v
Moorehouse

On Defendts mo. to dismiss Cause for want of proceeding —

Nye for Pltff the Cause is now on the general role d'Enquete & stands there for evidence —
Driscoll for Defendt this Inscription made without his knowledge —

No 1737
Bass
v
Bone
&
Bone —

On Pltffs mo. for a Com. Roy.
Roi for Defendt — mo. too late — Pltffs affidavit not sufficient — Besides the enquete has been declared closed —

Grant for Pltff —

No 921
Johnston
v
Harkness

Over till to morrow

No 1146.
Plante
&
Bousquet
&
E contra

On Pliff's mo. to name other Commissioners and to continue the Commission. —

No 252
Billanger
&
Archambault
&
Leonard mis en cause

On Evocation —
Mr L. M Vigé for mis en Cause — The action is petitoire — Leonard was put in suit on act of the report of the Surveyors named to bound the land in question —

Wednesday 3d June.—

Prest.

The Ch. Justice & Puisne Justices

Molson v. McGill & al } This cause being called for hearing on the Defendants motion for quashing the writ of Attachment sued out in this Cause I withdrew from the Bench, being a creditor of the firm of McGillivrays Thain & Co—

Thursday 4th June

Prest

All the Judges.—

No 1165 Byrne v. Johnson— } On Pleff motion to be permitted to adduce verbal testimony in support of his demand

Walker for Pleff — then ~~w a~~ documents in cause signed by Defendt which shews the nature of the work done by Pleff

Rolland for Defendt — The proof made by Pleff shews the contract was to pay after Defendt death, & qt cannot avail Pleff on the present action — The note produced shews evidence contrary to that on which he rests his claim.—

No 1336 Davenport v. Curtinius } On Defendt mo. to quash writ of Capias

Adams for Defendt parties are foreigners

and

and the law respecting arrests affects only persons resident in the province —

1 There is no suff^t affidavit filed in the Cause, as it does not appear that the person making it was the Pl^ff, his clerk, book keeper or legal att^s —

2 There is a variance between affidavit & writ —

1 Chitty 211 — 1 T. Rep. 656.

Walker for Pl^ff^s It is not necessary that the capacity of the person making the affidavit should appear in it, as it may be made out in proof — the late State of 3 Dec. Ch. 8. Geo. 1829 — does not require this form — it being taken before one of the Prothonotaries according to the form there prescribed

& ch. 27.

There is no variance between Writ & affidavit. it was not necessary to state the Copartnership, it is enough that the same parties are Pl^ff^s in declaration & writ, as those stated in affidavit —

Adams on reply — the law passed in the last Session of Parl^t in nowise altered the prior law, it was intended merely to give authority to the Proths to receive the affidavit

No. 1976
Harris
Mower } On Def^ds mo. for Security for Costs — as Pl^ff has left the Province since the institution of the action —

No. 914
Frost & al
v.
McKenzie } On objection of Defend^t that cause was not regularly fixed for Enquete —

McRolland for Defend^t the notice is irregular, as the Com. Eng. did not appoint the day — The 14 days notice are not given, 9^h is required in Cases fixed in vacation —

No 1050
Bellamy
v.
Dixon —

On Pltffs. mo. to reject plea filed by Defdr
Mr. Adams for Pltff — the Cause was inscribed for
Evidence, after which the plea was filed —

Mr Day for Defendt — the Defendt was entitled to
10 days after the usual time for pleading in Vacation —
Bell v. McDuffy, similar case — There was no affidavit
of service of notice when the Pltff made his motion

No 1299.
Lynch
v.
Smith

On Defendts mo. to dismiss action from
irregular service —

Borton for Defendt — ~~th~~ no true copy of declaration
has been served on Defendt — & there is a variance
between Decl. filed & that served —

No 1674
Prevost —
v.
Porteous

On motion of Mr Roi for distraction de frais
on a Judgt. rendered last term —
The distraction may be given after Judgt — refers
to Pigeau & Ravaut —

Walker for Defendt — there is no record before the
Court on which this motion can be maintained.
& the notice served on him as Attys of Defdt is without
avail. So he cannot be considered any longer his Attys
after the Judgt. rendered —

Stanley

Roi for Pltff — The Procr. continues his functions
until satisfaction 592 593. Ravaut —
Even were there a Saisie made 594 Id —

No. 1446
Warwick & Co.
v.
Converse —

action for goods sold

Charles for Defendt — case not proved, no proof of a partnership between Defendt & others — The articles were never delivered. —

Boston for Pltff — action is agt Defdt alone — the evidence is suffct —

—

No. 736.
Porteous
v.
Deschamps

On Pltffs motion to re-open the enquete & to produce a copy of a bill of Indictment —

Mr Cherrier for Defendt — mo. too late — the Enquete has been closed by both parties without any reserve no new facts stated nor names of Wits given to entitle Pltff to motion —

There is however a motion made on the part of the Defendt to ex. one Larau, to whose testimony an objection was made, as being a relation of Defdt — Yet in an action of this kind a relation may be a witness —

Mr Sewell in reply — The Pltffs mo. here is to shew something to rebut the evidence given by Defendt vizt an Indictment & conviction of Defendt of a Nuisance

As to the Defendt motion it cannot be granted —

—

No. 1079
Rolland
v.
Donaldson

On Pltffs mo. for a Com. Rogr to ex. Pls. Byrne & Sir John Johnson —

Mr Driscoll for Defdt consents to ex. of Byrne but objects to testimony of Sir John, an ant. of his interest he having sold the Seigniory to the Pltff

No. 1481.
Gregory
v.
Lindsay & al

Action on Promy Note — On mo. for delay to plead
Jones for Defendt moves for delay to plead
refers to affidavit filed —
Scott for Defendt objects to delay —

No 1891
Archambault
v.
Fontaine —

On Pleff. mo. that report of Pleff's Expert be homologated —

Mr Rollin for Pleff — the report of Pleff's expert shews the Justice of the Case by allowing for the coupe de bois its value, be pd for it — That the report of the two other Experts is unjust, as they estimate the land at its present value when the wood is nearly cut down —

Mr Vigé for Defendt — The Experts have valued the Coupe de bois as it stands at present and according to the rule of reference — & further because the wood in that part of the Country is of little or no value —

No 512.
Cartier
v.
Marchisseau
& Econtra

On Pleff's mo. for Judgt for a part of the demand admitted —

L. M. Vigé for Defendt — There cannot be different Judgts in the Cause, the whole must be determined by same Judgt — It is only in the case of a Tutor having monies in his hands, that such Judgt can be given —

No. 456

Denaut de Jeremie vs Ermatinger } action to obtain from Defend^t amount of certain Shares in the Steam boat Salaberry which were sold by the late Sheriff under a writ of Execution —

Rossiter for Pleff — an arrangement having been made between pleff & his creditors — he now asks for the money — hears on law —

Scott for Defend^t — The action cannot be maint^d It is not stated that Defend^t ever took upon himself the gestion & management under the will of the late Sheriff. That the action on the account stated can be maintained ag^t Defend^t only in his capacity of Exer — & not as stated, cites 1 H Bl. Rep. 106. 108 — as he cannot be personally liable —

1 H Bl. p 106 108

The special Count contains a tort & misfeasance or quasi-delit — for q^t he could have an action ag^t the late Sheriff personally but not ag^t his Exer — Toller on Exers p. ~~61. 62~~ 359. & 360 — Impey Sheriff 96. Com. Dig. v^o Administrative (B3.) 3 Bac. Ab. p. 98 — 99 — Denoz^t v^o Delit §2. p. 3.

Rossiter for Pleff — The Sheriff is responsible for his acts as much as the huissier under the Fr. Law executes the process of the Court — This is an action on the case for monies received by the Sheriff

It is enough to alledge that the Defend^t was appointed Exer of the late Sheriff, & as he has not denied it, he must be presumed to act as such —

N. Denoz^t. v^o Exer Testa. p. 229 —

This is not an action for a quasi-delit — but for a debt incurred by the late Sheriff q^t attaches upon his Estate —

No. 1678
Plamondon
Laplante —

On law
Green for Pliff — the only question is now to estimate the fruits & revenues & the improvements on the land — submits a draft of Jubilee

No. 1628
D'Aout
Dandurand

On Defend^s mo. to reject a part of Pliff's answer to his plea of Exceptn —
Rodier for Defd. Defd^s has pleaded prescription to q^e. Pliff pleads interruption — also sets out an act under q^l this interruption was made — this part ought to be rejected — as the action ought to have been founded upon it —
Grey for Pliff — The act here stated meets the plea of prescription, & will destroy it & is therefore pertinent

Friday 5th June 1829

Presᵗ

All the Judges

No 1206
Jacobs
v
Bender } On Pleff. mo. to ex. one Carmel
Mr Mondelet for Defendᵗ - the Witᵉ is a interested as being the counsel of the Pleff, and as a relation of the Pleff, having married the pleffs niece - The action is en separation de biens only & relations cannot be heard -
Bleury for Pleff - there is nothing to shew that the allegations agᵗ the Witᵉ are founded -

No. 595.
Streeter & al
v
Cushing - } On Defendᵗ mo. to be permitted to fyle a certain arrangement between the parties since the action -
Mr. McMillan for Pleff - objects to the motion, as it is intended thereby to deprive the attᵉ of his Costs -

No. 1341.
Brown
v
Hoyle - } on Pleff. motion - Disch^d -

~~No 314~~
~~Brown~~
No 1267
Andrews
v
Bethune } on Pleffs mo. to fyle 2 papers -

No 483
Leach
&
Leach

On Law –

Day for Defendt – attachmt. agt. property of the Defendt –

Denizt. vo Depot. p. 266. The Depot is a gratuitous Contract – not alledged in the declaration that the depot here was gratuitous – action is here called in action of Deposit – There should have been a demand made to deliver up the goods before any Special damage or value for them would be demanded – no offer to indemnify depositaire for the charges of keeping the goods –

Mr Adams for Pleff – Not necessary that the depot was gratuitous, as the law considers it as such the conclusion is regular –

As to the Incidental demand, the Pleff has excepted thereto, as it cannot be set up in an action de depot art. 106. Cont. Paris – & Resp. vo Reconvention –

Saturday 6th June 1829.

Prest.

All the Judges.

Prevost
v.
Porteous

Pltff motion for distraction de frais rejected

No. 1391.
Cutting
v.
Cutting

On Defendrs mo. for Dismiss for costs
Mr Adams for Defendr refers to affidavits on gt motion is founded
Mr Walker for Pltff — The affidavit is wholly insuffte

No 1405
Ross & al
v.
Gormley

On Defendrs motion that the saisie Gagerie be set aside as made after the droit de suite was lapsed —
Mr Stanley for Defendr — Cout. d'Orleans Des Exons pour Ventes — No eight days only are allowed after deplacement of the effects — Poth. Louage. No 257. p. 283.
Mr Driscoll, the Defendr concealed his effects & left the house before the expiration of his lease — and as soon after as they were discovered, they were seized. —

No. 1985
Pothier
v.
Wurtele
&
Knapp Garn

Pltff asks for Judgt
Grant for Defdr agrees that Pltff have his Judgt but contends he ought to have his recourse over

ag

agt. the Defendts. in garantie — The late Mrs Andrews devised the usufruct of the farm in question to the Defendt. in Garantie during the minority of her children & after their majority she gave him the enjoyment of one half during his lifetime — Knapp was the grevé de substitution. — Fr. Sub. p. 508. sec. 3 — and as such proprietor & therefore liable to the mortgage in question —

No. 7 Poth. Don. Test. ch. 7 p. 412 —

Walker for Defendt. By the will a part of the usufruct has already determined by the majority of the testators child & as he is in possession he alone is bound — That the usufruct of the Defendt. has determined wholly by the act of the parties — This appears by the Pltffs declaration The liability of Defendt. cannot be bound for the debts beyond the emolument he derives from the succession — but the amount of this emolument here is not shewn —

Ripn. Legs. p. 93. 4. 5 v. Usufruct. p. 396.

Grant for Pltff — Defendt. is & was liable for all the debts of the succn. under the will — & bound for the present debt — he was made universal legatee by the testatrix —

No. 24

Hutchinson v. Nichols —

On Promy note —

Sewell for Defendt. — note payable to Wm Hutchinson agent — & indorsed by him, but not said to whom he was agent — the note is indorsed in blank — & not proved that parties were Merchts or traders — nor alledge that Defendt. at the time of making the note was a trader or Merchts — The indorsement is stated in the declaration as made in full. & not according to the fact —

No 1043.
Mills & al
Nimmo —

on Promy Note
Badgley for Defendt — there is a variance between the Note declared on & that proved —

Chitty on bills 482.3..
Pl

No 1657
Torrance
Durocher

on Law —
Walker for Pltff — action by Pltff as Exer of Defdt on a promy Note — The plea alledges that power of Exers is expired — the Pltffs reply that by the will their power was extended — to this reply there is a demurrer stating that this is new matter & inadmissible —
It was sufficient for Pltffs to state in their declaration that they were Exers generally — even where the year & day had elapsed — That the action formerly brot

Repn p 161 —

Poth. Ob. No 261.2. & 270.271. —

Rolland for Defendt — The Defendts plea is a full answer in law to the declaration, & no new facts ought to be allowed to be brot forward in the Replication — to this the Defendt has demurred —

No 1837
Simpson
Davis —

On law
Walker for Defdt — action on an award —
The arbitrators were allowed to extend the time of making their award 15 days beyond the time appointed and it does not appear that the time assumed by Arbitrators was intimated to the parties nor put into writing —

That

Repr. Arbitr. 548.

That the award is not final as it ought to have been — Not stated that the award was signified to the parties within the time required

Sweeney for Pltff, it was necessary to intimate to the parties the extension of the time, — the other matters alledged are not founded —

No 1063
Ackley
v.
Thomas —

On law
Jones for Defdr — action for defamation —
No place where the words were used — nor are any precise words set out in declaration — The words are stated to have taken place in the Seigniory of St Armand — this is not specific, nor certain —

1. Chitty 342.
Com. Dig. act. for defamn.

Boston for Pltff declaration is sufficient

No 168
Gillespie & al
Spragg & al
&
Intevs parties

On Pltff's mo. to reopen enquete & send the matters in dispute before arbitrators

Mr Griffin for Pltffs states the proceedings held

Bedard for Jas. Hutchinson, Intevs party —

Monday 8th June
Tuesday 9th "
Wednesday 10th "
} Enquete days

Thursday 11th June.

Prest.

All the Judges

No. 751.
Pilon
Cedilot } On Pliff. mo. for a contrainte par corps for not accounting as required by the Interlocutor

Mr Bibaud for Defendr. the Defendr. has delivered all the papers — over

No. 737.
Porteous
Eno de Deschamps } On Defendr. mo. to reject certain interrogatories proposed by Pliff to Defendr.

Mr Cherrier for Defendr. objects to 9th Interrogy as tending to prove conversations — & can make no proof in the Cause — same as to 10th Interrg — 11th do — The 21st Interrogy — asked if he did not close up the public highway — this would be a criminal act & Defdr not bound to answer — 22d — same objectn as relating to the 21st — also to 27th — same objection —

No. 736 — Objects to Intg 9. 10. 11th — same as in No 737 — 21 & 22d — 25th — This is not a fact personally known or so to be considered by Defendr — étranger à la contestation also 27 — as touching criminal offence — the 28th — not a fact personnel to Defendr — & all subsequent Interrogs are of the same nature —

Mr Sewell for Pliff. the Defendr — is in default, which has been recorded agt him, this default has not been

taken

taken off, but only a demand made to take it off — but he shews no suff. reason for not appearing as required by law — no authority given by him to excuse him —

1 Pg. 239-240. & 241. —

Mr L. Vigé for Defend. says the law cited applies only when the party means to prevent a default being pronounced agt him — but here the mo. is to take off the default — & it has been always allowed on payt. of Costs — this is agreeable to law 1. Pigeau.

Mo. granted to answer —

On No. 737. The objections to No. 9. 10. & 11 — but the party is bound to answer like a witness & this is a fact particularly within the knowledge of the party — the facts here are material —

No. 21 — there can be criminal prosecution had on the Defend. answer to this question —

As to case No. 736 — the objections to 9. 10 & 11 same as above — As to No. 25 — he has not objected to it by his motion —

No. 709
St Julien
v.
St Onge } On Defend. mo. to ex. Pleff on new facts & articles — over to 14th

No. 1341.
Brown
v.
Hoyle — } On Pleff's mo. to compel Defend. to change the conclusions of his plea & to conclude to the Court —

Sweeney for Pleff, action for slander of title —

Mr Radiger for Defend. — can not sustain title of trial by Jury — the Stat. Go. 4 — applies only to personal property —

No 1467
Legault
v
Quesnel

On Pluff's mo. to reject second ground of exception pleaded by Defend^t —

Grant for Pluff — the plea is to exhibits & not to decl^n.

Mr Cherrier for Defend^t — The Pluff has answered to the plea, except the objectionable part — but he ought not to have answered at all — he cannot now avail himself of the insufficiency of the Plea —

No 1757.
Sawyer
v
Moore —

On Defend^t mo. that Pluff shew where the residence of Pluff is, and also that he obtain a Com. Rog^n —

Bleury for Pluff — The Pluff was bound to give security for Costs — as not residing in the Province, & therefore Pluff's atts not bound to shew his residence — The Com. Rog^n was not applied for within the time required by the rules of practice —

Boston for Defend^t —

No 1444.
Fortier
v
Christin
& contra

On report of Experts —

Mr Lacroix for Pluff asks hom. of the Report

Mr Sewell for Defend^t objects to the proceedings of the Expert as irregular —

No 188
Smith —
Poilier.
v
Rossiter

On Mr Rossiter's mo. for distraction for Costs

Mr Roi for Defd^t the client is not in the Cause

No 1277
Meliss
v.
Armour & al

action for goods sold — on merits —
Scott for Defend^t Mc Armour — The Defend^s state that Pl^ffs became parties to a deed of arrangement between Defend^t & his Creditors & accepted a composition & that Judg^t can be granted for this sum only — Sewell for Pl^ffs, the Pl^ffs signed the act in Scotland but on condition of retaining the security they held in Scotland —

No 2316
McNaught
v.
Hart —

action for goods sold — merits —

No 1667.
Exparte
Geo. Selby & al
on Decret Volu
and
Geo: Moffat
v.
Wm Hallowell
&
Irvine & al opp^ts

Judg^t on the order of Collocation of Defend^s Creditors to be observed in the Judg^t of Distribution

No 1182.
Cuthbert
v.
Delanaudiere
& al. —

Judg^t

No 464
Rolland & ux
v.
Pothier —

Judg^t dismissing Cause —

No. 473. Rolland & ux vs Pothier, Exr	Judgt on acct rendered by Defendt
No. 2311. Wagener vs Donegani & Donegani oppt	Order for proof
No. 1998 Papineau vs Chartrand & Brunet & al Oppts	Judgt on Opposn of Brunet
No. 884. Lacroix & Vannier & Oppost	Judgt allowing the Oppost Durand's motion — Diss: Pyke —
No. 560. Ferguson vs Harrison	Action dismissed
Solomons. vs Jones.	Judgt on plea of prescripn dismissing same as informally pleaded
No. 891 Guichaud & al & Jones.	similar Judgt

No. 1572. Guichaud & al v. Cook. —	Judgt. dismissing plea of prescription —
No. 874 Guichaud & al v. Jones. —	Similar Judgt.
No. 1596. Guichaud & al v. Day. —	Similar Judgt.
No. 382. Guichaud & al v. Bowker. —	Judgt. for Pltff.
No. 1585. Guichaud & al v. Devins, Curr. & Hagar —	Judgt. dismissing plea of Prescripn. — The Defendt. afterwards Judgt. given moved to amend his plea of Prescription — which the Court took into consideration — see 1 East. 391 — 2 Bos. & Pull. 482. — 3 Bos. Pul. 11. 12
No. 738. Cartier & Tetu, Curr.	Judgt. on acct. rendered
No. 1440 Warwick & al v. Converse —	Judgt. for Pltffs. —
No. 1985. Pothier v. Würtele & Knap. Gar.	Defendts. defenses en droit dismissed

Friday 12th June.—

Prest.

All the Judges.—

No. 1242.
Cuvillier & Boucher & Syndics of the Common of the River du Loup Oppts

On Pleff motion that the land seized be sold.—

Mr Cherrier for Defendt — contends that he is interested in obtaining a decision on the Oppn of the Oppts — as the value of the land will be considerably affected thereby — until this contest is determined no new writ can issue to sell the land and the Pleff ought to have demanded to have the Oppn dismissed —

Mr Bourret for Opposts — the delay complained of was owing to the want of papers which were to be had in the Prothys Office at Three Rivers & gt had been refused to the Opposts — The property in the Common here is of moment to the parties — The present motion cannot be granted until the Opposn be disposed of

No. 1757
Sawyer & Moore —

On action on Promy Note

Mr Bleury for Pleff demands Judt — and moves for the rejection of the verbal testimony adduced by the Defendt

Mr Boston for Defendt — The admission made by the Defendt is joined with circumstances which shew it was made for the consideration therein stated — the terms of admission cannot be divided —

The testimony of Larkin shews that the note was given for the payt of this lot of land — Defendt further shews that

that there were mortgages on the land, as appears by the deeds filed —

Mr Bleury for Pliff — the admission here made is sufficient to entitle Pliff to his Judgt —

No. 1571.
Mr De St Ours
v
Dufresne et al

On action of damages for constructing a Mill

Mondelet for Defendt — The action is brot by the Pliff as Seigneur of the Fief Baillaule, but there is nothing to shew that there exists such a Fief, or that it is within the Jurisdiction of this Court — Dum. des Fiefs. p. 27. & 28 — bannalité is not necessarily attached to Fiefs. Prud hom. p. 141 — 147. Ordn & arrets. 2 Vol — gives this right of bannalité — but not proved here that there is either a fief, or a Mill upon it — 355. Boutaric — Baillaul may be a detached fief from the principal Seigneury, of wh the Seigr primitif would have the right of bannalité — 357. 362. 364 — Boutaric — no ~~defenses~~ protest or notification to the Defendt requiring him to come to the banal Mill —

That the evidence here applies to one St Dufresne fils & not to the Defendt —

Mr Bleury for Pliff. The title filed of the Defendts land shews that it is situated in the parish of St Esprit in the Fief Baillaule in this District — The possession of the Pliff in the Fief Baillaule & of the receipt of the banalité is proved in the Cause — That the faits & articles must be taken as confessed on as much as

the

the Defendt cannot avail themselves of the non-payt. of their expences, of which no notice was given to the Pleff —

Mr Mondelet for Defendt it was the duty of Pleff to obtain the answer of the Defdt on faits & articles as he was his witness —

No 955.
Marié
&
Marié

On Pleffs mo. to be admitted to make verbal proof of the demand

Mr Lacroix for Defendt there is no commencement de preuve par ecrit —

Mr Bleury for Pleff, contends that there is suffe in one of the answers of the Defendt to admit verbal testimony —

No 46
On Requête
of Julien Girard
v
Thos. Girard

On Petition en destitution de Tutelle —
Mr Bleury for Petr prays leave to file certain papers and submits the case on the evidence adduced —

Mr Salmon for Defendt — The proof adduced is not sufficient —
The proceeding here is not that yt ought to be taken this action ought not to be brought without the previous opinion of Parents 220 pte 1re Mulé —

No 738
Boissonneau
&
Camyré
&
Tougas. Gart

On Pleffs mo. to reject the pleas 1st & 2d pleaded by the Garant —

Mr

Mr Cherrier for Pluff - action by Pluff as oldest Captain of Militia who claims a Banc in the Church & that Defend^r be held to give it up the Defend^r has called in the Fabrique from whom he holds, & the Fabrique has set up pleas, agt. 2 of which the present motion is made - The ~~Defend^r~~ Garant pleads that there can be no banc without the consent of the marguilliers - this is a mere denegation of Pluffs right & not an exception and ought to have been made by defenses in droit or simple denegation -

14 Proc Cov. Poth -

The 2^d point, pleaded, that there exists no Militia law in force in the Province - this is mere denegation

Mr Bedard for Garant - the pleas are rightly pleaded as new facts are alledged as the grounds of the exceptions peremptoires -

Exceptions & defenses are the same thing - there are only the exceptions to the Jurisdiction which are not a defenses to the action -

No. 758. & 1243

Lambe & Rodier

In 2 causes united - on merits -

Mr Grant for Pluff - action for 2 Instalments on a deed of sale -

Rolland for Defend^r - Sale made by Brown to Rodier & transfer amount of Sale to Pluff - By the deed of sale it is stipulated there shall be a decret Vol^re of the property at the instance & costs of the Defend^r if he should see fit - The Defend^r obt^d an order of Decret - Oppos^t came in who claimed as Creditors of the Pluff, & of Brown -

there is also an opposition by Pleff himself, who claims a mortgage — which stopped the sale — as the purchaser is bound to give security to pay all the oppositions made to the sale — Had a stranger become purchaser, the decret became force & the Pleff might have made his oppos^n after the sale, but if Rodier became purchaser, he had the same right as stipulated by the Contract between Brown and Defend^t — The opposition of Gibb is found dist on an obligation of q^h a copy is filed — But the Jug^t already rendered in this Cause is the greatest obstacle to the Pleffs right — June 1827 — the plea set up by the Defend^t was maintained — 1. Bourg. 475 lit. 4. ch. 5. — & 477 — where there is a peril of eviction the pay^t cannot be demanded — the oppos^n here are a judiciary demand & affects the Defend^t right —

The Pleff was allowed to plead anew and in his plea states that the opposition of Gibb is discont^d — but says nothing about Pleffs own opposition — But the opposition of Gibb could not be discont^d. as he was dead several months before the discontinuance of this oppn —

Grant for Pleff, The decret was to be at the diligence and expense of the Defend^t — This decret was prosecuted in June 1825 & oppos^n filed in Oct. 1825 after q^h the Defend^t did nothing to ~~pro~~ effect a decision on their oppos^n — and it was only when this action was brot. that Defend^t came forward — But was necessary for Pleff to put in his ~~possession~~ opposition for the money due to him, as a stranger might have become purchaser —

It was the duty of the Defend^t to have done diligence on these oppos^n & to gave notice of them

to

Mr Brown — By new Repr the appr of Gibb is discontd this discontr is good notwithstanding the decease of Gibb with the knowledge of the Defendt — There has been no dicaveu by the heirs of Gibb for this discontr of the advocate

No 567
Bouchette
v
Chaulette
&
E contra

On Report of Surveyor & on merits —
Mr Sol Genl — The Pliff agrees to abandon 3 lots disputed by persons claiming it —

Mr Cas: Brennan — Defendt had no notification given him of the operation & proceedings of the Surveyor — the notice was served on the same day on which the Survey was made —
That the Surveyor shews he has not been able to execute the Interlocutor of the Court — The Surveyor then proceeds to give a history of facts he found out or was told him on the Spot but he does not make any operation such as required by the Interlocutory Judgt —

No 1094
Donegani &c
v
Dubord —

action for goods sold —
Driscoll for Pliff — Evidence for Pliffs is suffte —
Walker for Defendt — says he bought the Indian meal in question from one Brown & not from the Agent of the Pliffs Lavery — & the delivery was made under an order gt — was given to Lavery from Brown's Clerk — Lavery is contradicted throughout in all his testimony —

Mr Driscoll in reply — supports the opinion that the evidence for the Pltff is suffr

No 1618
Champion
v
Henshaw

action for goods sold &c — on law
Henshaw for Defendr — action on an award
order for proof

No 528
Nelson
Hubert
&
Jac. Cartier
T. S.

On saisie-arret on Judgt —
Roi for Pltff — there are several suits in which attachments have been made — the object now is to reject the intervention filed in this Cause — Contends that on this Intervention being dismissed he is first saisissant —
The saisie here of Pltff has the same effect as a transport, and a transport afterwards signified will not avail. cites commentary on 108e art. Coutume — Fr. petit. Comm. Repa vo Transport — 251 Poth. Proc Civ. 29 Mars 1829 — date of transport & Aout 1826 date of saisie in this case —
Rolland for Pltff in three Causes — admits that Roi ought to be first paid &c on in relation according to date of saisies — & that Intervention should be dismissed — Saisie-arret & transport have both the same effect. Repa vo Saisie-arret p 61 — Lacombe vo Transport Pothier Proc Civ. p ~~196~~ 201 — 201 — 1. Bourg. 557
This case different ~~from~~ between a Saisie-arret & Saisie Exon as to contribution to be made

Mr Cherrier for the Interv^g party — Here the amount due by the T. Saisi was not ascertained until after the signification of the transport of the Interv^g party — Here the creance transported to the Int^d party is that of the Creeps & husband whereas the Saisies are those of the husband alone — When there are more Saisies than money to pay Old. Denz. Saisie-Arret. No 32. — & therefore there must be a contribution au marble la livre —

& Pigeau. 664. art. 3 —

Saturday 13th June.

Prest.

All the Judges

No 1096
Campbell
Wilson & al

On objections raised at the Enquete
Adams for Pliff — action for house rent — Tubs
A Hamilton 5e quest. 22e do — contends that the objections are frivolous —
Walker for Defendr. the questions are leading and not at all connected with the point in issue — The damages endeavoured to be proved are for a period prior to the year for which the rent is demanded

No 1050.
Bellamy
Dixon —

On Pliff mo. to amend his declaration —
Mr Day for the Defendr objects to the motion
The plea meets the merits of the action, & the present application is to make a new declaration —

No 914
Froste & al
McKenzie

On Pliff mo. to have Defendrs Enquete declared closed —
Rolland, Defendrs cannot be cut out of their right to shew the evidence in support of their defence —

No 715
Grant
Grant —

On Defendr mo. that action be dismissed for want of a power of attys to institute it —
M. C. Bruneau, for Pliff asks for further delay —

No 168
Gillespie
Sprags & al
&
Jo. Hutchinson
Intervs

On Pliffs mo. for further evidence —
Bedard for Intervs party — the contest here is to whom the goods in question belong — These goods were seized in the hands of J. Lambe, who declares that he had them from Jo & Wm Hutchinson the Pliffs. contest this declaration & say the goods belong to the Defendr —

Sewell for Pliffs. the Intervs party have used the books of Sprags & Hutchison to establish a part of their demand, & they ought now to be allowed to produce the books — Merkel. Campbell & Woods have spoke to entries in those books — The object in producing those books is to controvert the evidence so adduced —

No 2316.
McNaught
Hart —

Action for goods sold — merits
Sweeney for Pliff — plea here is general issue & ~~we it an acct~~. The Acct Curr produced by Pliffs shews the balce demanded — There is an incidental demand for damages for not having insured goods for Defendr as per order, but only for £100 whereby £300 damages The Pliffs contend that Insurance was effected to the amount of the value of the goods Defdt had shipped.

Sol. Genl. for Defendr — The evidence in support of the Pliffs demand is not sufficient — The Stat. requires that the deposition was taken before the 2d Baillie of the City of Glasgow, whereas it ought

to

to have been the Chief Magistrate — the Certificate at the bottom of the Certificate that this 2d Baillie was the Chief Magistrate because the Ld Provost and the the principal Baillie were then absent —
In tracing the Invoices they go back as far as 1814 down to 1825 — in gt interest is charged without any Acct appearing to have been furnished to the Defendt — The rule in England is, 6 Esp. 45 — interest allowed only from the day of pmt fixed but here no account was either settled or delivered — Wilson Resp. — referred to from Esp: 2 Atkyns. p. 249. — Willis v Jernegan — 2 Burnham. acct rec'd & not objected to, is an admission of it —

The Incidental demand for not making an Insurance for Defendt — The Pltffs. say, they had effected Insurance for the amount of goods on board the Britannia — The letter of Instructions is produced by Pltffs — By a second & 3d letter the order is reduced to £170 — as the amount of the Insurance — The value of the essence of Spruce must be allowed at 1/ ℔ ℔ — Phillips on Insurance p. 521 —

There is an item of £100 gt is charged as due by Defdr to a former partnership of Irvine McNaught & Co — In 1815. Decr. 30 — this ~~they~~ Pltffs had no right to sue for, as being the debt of another —

The interest £17.4. — £103.0.3 — as the money due to Leslie gt was paid & £70 for insurance, being deducted will reduce Pltffs demand to a balance of about £10. —

Sweeney in reply — the evidence in support of the demand is sufficiently proved — The 2d Baillie was

the

the Chief Magistrate for the time being — That according to the usage of Merchts the acts are annually transmitted with the Invoice of goods —
The Defendr has received Credit for the amount charged as due to the former partnership —
An Incidental demand — The value of the goods is to be made at the port from which they are shipped — the evidence adduced of the value of the essence of Spruce is not clearly ascertained; but of much less value than that charged by Defendr — the evidence of Lefevre is material & more credible than that of Defendr son — Carmel also values it at a lower rate —
1 Marshal 110 — the premium on the Insurance ought to be allowed & deducted from the loss claimed —

Sol. Genl. cites can. Dunlop & Dunlop —

No 1640
Cameron
v.
Beaudette

On Defendr mo. that Pleff give security for costs —
M'donell for Pleff — action for wages — The affidavit produced by Pleff is insufficient as it does not shew that Pleff has left Province —

No 990
Wm Bell
J. Stuart

On Pleff's mo. that Experts be named to ascertain the value of the work in question —

No 1656
Connel
&
Halpin

action on deed of sale — merits —
Rossiter for Defendt — The deed produced cannot be considered as a deed of sale, but an acte de Constitution de rente —

No 134
Pothier
&
Huntoon & ux

action on deed of sale of an emplacement
Roi for Pltff, action for arrears of rent — The Defendts state that the deceased Pomeroy left a widow and several other children besides the wife of Defendt — & that the Defendts can be bound to pay only their proportion — But the Defendts do not shew where the widow lives, nor do they prove the marriage of Pomeroy, but merely cohabitation with the woman — neither do the Defendts shew where the other heirs live — The value of the house to be built is about £50 to £75 —
Stanley for Defendt — There are 5 other heirs besides Defendt — and the Defendts can be condemned to pay only their share —

No 250
Boutin
&
Hebert —

action for deduction —
Roi for Pltff — Damages have been assessed by a Jury, the other conclusions for the maintainance of her child are now before the Court.

No 1153.
Pothier
&
Robertson

action on a sale sous seing privé —
Roi for Pltff — has proved the original by the Prothonotaries —
Stanley for Defendt — There is no proof before the

the Court of the act on which the action is founded
That signature of Pluff is not proved — There is no
tradition of the property —

№ 833.
Salls
&
Cotton
&
E contra

Action on a promissory note by the late Salls
agt Defendt as his heir —
Adams for Pluff — the Defendt has pleaded
prescription, and sets up a demand for goods sold
to this the Pluff has replied, Interruption —
Borton for Defendt — An arbitration was agreed to between
the parties, and notes of hand interchanged between
them — & the arbitrators decided agt the Pluff & gave
their award in favor of the Defendt for a sum of £7 —
The Pluff claims under the donation from his father
but this act does not convey to him the outstanding
debts due to him —
Adams for Pluff — denies the arbitration — contends he
has established his demand

№ 1797
Ayer
Leach
&
Leach Oppt

On opposition —
Adams for Pluff — Sugt for Rent — claim for
monies as the property sold belonged to Oppt —
No evidence to support the opposition —

№ 1473
Burton
Gibbs

on Rule to shew Cause why the Court
should not render an Interlocutory Decree
that on default of Defts praying the act

4—

of the Judge rendered ag^t him, he be contraint par corps for the payment —

Rosseter for Defend^t this application ought not to be granted — admits that Judg^t has not been satisfied, — submits to the Judge of the Court — That the Ord^n of 1785 has by implication repealed the old law of the Country —

No 1748
Lemieux
v
Maillet

Hearing on law — action on Garantie —
Roi for Defend^t — has moved to reject the Replication as containing matters of law & fact together —
Mr Stanley for Pliff — the Defend^t says he is not bound to warrant Pliff, as he the Pliff has not paid a certain sum of money to Mr Grey, which he was not bound to pay —
Mr Roi in reply contends that his plea is sufficient —

No 127
Hollingsworth
v
Haight

action for board & lodging — Ments —
Nye for Defend^t admits demand to extent of £11. —
Stanley says Defend^t has pleaded pay^t out £ 16/

No 128
Cameron
v
Etna Insurance
Co

On law —
Walker for Defend^t Excl^s in covenant in specialty & in assumpsit — to this there are two demurrers
The Count framed in assumpsit — There are distinct causes

Causes of action & cannot be joined — The first Count of assumpsit — the plea is non assumpsit — & on Covenant, non est factum —
1 T. Rep. 274 — where same plea will not extend to all the Counts, they cannot be joined —
3 Levinz. p. 99 — where trover & assumpsit joined — Judgt arrested — 1 Raymd. 272. 2 Wils. 321 — 1 Raymd 58 — Bl. Rep. 848 — The breaches are not properly assigned in the first Count there is no breach assigned — and the damages in the conclusion can apply only to the Count in Covenant — There is no liability assigned in the first Count gt results therefrom — no breach — & therefore no damages —

Sweeney for Pleff contends that the declaration is sufficient — By the laws of this Country no such distinction exists as that set up by Defendt — and by this law there is not necessary that any breach should be set out —

Pickle v Hunter —

No. 1247.
Corporation of Clergy Reserves v McMillan — } On Law
order for proof —

Guichard & Divers — } Defendts mo. to amend rejected —
see Tidd's Prac

Monday 15th June.

Presd.

The Chief Justice —
Mr Justice Pyke
Mr Justice Uniacke.

No 2315
Jones & al.
v.
Wood & al
&
E contra

action of Revendication for a quantity of glass-ware —

Walker for Pltff. goods shipped to Defendts & gt came into hands of Defendts as consignees on behalf of the Capt & owners — The goods were addressed to Pltffs & a bill of lading sent them — on the arrival of the goods the Defdts gave a bond for the duties of the whole shipment — There were several consignees of goods in the vessel — When bond was given the amount of duties was not ascertained — When vessel arrived at Montreal the Pltffs made the usual entries at the Custom House & got an order for delivery of goods, but the Capt & Defendts refused to deliver the goods ~~was~~ until the Provincial duty was paid, this Pltffs refused to pay and Defendts kept possession of the goods The Defendts here acquired no lien on the goods from their voluntary act in giving this security they gave credit to Pltffs

3 Chitty 538. 539. Com. Law — lien is acquired by express contract, or by implied contract, or usage of trade here there was neither — or by legal relation, as in case of an Inn-Keeper — 1 Bar & Ald. 575 — & 582 when principle of lien is laid down —

The Defendt had no legal possn & could have no lien on the goods — 1 East. 4 — here the possn of Defds was tortious — Paley 107. 2 East. 235 — possession only gives a lien. 6 East. 20 —

2 Ter Rep. 485 — 548 Chitty. Com. Law 3d Vol — 4th Barn & Ald. p. 50 — where improper possn is obtained no lien is created —

The claim set up by Defds could not create any lien unless at the time of the shipment it had been so stipulated — the Master was bound to deliver the goods & the Defendts had no right to intervene to prevent it The Master pleads that he had a right to retain until payt of duties —

3 Bos & Pull. p 492 & 3 — 2 Holt on Ships. 169 —

492-3 as to the extent of lien which the owner has on the goods for the payt of the freight — and in England Ships are not liable to lien to persons providing necessaries for them —

2 Holt. 232. 233. — no usage of trade to warrant a lien

213 5 Barn & Ald — 213 — no lien for Capts wages —

2 Hen Bl. 254. —

4 Barn. & Ald. 630 — a right set up for certain

630 port charges by Owner of Vessel agt the freighter —

15 East 547. no lien for freight or demurrage on dead freight

547

263 6 T. Rep. 263 — lien allowed only when goods have been deposited as a pledge or deposit wt the party — there must be an express consent of the owner that the goods come to the possn of the party —

2 Holt 207. & 208 — the mere undertaking to become bound as Surety will not give a lien —

6 East. 371 — the right of stoppage in transitu is a personal right & cannot extend to the Surety —

In such case any man paying the Carter might claim a right of lien on the goods —

The Defend^s could have bro^t no action ag^t the Master had he refused to deliver the goods to them in order to hold them for the pay^t of the duties — 575. 1. Barn & Ald. —

551 — 3 Chitty 551 — lien is a personal right & cannot be transferred — 5 T. Rep. 606 — & 7 East. 6. —

The assignee of the bill of lading could not have been bound by such claim of Defend^s as the goods were not charged w^t such lien — & bill of lading may be transferred like a bill of exchange —

A lien can be exercised only on a ready money demand, & not on a future liability, as the case here — 3 Tor Rep. 122. Kinloch v Craig, there is distinction between pay^t & a liability to pay — 2 East. 226 —

3 Chitty. 549 — a factor who has become security for his principal has no right of lien without express stipulation — 3 Bos & Pull. 499. —

4. Barn & Ald. 50 — no lien until money paid

The Defend^s trusted to the personal security of Pl^ffs from charging them w^t. 2½ ℔ cent for the security so given by them at Quebec — but no such commission could be allowed on their voluntary act, & the Com^n is a recompense for a risk run — x

3 Barn & Ald. 497 —

x 543.
1 M: & Selwyn 543
1357. Selwyn N. P. —
16 Vezey 280. 1
5 M: & Selw^n. 180 183. 6

Mr Scott for Defendr — The Defendr contest the Pltffs right, as they were intitled to detain the goods for the freight — The Defendrs have not paid nor tendered the freight —

3 Ch. Com Law 137. as to what a sufficient tender ~~541. & 546~~ Id. — 556. — The tender here is insufficient, it is merely an offer in the protest —

The Defendrs as Consignees of the vessel were intitled to retain the goods for the duties — the giving security given by Defdr here was not a voluntary act, they were bound to do it — Paley. P. & Agent. 24 — ch. 1 — sec. 5.

This security being given gave a lien to the Consignee for the money he had become bound for Paley. 107. sec. 3. & p. 109. — Id. p. 93 — 2218. Bur. Rep. — 2221. — 6. Prec Rep. King v Lee & al — 1. M & Selw. 535 — lien on goods for yt money is disbursed —

The Pltffs ought to have tendered the same kind of security to Defendrs. yt. Defendrs gave to the King — But Pltffs were not intitled to this benefit, as by law they were bound to pay the money immediately for the duties, being under a £100. —

No 1371
Griffis & al
Moore — } action for board —
evidence we can referred to

No 1092
Snaith
Wyatt } Quit. touching sufficiency of Affidavit

No 1198
Massue
&
Buchanan

Action for rents & pension viagers — on law
Walker for Defendt — The right of action here
vested in Leprohon & his wife under the deed
of sale — & it was stipulated that out of the money
Defendt was to retain the life rent due to Pliffs' wife —
That in the subsequent contract between Leprohon
& Defendt Leprohon's wife was no party, & therefore
Defendt has an interest not to pay the money now
demanded as there is a defect in the deed so subsequently
made — The Pliffs accepted Defendt as their debtor
but this was never intimated legally to Defendt —
and Pliffs not having been parties to the deed
they have no action agt Defendt —

516. 529 Poth. Obl. No. 242. 516. 529. —

Mc Cherrie for Pliff — The land sold by Leprohon
& his wife to the Defendt was a Conquet — the price
fell into the Community & any subsequent change
to be made in the mode of payt belonged to the husband
alone — The subsequent contract was therefore valid —
The subsequent contract was ratified & accepted by
the Pliffs — qh entitles them to their present action —
Repn vo Delegation p. 352. — & p.

No 1298
Wilcox & ux
Hall
&

Action to obtain delivery of certain effects
& real estate qe were given by Defendt to
Livingston Hall, & now claimed in the
name of the minor Children of Livingston Hall
by their Pliffs their tutor —

Blenny

Bleury for Pliff. the Donation here was a titre onereux & falls into the Community, and the Pliff now as Tutrix & Commune en biens bound to pay the charges of the donation —
Le Brun Comte p. 142. edit. 1754 case of Gamelin v. Gamelin —
But ~~off~~ all events, if the property here should be proper the action will still be founded for 1/2
The second exceptn is that action ought to be brought agt the wife of Defdt —
The 3d Exceptn there was no tradition — But the donation is nevertheless valid — Lebrun p. 150 — No 5. tradition par voie feinte. — Repn 337 vo Donation — 2. Bourgn p. 110. art 274 Coat. Paris — Poth. Don. entre vifs. p. 54. 55 — Dupp. Don. entre vifs p. 423 —
The Defendt says the act was revoked by him, but this could not be done by him alone —
426 That even if made to defraud Creditors the Donee was entitled to have the benefit of it. Dupp. 426 —
That the act was not insinuated — this exception is not of any effect — 2. Bourg. 128 — the donateur cannot avail himself of this defect — Rep. 379 vo Donation — Poth. Don. sec. p. 77. 78. — 1 Dupp. p. 427.
Mr Vigé for Defendt. The action is not brought by the Donateur but by his widow — The Defdt sold a certain number of effects to his son, & afterwards made a cession of a lot of land to his son in consideration of a rente & pension viagere of £160 — The Pliff

cannot

cannot claim, as she never acquired a right in the property, and the children of whom she is the tutrix who never fulfilled any of the obligations, can now claim the property — Ferrere, Dig. No 19 — Communauté, the property was propre — and the widow can claim nothing as to it as it never fell into the Community —
The only action the heirs could have had would have been to obtain possession of the thing given — the party now contends that the Contract never had its effect & not intended to be effected, as nothing was ever done by the parties in execution of it — that Defendt remained all his lifetime in possession & paid all the charges on the property —

The proof is complete upon all the points of exception pleaded by Defendt — The deed of donation was never insinuated by the Donataire — a presumption that the deed was never intended to have its effect — the heirs of the Donateur are now in Suit, and have a right to avail themselves of the want of insinuation —

Replying in answer — the points pleaded by Defendt cannot be maintained — the Defendts do not claim here that the act be rescinded for the causes alledged, if the act was legally made, it must have its effect — Although no tradition was made during the lifetime of the Donee, yet that tradition may now be demanded as well as the real as of the moveable property — The act of revocation of Defendt — can be of no avail — nor the want of insinuation — nor can the Defendts par representation d'instans claim the benefit of the want of Insinuation avant them, as they do not plead it,

No 179
Beaudouin
o
Langellier

action for money fd over paid to Defd.
Greece for Pluff, it appears by the evidence
that Defend. obtained more than was due
to him & for which the action is brought £9.0.10
w interest on it — Domat p. 156. titre de ceux qui
font les affaires des autres — Id. vo Interets & Domages
p. 263. edit. 1777 — Rep. p. 466.7. vo Interets — Lacombe
vo Interets p. 370 —

Cherrier for Defend. — balce due was £7 — for qh
a Ingt may go, we costs as in the Inferior Court —

No 352
Tessier d'Lavigne
o
Lacombe
&
E contra

action en delivrance de legs —
Mr C. Bruneau — Defend. is Exec & Legr
universelle of deceased by whose will, her
children of the second marriage are instituted
legataires universelles after death of Defd. — action
for 1000# — no part of which was ever paid to Pluff
Defend. say that effects & cattle were delivered to
Pluff to a greater extent than the legacy & thereon
institutes an incidental demand — The effects
recd. ought not to go in extinction of the legacy as
the brothers & sister of Pluff recd. a similar quantity
of effects besides the 1000# — this appears by the
marriage contracts of the parties — agrees to deduct
the articles received since the death of the testatrix, viz.
1 paire de bœufs 1 vache 7 minots de bled a 100# p minot

Mr Le Vigé for Defend. — there are no admissions
made by Pluff in the cause — the Defend. have proved
the delivery of the different articles in question — the

Pluff

Plffs ought to have stated by their action what they had already received & on what principle, and claimed the balance — It is evident by the will, that the intention of the testator was to give 1000£ & no more — the proof made shews the Plffs have rec^d £34. 0. 11 — in value the Plffs ought to bear the expence of the enquete as by their denegation they have compelled the Defend^rs to prove the delivery of all the articles stated by the Writ —

Mr Bruneau in reply — It appears that the sons received a message besides the 1000£. & the words of the will ought to apply to this —

Tuesday 16th June

Prest.

All the Judges.—

No. 1209
Deshautels
&
David } over

No. 1206.
Jacobs
&
Bender } On Pluff mo. for a provision to be paid to her of £40.—
Mondelet for Defendr. The Pluff is not entitled to the motion, as she has hung up the proceedings since last Term, no enquete has been made.—

No. 145—
Fraser
&
Maitland & al
&
Forbes & al opts } On ~~Pluff~~ oppts mo. for security for Costs from the Opposr. Forbes—
Mr Sol. Genl. for Oppt. It should first be ascertained whether the Pluff. mean to contest the oppost.—

No. 1578.
Scott
&
Proulx
&
Labelle opt } On oppost. motion to discharge the Inscription for hearing on Merits, as the parties must first proceed to make proof—
Roi for Pluff there is no necessity for proof as there is enough before the Court to dispose of the Opposition without proof—

No 2236.
Ayers & Smith & Smith & Desrivières & al Gent.

On motion of Mr Bourret of counsel for Garant Inc Ayer that the Inscription for hearing on the merits be set aside.
Mr Beaubien contends there are facts to be proved & the Enquête should first be had

No 751
Pilon & Cedelot

On motion of Pliff for contrainte par Corps & on Defendr motion for delay to fyle his acct —

Sweeny for Pliff, the Defendr is in default

No 53
Digby & Brookes

action for medical attendce & report of arbitrators
Mr Bruneau for Pliff

Walker for Defendr — the arbitrators have allowed more than Pliff at first asked —

No 521
Mr Kewsie Cur & Cartier & Charbonneau oppt

On opposition of Charbonneau à fin de conserver —
Mr Donell for the Defdrs in reprise d'instance the Judgt referred in opposn has no connection with the Cause —

Mr ~~Mondelet~~ Bleury for Charbonneau contends that the Judgt does apply to the parties in reprise d'instance —

No 2315
Jones & al
v
Wood & al
& E contra

~~The right~~ & arg. cont.

Mr Scott for Defendt the right claimed by the Defendt is an equitable right & recognized by law — Domat. lit 3. tit. 1 ser 5. p. 209. tit. des Gages & hypoth. & p. 205 art. 19. — Basnage Tr. des Hyps. p. 4 —

The Defdt were obliged to enter the vessel at the Custom House at Quebec & secure the duties & this gave a tacit right on the goods of Pltffs — & gave Defendt all the right gt the Crown had there was an implied contract to give Defendt a right over the goods from the acts done by them for the benefit of the Pltffs — the goods were by the act of Defendt increased in value — Had not the security been given the goods would have been warehoused & Pltffs subjected to trouble & expence — In England all goods are warehoused and all duties are pd or secured before they are delivered up — This was not a voluntary act of the Defendt to give security, they were bound to do it as Consignees of the Ship — refers to Paley — as to duty of factor — here Defendt became necessarily the factor of all the persons who had goods on board the vessel — The agency of 2½ p cent charged was in recompense for the work & labor of Defendt —

The damages claimed £4000 damages — but have made no proof of the nature of the business carried on by the Pltffs — No tender made, a mere offer only — refer to deposition of Ware, as contradictory — there

were

there were only 34 packages qr belonged to Pltffs in Defdr store, the others were bought by them

Mr Buchanan for Defendr the doctrine of lien 4d England & of privilege in this country differ completly — the English law in this particular is singular — so says Abbot. p. 334 — see privilege Dig. lw. 42. tit. 6. l. 26 & 34 — & can cited pone Domat, cites case of Clarke v Young decided in this Court. & ordre of 1681 was enforced by the Court — qr was only the com. law of France — The law of England that lien depends on possn has been found inconvenient

334 Abbot

Chitty on Comn 3 Ch. 551. — Case of a raft — law 8. de incendiis 2 lw. tit. 7. p. 17 Domat. & 2 lw. tit. 9. p. 195 — wherever a thing is preserved or ameliorated — cites case Reid & Porteous where party had given up his possn lien refused — The charge of 2½ ℘ cent for trouble cannot amount to a waiver of privilege — any more than case of a common broker +

Walker — as to tender — it was sufficiently made, when delivery of goods was made + refers to testimony of Lafresniere + who speaks as to tender of money + it was sufficient the money was exhibited without being shewn. The Defendrs could not have maintd an action for the duties for qr they only gave security, but had not paid. As consignees of the vessel, there was no necessity for them to enter into the bond in question — the goods might have been landed, and a sufficient quantity of the goods left wth Custom House to answer the duties + as consignees the Defendrs could have no better right than the Master of the vessel — The practice of consignees giving general bonds has lately crept in by an understanding among merchts for their mutual convenience + & monies are afterwards collected before the duties become payable +

The Consignee of the vessel can exercise no greater right than the master of the vessel, or in so far as he chuses to allow them to act for him +

There is a difference between a pay^t and a liability to pay —

Had the Defend^s actually p^d. the amt. of duties to the Crown instead of giving bond, had the duties exceeded £100 — they could not claim the money from the proprietors of the goods —

The goods not liberated by the bond — still liable after amount of duties ascertained —

The poss^n of the master, was merely to secure the freight — his poss^n could not avail Defend^s — whose claim was wholly different — there could be no other possess^n but that of the Master for his interest — & that of the Consignees as ~~liable~~ having a right to receive the goods — third persons could not legally obtain possess^n from the Master — & the poss^n of the Defend^s obtained in this way was tortious —

The authority from Domat as to the Voiturier retaining the goods as limited to the person himself, & is not extended to any third persons who have no charge or care of the property — 2. Bouy. tit. 3. p. 497. refers to the proceedings of a person in situation of the Captn of the vessel — There is no such obligation extends to the Captn of the vessel as that of securing the rights of the Crown on goods he carries in his ship —

The right of lien is in the nature of an attachment —

There is a storage charged by Defend^s of about £24 — for a short space of about 4 or 5 days —

No. 2332
Molson & al
v.
Maitland & al

Buchanan for Pleff.

Action on the case for negligence in steering a vessel by the Defendt. servants, whereby the Pleff. vessel was injured to their damage £4000. The Plea is not guilty — On 23 June the New Swiftsure & Hercules started from Quebec & Hercules arrived at Sorel first & when the Swiftsure in entering the River Sorel met with the accident in question — it was after dark & the N. Swiftsure had her lights out & on entering the river fired her gun to give notice of her approach — The Hercules in coming out of the River departed from the usual course — it is the usual course for vessels going in to the River to take the East side of it, and the vessel going out to take the West side — The deposn. of Capt. Armstrong is the most consistent and clear in every respect & to whom no objections have been made — he shews the reason why the course of navigating into & out of the River should thus be observed — The Hercules did not take the usual precaution — she he had no lights at her bows — she did not conform to the usual route on going out of the river — she lay too close to the East shore, much closer than was ever seen to have been used by any vessel before — & in taking an oblique direction to the West side of the River, and thereby struck the wing of the Swiftsure — The Hercules must have known the time at gt. the Swiftsure would arrive in the River, yet the Hercules remained 2 hours at Sorel — & after the Swiftsure fired her

gun

gun, the Hercules was just putting off from the wharf & might have stopt her moving had she thot fit until the Swiftsure had passed — Every precaution was used by the Swiftsure, & none by the Hercules, & the Defendrs must answer in damages — 2 Journal Voisinage. 323. 324 — Boulais de Paby. 4 Vol. p. 498. & 501 — the vessel going down a river or coming out of a port ought to make way for the vessel going up the river and coming into port — 2. Valin. 184. art. 11. — Was the Hercules did not comply with — the Hercules had almost the whole river to steer clear of the Swiftsure which was hugging the East shore of the River Objects to the testimony of certain witnesses examined by the Defendrs as incompetent, being the pilots in charge of the Hercules — moves to reject their depositions — releases have been filed, to these witnesses, but they are not sufft — they were executed after the dissolution of the partnership of the Defendrs, as the representatives of the partners did not all execute those releases, & one of the Defendrs had no authority to execute them, but only each person for himself — objects also to the competency of Capt Brush of the Hercules, as conducting & advising the defence of this action besides being the Commander of the vessel — he was also irregularly examined as about to leave the Province, without a regular affidavit to shew the necessity of examg a witness as about to depart the Province, — as it is not stated that Defendrs would thereby be deprived of the benefit of

his

his testimony — Ryan's testimony ought not to have much weight — he had a quarrel wt. Pleffs was dismissed from their service. — in his cross-examn. he contradicted himself — he acknowledged to have said that Capt Brush was wrong in leaving the part while the Swiftsure was coming in — The Defendts have endeavoured to justify themselves by the testimony of some other witnesses, but the great weight of evidence is in favor of the Pleffs — Gilbert Ev. 140. 141 — Starkie 1 p. 460 470 & 520 — & G Tullier 439. 440. 446 & 447 — as to the rules for weighing evidence —

By law Dig. liv 9. tit. 2. law 29. 2 & 4. par. — the party injured entitled to his remedy — 1. Mornac. 647. — where he gives the text of the Rhodian law, where every precaution is not used by the vessel coming out of the River. — 2 Valin. 177. 8 — 183. 4 — Toubeau 2 Vol. 281. 282. — Boulay de Pati 4 Vol. p 492. 3. 4. 5 2 Grotius — the damage cannot be divided, as in case of an accident without fault, this is not pretended and not claimed, as it is a kind of justification and ought to have been pleaded

As to damages proved — 1. The damage to be repaired — 2 The delay of the vessel in not being employed — & 3 The hurried manner in which the repairs necessarily were made so as to hasten her departure — estimates the whole at £2119. 15 —

Had even the Swiftsure been on the wrong side of the River, yet when suffl space was left for the Hercules sufficient way, she was bound to take it — In England, in travelling, even if a man take

the

2 Geo. 4. ch. 7 – Prov Stat. –

the wrong side of the road, yet if he leave suff^t space for the other to pass, he is not liable to damage

2 Dowl's & Ryland 63

2 Esp. 533 – 1 Stark. 423. 2 Starkie 37. – 213. 1 Bingh^m Rep. –

Sewell for Defend^ts. When the Hercules was about to swing off from the port at Sorel – the gun of the New Swiftsure was heard – the H. took her usual course and 2 vessels came in contact, and damage done to both vessels – The Pl^ffs wit^s have not ascertained the fact that there was no light on the bow of the Hercules on her coming out, but on the contrary the Defend^rs can shew by positive evidence that the light had been placed there in the usual manner – all the Pl^ffs evidence of this fact is merely negative – The releases filed to the Witnesses objected to are sufficient to render them competent, and are signed by all the Defend^rs the objection that the powers of Att^s of the absentees have not been represented should have been raised by special objection & an opportunity given to Defend^r to represent the powers of Att^s – dep^n. No. 25. Jos. Felice – says candles were lighted, and several others confirm the fact that the lanthern was lighted in the usual place – The case here was a pure accident and no fault to be attributed to the Defend^rs. There has been no custom established that vessels should take the East side of the River in going into port – It can be only in case of negligence that the master is liable – The Custom is that all Steam boats passing each other shall ~~pass on~~ take to the right hand side of the River – this

fact

fact has been clearly established by the Defendts witnesses —

Peakes Ev. 314 — Master not liable for the malicious act of his servant — negligence must be shewn

2 Brown Av. Law. p. 36 —

Argument contd till to morrow.

Wednesday 17th June

Prest.

All the Judges. —

No. 1420.
Clarke v Young et al

On Defendts motion to set aside the writ of Execution sued out in this Cause —

Rolland for Defendt the Judgt was agt the Ship but the execution is agt the goods & Chattels of Defdts cites Tidd's Prac. p 913 & 925 — & p 442 as to motion to be made —

Mr Sol. Genl this course cannot obtain, as there is an opposition containing all the moyens of the Opposn and to which an answer must be put in — There is at present nothing before the Court on which it can ground its decision —

No. 1257
Grant v Mercier & contra

On Pltff mo. for arbitration — over to 29th

No. 540
Starnes v Dewey & Main, Intedt

action on deed of sale —

Sewell for Defendt Main obtd an Att achtt of the money in Deweys hands ~~before~~ after Wood assigned the debt Dewey owed him to Pltff — & therefore Main holds the right in preference to Pltff, because the transfer to

Pleff was not perfected by signification — there was merely a notice given, but no copy of the transport served — Rep^n Transport. 256 — For. Parfait & N^o Lit. Transport. —

Ross for Pleff the transport is sufficient —

—

No. 2332.

Molson & al
v
Maitland & al

Argument continued

Boston for Defend^t — The rule early established by the Pleff themselves in navigating Steam boats in case of boats meeting was, that every steam boat should draw to the right — this has been ~~generally~~ always followed to the present moment — the same principle holds in land carriages by the Rules of Police — In England the rule is different —

When damage occurs from accident without negligence no action is given — The Defend^ts are disposed to consider this case to arise from an accident — but had they been Pleff. they would have been entitled to damages —

The Pleff complain as grounds of negligence in the Defend^ts that the Hercules had no lights up — 2^d. That Hercules knows that the Swiftsure was arriving delayed their departure from the wharf at Sorel and came down upon her — and 3^d. The Hercules took the wrong side of the River in leaving Sorel. —

2 Geo. 4. Sec. 12

The Swiftsure had no Stern light as required by the law. 2 Geo. 4. Sec. 12. —

The Swiftsure took the Sorel side of the River —

The Defend^ts say, that the Hercules was under way at the time the Swiftsure's gun was fired — had a light in her bow — not necessary nor prudent to cast her anchor —

That the Swiftsure deviated from the general rule by taking the wrong side of the River & Cap. Armstrong was wrong in assuming the command of the vessel & directing a wrong course —

The Defendt contends that when Vessel is under the conduct of a pilot, he alone is responsible — & not the owners — 1 Holt. 407. 471. 75. 481. — Holt 359. 7 Taunt 258 — 1 Taunt. 568 — 15, East 384 — 1 Bos & Pull. 404 1 East. 106 — 2 N. Rep. 182 — 3 Ch. Com. Law. 490. — Poth. Obl. 121.

The Plffs witnesses are obliged to allow that they follow the general rule established by Plffs that when Steam boats meet, they each take the right —

— When the Swiftsure was coming round the point & was coming up the River, she was about the center of the river, and did not chuse the land side in such way as to shew to the Hercules she had adopted the land side as her course — Depts. No 37. No. 3. No 19 — No 25. — No 28. — No 30. — No 36. — No 39. — No 40. —

Mr Sol. Genl. for Plffs in reply — The rule said to have been established by Sir Molson, was never considered so general as stated, nor meant to apply to the River Richelieu — see dept of Jon Perrault the order was given by Molson to some of his own Servants on a particular occasion — This was not binding on any other individual, nor was it ever communicated to the Defendts or their servants — That several disinterested Wits who declare they saw no light on board the Hercules — yet they saw the light on board the Swiftsure — The evidence of Plffs Men cannot be considered as negative — But then would seem that there was no light — It was an act of imprudence in the Capt of the Hercules to have left the wharf without placing his light — The course pursued by the Hercules must have convinced every man that the boats must come in contact — & it is said by some of the Wits that had it not been

for

* Pilot claims says he had just time to place the light when the collision took place —

for the Swiftsure the Hercules must have gone ashore.
see Ls. Giroux's testimony. The Hercules had no light either in the Bow or Stern —
The course pursued by the Swiftsure in the Richelieu
was the correct and only course — Brush in his evidence
that vessels coming into the Richelieu from Quebec ought
to hug the South Shore, until they get near the
wharf — Ryan, Dep^ts. W^r says, that if there were no
rule, in coming out of the Richelieu, ~~the Hercules~~ he
would have taken the left or larboard — blames Capt
Brush for leaving the Wharf before Swiftsure arrived
Kelly, says Swiftsure kept close to the South Shore —
also Capt. Hanson — also says same & that Swiftsure
was in the usual course — Boudreau also, speaks
to the usual course — David Bouillé — Capt. Belcour
The question what was the usual course of navigation
in this River for vessels coming in —

Supposing war the Swiftsure had deviated, ought the
Hercules to have done so also, knowing that he must
come in contact w^t the Swiftsure by such a course —

Friday 19th June.

Prest

All the Judges

No 381
Allsopp v Buck } Judgt

No 1243.
Lamb v Rodier } Judgt

No 352.
Tessier v Lacombe & E contra } Judgt for Pleff

No 528
Neilson v Hubert & Cartier J.S. & others } Order of distribution on the several attachments by saisie arret

No 1277
Melliss & al v Armour & Shedden } Judgt for Pleffs

No 567.
Bouchette v Chaulette & E contra } Interlocr Judgt prolonged

No 1014
Fraser v Cuvillier } Process quashed

No. 1420.
Clarke. –
Young. – } Defendt. rule absolute, & exon set aside. –

No. 1473.
Burton
Gibson – } Rule for contrainte absolute – Judgt. 20th inst –

No. 1198
Massue
Buchanan } √ Judgt. dismissing Defendts exceptions –

22d June 1829 –
Trotter & Knight

October Term 1829

Thursday 1st October. –

Ch. Justice Reid
Mr Justice Foucher
Mr Justice Uniacke –

Mr Justice Pyke was absent from indisposition

No 921. –
Johnston
v
Harkness

On Pltff mo. to reject Defendt plea, as it concludes to the Country –

Boston for Pltff – considers this course regular – leaving to party to apply to fyle a regular plea –

Stanley for Defendt – The motion is irregular –

No ~~63~~ 1828 –
Gamelin
v
Kee –

action on Bill of Exchange –

Driscoll for Pltff – the plea here is payt – this defence has not been made out – the evidence adduced by Defendt does not prove the fact –

Sol. Genl for Defendt says noths –

No 284 –
Ayers
v
Bomhower
&
Deserviers

on hears on law

Beaubien for Pltff – the parties must go to proof –

Bourret, says there are matters of law which must be first heard –

Friday 2d October 1829.

Prest.
Ch. Justice Reid
Mr Justice Foucher

No. 1675
Andrews
Crooks

On Pluffs mo. that enquete be declared closed —
Mr Grant for Defendt — the objection raised by Defendt. to a question proposed by Pluff must be first disposed of — the question had in view to introduce new exhibits into the Cause —

No 2044.
Gillespie
Shipley

On Defendts mo. to quash process & discharge Defendt from custody —
Adams for Defendt — The affidavit filed is for £19. 3. — & writ issued for £20 — refer to case of Woods v. Vandersluys & Gardner v Snowden — where point has been determined —
Mr Grant for Pluff — the action is for more than that sworn to — qt is done every day — The amount for which the bail is to be given is indorsed on writ —

No 1629
Wher
Hill —

On Law — action of Trover —
over till to morrow

No 15
Brown & wy
Allen sal

on question of right of Evocation —
Jones for Pluff — action is in trespass & the right to land cannot come in question —

No. 1. —
Hall & al } Evocation rejected
Coward }

No. 63.
Bedard } On rule to shew cause why Exon & Pd not
Lemai } issue on Judgt —

Mr. Cherrier for Defendt — The Judgt was conditional qt have not been complied with by Pltff, to furnish discharge to Defendt — & pay Costs — qt have not been paid — no security given —

The copies of the acts served on Defendt — are not authenticated in any manner — the Defendt — is entitled to have authentic acts for his discharge —

Mr Bleury for Pltff — the copies served were sufficient the originals being of record

No. 728
Freeland } action on bill of Exchgt
Bridge & al } Griffin for Defdt — Bridge no mendn of the bill ever having been protested — the copy of the bill & the original filed are different — no certificate of the notary that the copy is a true one —
At all events interest ought to run only from the service of process —

Adams for Pltff — the admission of signature of Bridge, to Bill waives this objection —

Saturday 3.d October 1829.

Prest.
Ch. Justice Reid
Mr Justice Foucher.
Mr Justice Uniacke.

"This was the last time Judge Foucher sat in Court - he died afterwards on the morning of 26th Dec. 1829. - aged 69 years.

No. ~~1891.~~ 1094.
Donegany vs Dubord

On Pfff mo. to discharge cause from deliberé & a new Com. Rogr. granted for further examination of witnesses.

Driscoll for Pfff, refers to the conversation had between Lavery and Brown, on affidavit of Lavery - refers also to the affidavit of Ferguson who was present at the time of the conversation between Lavery & Brown - refers also to the deposition of Josias Wurtele -

Mr Walker for Defendt. this is a second application to open the deliberé in the cause - It would be irregular to grant this application, as it would encourage a party to hunt up testimony to controvert the evidence already given in the cause - The only case to be assimilated to this, is a mo. for a new trial in England - but there all the witnesses are examined anew, gt. would not be the case here - The Pfff may always obtain the justice his action may merit, by discontinuing his action & bringing a new one - It would be establishing a dangerous practice to allow such a course of proceeding - The discovery of new evidence merely corroborative of evidence already given is never admitted as a ground of new trial - & all the evidence here offered is of that description - refers to case of award of arbitrators when rendered, if perfect, cannot be altered even by the opinion of the Arbitrators themselves - this will apply more strongly to the evidence of witnesses - £ 2 Sha. 690 Price vs Brown - gh. is strongly applicable, as to adducing new Evidence 2 Ted. Prac. 879. on new trials - 1. Bos. Pull. 429. - new trial granted

granted under particular circumstances — of gt. there are none — 3 Bur. 1771 — where the Wits were said to have been suborned — 718. 2 T. Rep. dictum of Court as to the danger of granting new trials; merely the power to make out a better an. 717. 1 T. Rep — where a new trial refused — where it was discovered a Wit. was intended 326. Bull. N. 1o. Tellen B. & C. — when Pluff may be nonsuited — Vesia Ab. 1o Trial XG 485. 486. —
3. Morgan's Law Essays — 2d Essay. p. 84. 86. & seq.

There are six affidavits made by Lavery in this Cause — the latter 3 only he will consider — In the 4th affidavit, 'a fact is said to have come to his kn. 2 a 3 months after the Com. Rep. was executed, but he did not communicate this fact until near 12 months after — In Sept. last a 5. affidavit is made by Lavery — states he could not prevail on Wurtele & Ferguson to give their affidavits — gt. shews the intent Lavery took in the Cause, & was bender a matter on gt. Pluff. might have made their affidavit — In the last affidavit there is no sufficient ground shewn — —

Mr Driscoll for Pluff — the affidavits produced will shew the ground of the application is well founded —

No. 1096 & 621.

Campbell
Wilson
&
E. Coutra

On Pluff mo. to be allowed to examine witnesses to impeach credibility of certain Wits. produced by Defendt —

Adams for Pluff, moves to be permitted to bring up the arbitrators to shew the proceedings had before them, different from what the Witness of Defendt has stated —

Walker in reply — course proposed is irregular — the Enquiry is closed — & to open it an affidavit was necessary to shew the relevancy of the facts to be proved —

No 1964
Foster
v.
Stevenson

On Defendt mo. to quash process —
Bleakley for Defendt the process was served at night — 1 Jousse. tit. 7. art. 10 —
Mo. rejected —

No 2229
Ross-
Lacroix

On Defendt mo. to set aside the Pltff motion for a trial by a Jury —

Beaubien for Defendt — The trial by Jury can be had only between merchant & merchant, trader & trader whether of the parties to the action is of that description and the action is besides founded on an obligation — and although this considerations of this obligation may have been commercial, but by taking an obligation the nature of the debt has been altered, & the parties to the transaction are besides changed — The different Counts in the declaration shew personal transactions between the parties, which are not commercial —

McBoston for Pltff — The original transaction was commercial, but the rights of the parties to that transaction are now before the Court —

Instit. Commerciales de Boucher. — Ch. 3. p. 12.

No 632.
Molson
v.
Himsworth
&
Himsworth
oppt —

On motion of Oppost for delay to fyle his moyens d'opposition —
Rossiter for Oppt — states that the claim of Oppost is for the rights of the wife on the land seized and the necessary delay to produce papers

Sol. Genl for Pltff admits marriage of Oppt — & contends that no delay can be granted for the letters patent of the land in question —

No 1999
Pierson
v
Tufts

on Pliff mo. that enquete be declared closed —
Walker for Defendt — enquete only closed on 14th Septr

No
Snowdon
v
Lalongé
&
Masson opt

on opposn afin de charge —
McRollin for Oppost — contends that the Oppost has a right to this opposition — on the deed of donation on which it is founded —

No 2040
Sawyer
v
Harvey & al
U

action for pasturing of Cattle
Henshaw for Pliff — has made out proof to a certain extent of his demand — & for yt he asks Judge the Defendts contend that the place where cattle were pastured was a Common & Pliff not entitled to any remuneration but this has not been made out —
Mr Grant for Defendt — The action is without proof the dictn is informal — not stated who the Pliffs are the heirs of —

No 1796
Spence
v
Ferguson
&
E contra

action for work & labor & for an apprentice fee —
Boston for Pliff — Pliff bound till he attained the age of majority — by certificates from Ireland, it appears that Pliff attained the age of majority on 26 Dec 1825 — but as it was then concerned he was only 19 years of age, he continued to serve till 1827 — now demands an allowance from the time he came of age — besides damages for not having been taught his business as a printer —

Mr Driscoll for Defendt — documents produced are insufficient — the majority not proved — no identity of the Pliff with the certificates —

Monday 5th October.

Prest.

Ch. Justice Reid.—
Mr Justice Uniacke.—

Judge Foucher was absent the rest of the Term from indisposition and died on 26th Dec.

No. 1860 — On Petition of Dn. McCallum & Edwd. Connor Sal —

On Defendt. motion to dismiss proceedings on Devil Volr.

Boston for Defendt. more than two terms have elapsed since last proceedings —

Mr Buchanan for Petrs. the proceedings were originally taken under a law now expired — the Defendt. to No. 9-60 claim a right of being discharged — this was unfounded — & the claim would have been dismissed if the Court could have heard the merits — but as the law is expired, the Court cannot adjudge upon an accessory where they cannot adjudge upon the principal — the demand originally was to sell the diagonal right & not the right of soil held by the oppts.

Mr Boston for Oppts. The Court must have power to adjudge upon this question, as the party was in default before the law expired. —

No. 2050 Ex parte on petition of Robertson Devine oppts. —

Oppt. declare they do not intend to file any moyens

No. 2229 Ross Lacroix

On Defendrs. mo. for delay to plead —

over till to morrow

No 1136
Stanley
Hamilton
Colclough } On opposition — nothing said

No 1272
Tully
Stansfield } On law
Mr Mondelet for Defendt — has pleaded an exception dilatoire & temporary en droit — That there is now an instance depending before the Court of K. B. at Quebec which must be first determined before Pliff can proceed a Pliff is the Cessionaire of Perry whose property has been seized & sold — this exceptn is good in law — Pyles Kiss. Forbes v Atkinson and Conf. Bor. tit. 6. art. 3 — Here the Pliffs cedant may be paid the whole demand — 1 Pigeau 39 — 156. 188. 190 —

Mr Greece for Pliff — action on a transfer of a Judgt rendered at Quebec — the exceptions cannot be maintained there is no litispendence here stated — refers to Bornier — not between the same parties — nor the same cause of action —;

No 1349
Leroux
Cardinal
& Several Earls } Motion on part of Cardinal to produce a discharge from Langevin, the arrier Garant —
Mr Beaubien for Trottier, says he is entitled to go to evidence as to value of the part of the land of which he was wicted —

No 1276
Gay
Bingham } action for wages — clothes & damages —
Sewell for Pliff — refers to the evidence of Wright who hired the Pliff —
Beaubien for Defendt — Defendt has recd his wages regularly — no proof of any agreemt — nor that pliff was discharged from Defdr service

the Contract here was not binding on Defendt — not made double — no proof that Wright had any authority of the kind stated in this agreement — which is of an extraordinary nature — That after this agreement the Pltff entered into a new agreement wt Defendt for one year at £36 pr an — & his wages pd accordingly — There is no proof that Defendt discharged the Pltff from his service —

Mr Sewell in answer — The writing here was left in the possession of the Defendt & he has no right to claim that it should be made double

No 1108
Torrance & al
v
Decrocher
& Oppts —

On opposition of Torrance —
over to 7th

No 356
Crevier & al
v
Monarque & al

action for rente & pension viagere —
Mondelet for Defendt contends he had the right to retain the money claimed in his hands to answer for a Dower on the land given — refers the question as to value of Wheat demanded —
Bourret for Pltff — Dower is due to Wife of Pltff — & is willing to give security —

No 599.
Walsh
v
Tibbitts & al
&
Thorn. T. S.
&
Thorn Intervs

action for wages —
Rossiter for Pltff — only question here is touching a claim made by the Intervs party — action agt Defendt is made out —
Walker for Intervening party — The Pltffs proceedings as the Defendts are irregular — action agt Defendt a Copartners — The Pltff proceeds on Stat. 4. Geo. 4. ch. 13 to compel an appn of Defendt — No proof of the publication of the order on the Gazette

one Gazette of 28 feby 1828 wh. an affidavit that the order was published for 4 months — from 1 Nov. 1827 to 28 feby 1828 — which does not show 4 Calendar months — There was no Montreal Gazette on 1 Nov. 1827 — the first publication was made on 3d Nov. '27 — The notice not sufficient in regard of the description of the Defendts. The notice should have all the legal description required in a writ of Summons — It appears that affidavit for notice was made by Pliff himself — The Court stopt the further hearg — this being a fatal irregularity.

No. 250 - 706
Bent & al
Spragg & al
Howard & al
Intervs —
Outram opt.

On Intervention of Miss Howards —
Mr Walker for Pliffs — opposes claim of the Intervg parties Pliffs are creditors of Defdts & sued out on their Judgt a writ of attachment on ye sundry goods & chattels were attached. —

Mr Rolland for Defendt Stewart Spragg — The Pliffs obtained a Judgt on a condition that they should not proceed agt the personal property of the Defendts — The Pliff could not at any time have sued out exton agt the moveable property of the Defendts In which the confession of the Defendts was accepted, the Judgt obtained thereon could not warrant any attachment of the goods without a special action to that effect — at all events the present action should have stated the grounds of fraud and to have proved it — as the only grounds on which such an attachment could be maintained — The attachment here was sued out the day after the Judgt was obtained —
Walker in reply, the confession was that the Pliffs should sue out Exon agt real Estate without any previous discussion of the Defendts goods & Chattels —

Mr Rolland for the Intervening parties — Miss Howards The Intervg parties went to keep house for the Defendts and put their monies into the hands of the Defendts and drew out the monies as they wanted it & employed a part of it in the purchase of furniture for the Intervg parties —

In June 1826 the attachment was returned — Wm Spragg
dead upon the return of process — yet both Defendts
were called & Wm Spragg made default — Stewart Spragg
gave notice of the death to Plff. in June 1826 — yet the
Plff. still proceed in the cause — in June 1828 — an
ex parte motion of Wm Spragg was filed — on 13 Oct
1828 the Enquete was declared closed — when the cause
to be heard on merits — the Plff took a rule on Stewart
Spragg as the heir of Wm Spragg — but St. Spragg was
discharged on his stating he was not heir — on this
a Curator was appointed — but the act of Curatelle is
not filed — Devins, Curator is called on the submits
to the Court — but the Court has given no order that
he shall take up the instance — yet the Cause has been
again inscribed without any enquete, at which the Curator
had a right to attend at the enquete & examin Witnesses —

The Miss Howards were in possession of the house
and of the furniture seized, & was made by their
orders and at their expence — they brought furniture
with them to the house — the evidence of Stewart Spragg
shows the manner in which the furniture was made —
It appears that at the time the Spragg's were in good
credit, the monies of the Miss Howards appear to have
credit, and the monies paid to them from time to time —
The defendts paid for board to the Miss Howards — this
true furniture was purchased by Wm Spragg, but it was
with the

Walker for Plff — a bare suggestion of death of the
party is not sufficient, a short service is requisite
1 Pigeau 236 — 342. 343. 344 — form of notice to be served is
given — Here no notice was given to Plff & their attorney
If there was any irregularity in this case it proceeds from
the fault of the Intervenor parties in prosecuting a claim for
the effects seized as belonging to Wm Spragg, while they

Knew

knew that Wm Spragg was dead —

The Enquete was closed on the Intervention, as no Enquete was ever had on the original Cause, no enquete being necessary, the documentary evidence being sufficient to establish the demand — The Pleffs here have been supporting the rights of Wm Spragg for the benefit of his creditors —

When the Curator was called in he made no objection to the proceedings and demanded no new Enquete, and if there was any defect in this respect it was the duty of the Interv^s parties to have had a new Enquete with the Curator —

The Interv^s parties were never the proprietors of the effects claimed — it consists of very expensive furniture provided by Wm Spragg — the dwelling house was fitted up on an expensive scale by Wm Spragg — the Intervening parties did not rent the house, but came there as house keepers — the whole establishment was expensive for the views of Wm Spragg — the Interv^s parties, as persons of economic habits & of advanced age & living in a retired manner before they came to this house all their means, with their habits cannot be presumed to have been laid out in furniture of this description — An aut Curt produced by Mr McKenzie & on gt they found their claim, is strong evidence ag^t them — it com. in Octr 1820 & closes in March 1827 — & the entries to the Credit of these parties bear a date subsequent to the process in this Cause the aut. Curt. is opened w^t Mary^t Howard alone — In this aut. credit is given for the board of Stewart Spragg, but nothing said of Wm Spraggs board — which would show that the expence of the establishment was on the aut. of Wm Spragg alone — & Stewart Spragg cannot explain on what principle his brother was to board in the house — & credit is given for Wm Stewarts board only after the seizure — then entries are made to the credit of Mary^t Howard last different times to extent of £1200 — in a variety of articles which were never contemplated until the seizure —

The expenditure of Wm Spragg was proved to be £400 — in his board alone, whereas the board charged by Miss Howards was only £80 —

In this acct. there is no charge agt Miss Howards for rent of the house. — although all the charges for servants are made agt the Concern —

Great sums of money are credited to Miss Howard in 1826 gt were stated received many years before, & interest on sum of these allowed, but no interest charged to Miss Howard for monies advanced to her —

The acct. according to S. Spraggs evidence was a mere house keeping acct. but that the Miss Howards were to be no expense whatever —

There are two accts wr Miss Howard in the books — in one acct. marked T. gt appears to be the true account, Miss H — is credited for £600 gt was due to her by the concern of Sohr & Wm Spraggs & gt Wm Spraggs had undertaken to pay & brot into the books —

All the bills of parcels of the articles furnished except two or three, are in the name of Stewart & Wm Spraggs — & many of the articles are fit only for gentlemen —

Todd, the Joiner, says the furniture was ordered & paid for by Wm Spraggs —

Thompson, the bookkeeper says all the purchases were made by Wm Spraggs & without the knowledge or participation of the Miss Howards —

McRolland for Intervening parties, controverts the allegations & statements of the evidence — the whole charge of the establishment according to the acct. produced does not exceed £300 p an — there is no charge in this acct. for wine or liquors — the establishment was understood to be at the charge of the Spraggs — & considering the allowance made for board & lodging & expences of servants & for washing & mending, it will amount to about £226 —

№2229

Ross
Lacroix

Plffs motion rejected, there being several of the Counts in the declaration referring to transactions between the plff and Defendt personally which could not be tried by a Jury and therefore (as there could not be two different trials in the same Cause) these must be tried by the Court as well as the other Counts relating to the Commercial transaction in question. —

№1094.

Donegani
et al
v
Dubord

The Court considered that it would be a dangerous principle in the administration of Justice to admit the motion of the plffs for a partial examination of witnesses to controvert the facts proved by some of the witnesses in the Cause — That when a Cause was pleaded and left under the consideration of the Court it was understood that the parties had adduced all the evidence they had or legally could produce in support of their respective interests, and if it were allowed them to hunt up further evidence arising out of, or to controvert facts proved, it would be destructive of public Justice, & no man would be safe, as his best rights might thus be destroyed, when he had just reason to consider them as secure, and more especially by the partial adduction of such new evidence — That the regular Course ought to be where new evidence material in a Cause under such circumstances has been discovered, to discontinue the Cause and bring a new Suit, which is always in the power of the plaintiff — That if the Court could at all maintain a motion of this kind it could be only on that principle so as to put both parties on an equal footing, and also on the payment of all

the

the Costs of the enquête & examination of Witness had in the Cause, as Costs incurred by the fault & neglect of the party applying to open the enquête anew. It was therefore ordered, that the Plffs motion should be granted on pay^t of all costs accrued on the enquête already had, and with leave to the Defend^r to examine all such witnesses as he should see fit and by law he was entitled, after the Plffs should have closed their Enquête. —

No. 738.

Boissoneau v. Campré — Garants

The first plea of exception pleaded by the Garants was over-ruled, as being matter of défense en droit — the two other pleas maintained and ordered that Plff answer thereto —

Tuesday 6th October.

Prest.
Ch. Justice Reid
Mr Justice Uniacke.

No 876
Delabrucere
v
Papineau
&
al.

On Defendt. motion to discharge the inscription of the Cause from the Role de droit

Mr Ld Vigé for Defendt. The Cause is not in a state to be finally heard - 2 Exp. named wt. right to name a third - the third named ex officio - In Febr last Bordages & Lukin made a report. & Lemai another - It was ordered that parties should pay the Experts their fees before being paid - two have been pd & their report is before the Court, but the report of the other, Lemai, is still unopened and not therefore before the Court - That until this report be opened the Cause cannot be considered as ready for hearing - the fees of this Expert ought to be paid by the party who wishes to proceed in the Cause - This has been the opinion of the Court in regard of it officers in other respects -

Mr Beaubien for Pleff - If the Defendt. considers that the report of Mr Lemai is advantageous for him, it is his business to pay the fees and open the report - That by the rule of reference two of Experts are authorized to proceed But considers that Lemai has not made a report, for gt. any payt. ought to be allowed - Besides Lemai had his acct. taxed without notice -

Mr L. M. Vigé in reply - The Report of Lemai must be disposed of in some way before the Cause be heard

No 1457
Mills.—
Gerrish } On Defendt. mo. to discharge the Inscription for Enquete—

Walker for Defendt. no notice of time of filing Exhibits— No notice of the precise amount of the demand.—being an action of assumpsit—
Adams for Pleff— The action is not in assumpsit, but for work and labor—& account stated— nor an action in which a bill of particulars is required—

No 2052
Try
Nimmo } On Defendt. mo. to quash writ of attachment—
Rolland for Defendt. the attacht. was executed and was afterwards discharged, & moves that the Sheriff state the time of the discharge to shew at what time the service of the declaration was made, as service of it at the Sheriff's office could not be made after the attachment was discharged—

7 Geo 4. ch. 8.

Mr. Walker for Pleff— Pleff on 20 Augt. sued out an attachment & on 21 it was executed & according to law served a copy of writ on Defendt. & a copy of the declaration at the Sheriff's office— it was afterwards discharged & the effects delivered over to the Trustees.—

No 2064
Try.
Nimmo } Similar motion—

No 2067
Rogers.—
Bower } On Defendt. motion to quash process, as Defendt. lives in Noyan & not in Sabrevois—
Mr Sweeny for Pleff the service on Defendt. was personal—
Decided. Dis[illegible] v. Ayers. this shd. be pleaded in abatement

No 2260
Nicholson v Bogg — 9. Geo. 4. ch. 8

On Defendr mo. to quash writ of Capias — Boston for Defendr — This is an action of damages, for which a writ of Ca. cannot be granted, there must be a debt existing at the time of the suing out of the writ — here there was no debt due — cites case of Duplessis v Wilson. 5 or 6 years ago —

Fisher for Pltff. cites case of Davenport v Cutlemans all the grounds for quashing the writ must be set forth in the motion — now it is referred to the declaration as containing no sufficient ground to warrant a Capias now the sufficiency of the declaration cannot be tried by a motion — the affidavit & writ are not attacked, & that only can be attacked by motion —

No 1165
Byrne v Johnson.

action for work and labor —

Walker for Pltff — in support of the demand the Pltff has produced a variety of letters & other documents to substantiate the demand — the Pltff has also made proof by parol evidence to prove it —

McRolland for Defendr — The proof is the same as made in the former action — There are however two pleas to be first determined — 1st Chose jugée — which is here pleaded by Defendr. No 851. Obl. — & No 888 — case where it applies — Defendr has produced the declaration & other proceedings on the former action & the demand is the same. —

The Defendr accepted a promise from the Defendr ~~a promise~~ for his demand to pay after his decease, and had it in his possession & has produced it in this Cause — the declaration states even the day on which the promise was made. — and all the proof made is prior to the date of this promise. — The Defendr having accepted this written

promise the Pliff cannot have recourse to a prior proof by verbal testimony — The letters produced by the Pliff were not always written with the greatest attention — but they establish no debt of £500 due to Pliff — The enquête here consists of testimony to prove the particular agreement between the parties, qt cannot constitute any proof in favor of Pliff on this demand —

Moves to reject the testimony of Mr Tetu, the Notary as having testified respecting what passed between the parties touching an act which he was called to pass, altho' no act was passed — the Notary also gave a certificate qt according to Serpillon is sufficient to reject his testimony the paper produced on which the Defendr has written some objections is an oblign payable in 8 years, which cannot apply here —

No 1927
Benoit
v
Vallieres

action for bread —
Guy for Defendr says the demand is not made out
Rolland for Pliff — if the Court has any doubt it may call Pliff on his oath —

No 1242
Cuvillier
&
Boucher
&
Syndics of the River du Loup opps

On opposition afin de distraire —
Mr Cherrier for Pliff, the opposants claim a certain right of property in the property seized — to this there have been exceptions raised by the Defendt —
Order for proof

No 124
Solquin
v
Jolicoeur
&
Boyer

On motion for provision as guardian of a horse seized — Guy for Oppt asks for £10 —
C. Bruneau for Pliff — fyles affidavits to shew the same already

already allowed is too much — & that nothing more should be allowed —

No. 2309.
Beaulieu & David

On Defendr. motion to quash process from irregular service —

Moreau for Defendr. By affidavits produced it is evident that the Defendr. lives in the parish of St. Laurent & not in the parish of Montreal —

No. 1629.
Wher & Hill —

On ~~Defendrs~~ Pltffs mo. to discharge the inscription as the Enquete is not closed —

Mr. Adams for ~~Pltff~~ Defr. ~~Pltff~~ Defr. is not bound to produce the Wits. to answer to the ~~obj~~ question, and that the objection made by the Pltff must be admitted. The question proposed, is as to the understanding of the witness which is not material —

The Defendr. having admitted the fact demanded — The Court directed —

No. 250
Bent & al & Spraggoal & Opposts

On question of order of collocation of the opposts.

Mr. Walker for Pltffs. previous to Pltffs. Judgt. the Defendrs. were insolvent, vest. on or about 1 Jany. 1826 and it is contended not withstanding does not deprive the Pltffs of their right of Mortgage, and also that there was no insolvency —

Mr. Buchanan for the Chirographary Creditors 3 ~~the~~ Judgts. were given on 19 & 20 April 1827 on Confession of Judgts. by Defendrs. the other Creditors contend that these Judgts. gave no mortgage as Defendrs. were at the time notoriously insolvent — In no case was an Insolvency more apparent

several witnesses as well as the acknowledgment of the Defendants themselves prove this beyond a doubt — a week before these Judges there is a deed of Assignment made by the Debtors themselves for the benefit of his Creditors — It has been attempted to rebut this proof — moves that ~~exa~~ depos^s. of Jas Holt & Js Chas Grant be set aside as incompetent witnesses — Holt is the Attorney ad negotia of the Pltffs. since March 1827 — he has also a pecuniary interest, as he expects 5 p Cent on the money recovered this is not a mere commercial fact, but touches the right of Mortgage — Rodier — Domat — 3^d lib. 3^d sec. §6. 11 & 23 1 Mornac 1318 — commenting on the law referred to by Domat — No 825. Poth. Obl. — 66. & 67. Proc. Civ. — In 163 art. Cont. Brittany. — Duret Alliance. p. 112 D'Argentré on same art. of Custom of Brittany — That Holt has signed the very deed which acknowledges the ~~debt~~ insolvency of the Defendants —

There are documents here marked N. O. P. — which require its notice — an instrument dated 12 April & notice in the Montreal Herald of 14th. April by the Trustees Holt & Wood — There is also a letter from them to some of the Creditors —

1 law 42 tw. Dig — 2 Toubeau 365 — 2^d lib. tit. 12. p^t. 1st. Ch. 9. Basnage Hyp. Stacca — Where Debtors conceal themselves or acknowledge themselves to be insolvent — Jousse on Ord^ce Com. 2^d. Ravirol on Perrier — p 119 — 1 Black Rep.

Cont^d. to hear Pltff in reply to morrow

Wednesday 7th October.—

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke.—

No 1241.—
McRae
v
G. Donaldson
&
Jn. Donaldson
oppr

On rule on Sheriff to shew cause why he had not annexed a certain opposition to his return—
Mr Boston for Sheriff. there should be some ground to found this application— The paper given to the Sheriff was not in form a substance such as he is bound to receive according to the rules of practice— files the paper.—

No 356
Crevier & ux
v
Monarque

On Defendr mo. to be permitted to file a new plea—
Mr Bourret for Pltff— It is too late to plead anew—

No 2229
Ross.—
v
Lacroix

On Defendrs motion for delay to plead—
Mr Beaubien for Defendr states grounds of affidavit on which motion is founded—

No 250.
Bent
v
Spraggdal
&
Devers Crers
oppr

Mr Walker for Pltff— The action on which Judgt was given on March 1827— The Judgt confessed w. condition of proceeding agt lands only— The assignment made three days after the confession of Judgt—
The evidence on the part of opposts shews no insolvency in Defdts

Defendr at time of confession — Nor does Insolvency invalidate the act — failure is not deconfiture — the assignment of 12 April 1827 has no connection with Pltffs Legs —

This assignment held out a benefit gt. the Creditors, chirographaires refund to accept — It is said in the reasons that there was only an insolvency, but no deconfiture — The evidence adduced by appeals to shew the insolvency is insufficient — Barnard a Wit. says that in fall 1826 the business declined — in 1827 the doors shut although Wr fastened — But in consequence of the declining health of Wm Spragg the Defendr intended to close their affairs & to dissolve their partnership — which will explain sufficiently Barnard's evidence — see also Wilkie's evidence — By the acct. produced by Budden in support of his claim, it will be found they rendered to him an acct. sales of goods for him, on 31 Dec. 1826 and even latter on 1 Feby 1827. he recd a payt on acct. of his debt of £30 — as Holmes's evidence — the dishonor of one note, is no proof of insolvency — & his opinion of what constitutes ~~[illegible]~~ bankruptcy is not correct — and besides in March 1827, it is found that the Bank was taking a mortgage for their debt — Wilkie & Thompson both say that the Defendrs insolvency was not publicly known until the legal proceedings of the Pltffs were made known — The Defendrs were making public & open sales to a late period in the fall 1826 — this appears by different witnesses — on 31 Oct. 1826 sold property for Pltffs to the extent of £750 — which sets aside all idea of insolvency at that time — Jackson is brot. up to prove the retiring & concealing of the Defendrs but he does not go to the extent that Defendr were concealing themselves from their Creditors — The Insolvency of the Defendrs can be dated only from the meeting of their Creditors in the end of April 1827 — Mr Young says, that at the meeting of the Creditors they were indignant to think that there should be an

insolvency

insolvency, as they were convinced the Defend.rs had more than sufficient to pay all their debts —

The assignment of 12 April 1827 was imperfect — Mr Grant was applied to by Defend.rs to prevent costs of different actions in case the other Creditors were all to bring actions The Instrument was never carried into effect as the other Creditors did not accede thereto — the Trustees on the supposition that the Creditors would accede thereto gave the public notices referred to —

Insolvency cannot defeat an hypothecary claim — Deconfiture is diff.t from faillite — ~~Deconfiture~~ faillite cannot defeat a mortgage — faillite will — there was no faillite here — Faillite is known by external facts 1. Pigeau 437 — & is different from deconfiture — Rep.ce v.o Vente. 149. 150. & 151 & seq — The ord.ce of 1673 — to shew what is bankruptcy — & Rep.ce as above cited shews some additional circumstances — but failing to pay bills &c — does not constitute bankruptcy — Trevoux says a desordre dans le negoce — is a sign of bankruptcy — Rep.ce v.o Banqueroute — cites three arrets qt. shews the point clearly — as to numerous Judg.ts rendered ag.t the party — The principles of Qui in fraudem creditorum of the Digest appear to have been introduced into France & into Scotland — Stat. 1621. in Scotland — & 1696 — agree with the law of France, as to what shall be a bankruptcy or not. cites a case from Erskine nearly similar to the case in hand — 464 Wells Torbay & Ware 1 Bur. 436 — 1 L.d Ray.d 724 —

Jousse — 1 art. 11.e Tit. ord.ce 1673 —

The authorities cited by opposts from the digest allude only to fraud, which has not been alledged here as a ground for setting aside the effect of their Judgmt —

The authority from Toubeau, does not apply —

Mr Buchanan for Opposts in reply — much time usefully used by Pleff — only two questions — the state of the parties at the time of the Judg.t rendered — & the effect of it —

It is not material as to state of parties in 1826 — it merely shews the preliminary circumstances qt led to the bankruptcy the credit in 1826 of Defd.rs was declining — their business falling off

In Febry. 1827. their paper became due at the Bank and was dishonoured — the definition of banqueroute given by Bornier corresponds wt what Holmes gave — Tit. 11. Ordce 1673 — a failure of credit — unable to meet commercial engagements — qt is insolvency or deconfiture & by not payers their paper, Defendts were to be considered from that moment insolvent — The right of Mortgage of the Bank has not been contested —

Basnage — the avowal alone of the Debtor of his insolvency is sufficient — in a solemn instrument, signed by the very creditor her claiming a preference — is decided as here — The letter written by the Trustees in execution of the deed is a further acknowledgment —

What was the intention or the necessity of an assignment but to secure the property for all the Creditors — & the letter of the Trustees shews that this was the intention & that in this respect they were acting for the benefit of all the Creditors — Cites case in digest. 42 liv. 5e tit. 12e law Lacombe, v Fraude, to shew the remedy given by the Prætor was not the only one allowed by laws of France — relief can be granted although no fraud has been established. 1 Pigeau 463 no preference on a Ingt. given in the 10 days before Insolvency — here the Insolvency was before. Brodeau 179. 780. No. 6 — Denis all privilege in favor of any Creditors — the ordce of 1673 introduced no new principles — Stracha — admits the same principle part 1. ch. 9. Basnage des Hyp. Lapeyrere, vc Faillite 515. 519 —

No. 1773.
Ferrier — } action on promy note —
v
McMaster } McBarton for Gibb & Henderson filed an Intervention —

No
Foley
v
Donegani } On opposition a fin
Donegani } McBlurry for the oppost — There is very strong
opt } evidence to shew that Oppt is in insolvent State

and

and the Opposants claim is proved —

Mr Grant for Pliff — The claim of the Defendt was allowed to extent of £62. on the arbitration made between the parties — the opposition here is made for the same subject as the Incidental demand, on the principle that Pliff was unable to pay what he owed to the Defendt

The Opposts have not proved their claim — the delivery not proved — no proof of undertaking to pay for Craig — at all events the Opposts must pay the Costs of this opposition —

No 159.
Hart
v
Bowron
&
Lukin Gnr

Action for purchase money on a sale of land —
Walker for Defendt — Plea that Lukin had not obtained the letters Patent of the land sold — on this Pliff sued out an action in Garantie agt Lukin the original seller & who transferred his right to Pliff

Mr Lukin by Mr Bruneau his attz was called in as Garant

No 1387
Lecavalier
&
Cartier —

On Law. action for 2 notes —
Mr Lafontaine for Pliff — 1822 Barley. p. 397. §. 2

Thursday 8th October.

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke —

Friday 9th October

Present

Ch. Justice & Mr Pyke

Saturday 10th October.

Prest.

Ch. Justice Reid
Judges Pyke & Uniacke.

No 1420
Clarke
Young Sal

On Defendts mo. for stay of proceedings until Sheriff shall have complied w the requirements of the writ of Execution —

Mondelet for Defdt — The writ directed the sale of a certain vessel seized by Pleffs — the Sheriff has not done so, but has seized the goods & effects of Defendts — there is a memorandum of Pleffs attorney's endorsed on the writ of Execution that the vessel has been sold with the consent of the Defendt — but of this the Sheriff says nothing & therefore the writ has not been regularly executed — the acknowledgment of the attorney's cannot operate as a compliance by the Sheriff wt the writ — nor does

he

he adopt it as his doings on the writ —

Mr Sol. General for Pltff. The execution here is sued out agt the Ship, and a sale thereof is stated to have been made, and indorsed on the writ — & this sale was made with the Consent of the Defendr this is sufficient —

No 1498
Cardinal
v
Cardinal
&
Dumoulin

On Defendr mo. to discontinue rule of the 4 April last — without Costs —

Mr Guy for Dumoulin — the Defendr mo. cannot be granted, as the opposition of Dfdr was ill-founded, and he cannot be allowed to withdraw it without paying Costs —

—

Monday 12th October 1829

Prest
Ch. Justice Reid
Mr Justice Pyke

No 700
Tetro
v
Patenaude
&
Dessaules

On rule on Sheriff why he should not be bound to pay ~~Pltffs~~ Oppts debt as he has adjudged the land to the Sheriff —

Mr Rolland for Opport. This matter of consequence and as there is no dispossession of the Debtor, he has been allowed to push up his land at the sale & at last to become the adjudicataire — this is contrary to law — In England the action is given agt the Sheriff only when the report is not true, but the fact is truly stated — & the return is here the same as if no sale was ever made — Thibault. 218 — No. 25 — Poth. Proc. Av. 288. — Hericourt. 179. No. 22. —

M

That in this cause the whole proceeding is null, and the same as if no seizure had been made — and no Venditioni Exponas can issue. —

Mr Sewell for the Sheriff — The course here must be by an action & not on this summary manner —

No 1773.
Ferrie & Co
v
McMaster
Gebb. & Intervs

On Pleff. mo. that Intervs parts give a copy of the Intervention —

Bender for Intervs parts — there was collusion between the pleff & Defendt — to deprive Intervs parts of his debt —

Mr Driscoll for Pleff — the service was indecorous & improper —

No 2214
Shaw
v
DeBleury

On Pleff. mo. that Defendt plea should be dismissed as sufficient —

Mr Driscoll for Pleff — The plea admits the demand & sets up nothing to bar the demand — it refers to a paper annexed, qt can be considered as no plea — besides this paper contains matter of damage & not a liquidated demand — There is also an Incidental demand for damages, qt cannot be received on an action of the present nature — There should be some thing certain in all Incidental demands —

1. Tidds Prac. 691 — Cowp. p. 56 — Powlet & Strickland 6 T. Rep. 488 — 1 Bl. Rep. 394 — 2 Bl. Rep. 910 — 4. Esp. 207. 1 Taunt. 137 —

Bleury for Defendt — The plea admits the debt, but states on what acct it was contracted — & sets up a larger debt due by Pleff to Defendt — which is a clear and liquidated debt, except as to the repairs —

Mr Rae
v
Geo: Donaldson
&
Jno Donaldson

On Rule on the Purchaser, John Donaldson why there should not be a new sale at his folle enchere

Sweeny for Purchaser — The proceedings here are null and void in law as the lot of land in question was the property of Purchaser & in his possession & the seizure made super non domino — Hoi. Cont. 46 —

That there was no proces verbal of Seizure delivered to the Defendt —

Mr Boston for Pltff — The purchaser should have made his opposition in the regular course, if the property was his —

No 1191
Pothier
&
Pion —

On Report of Experts
Notes said

No 1051
Bellamy
v
Dixon

action of Revendication for a yoke of oxen &c

Mr Day for Defendt. The declaration not sufficient it is a species of action of Trover — no allegation of a wrongful conversion of the cattle defects claimed — But the evidence is not sufficient to maintain the action — There is no proof that the property belonged to Pltff when the action was brought — There is only one witness who says he sold the oxen some months before the action — this does not say that at the time of the action the property belonged to Pltff — Danty p. 50 — There is a witness for Defendt who says he had purchased the cattle for the Defendt —

Mr Adams for Pltff — The evidence is sufficient — not necessary to state in declaration the day when property was in his possession —

No 1079
Rolland
v.
Donaldson
& al. —

action agt. Defendt. Donaldson to restore & pay a sum of money stipulated in a sale made by him to the other Defendants —

Rolland for Pluff — Donaldson alone has pleaded to the action, which is for having sold the lands of the Pluff — In 1800 the Defendt. obtained a Deed of Concession for 6 lots — the last two of which are those claimed by Pluff — the Defendt. in 1826 the Defendt. obtained a quittance for these two lots. No 98 & No 99 — Depn. No. 7. Poulin it appears that Defendt. had exchanged these lands with Sir John Johnson — & that the lands were in consequence in the possession of Sir John — a Cours d'eau was established on these lands in gt. Sir John was stated to be the propr. & possessor of these lands & the homologn. whereof was demanded by the Defendt. in the name of Sir John — The depos. of Le Pinian also establishes the fraud — Byrne says that from 1818 the Defendt. never paid any rents for the No 98 & 99, as this was the period of exchange with Sir John. —

Cites. N. Denist vo Declaration en Ingt. Commun Pothier, Mandat. — No 189. — & No. 58. & 60 —

Mr Driscoll for Defendt. There was a kind of negotiation between Defendt. & Sir John that the lots No 98 & No 99 should be retroceded to him, but it was upon condition that Sir John should grant the lots No 309 & 310 free of lots & Ventes to the sons of Defendt. which Sir John did not do, but made them subject to Lods & Ventes

The rents pd. for the mountain lots must necessarily have included No 98 & 99, as No 96 & 97 had before this been retroceded to Sir John, & No 94 & 95 pd only one Sol. of Cens & could not bear the heavy rents pd by Defendt.

No. 1707.

Mactier
to
Lacombe

action for Lods & Ventes
on Law —

Cherrier for Defendt — The action is founded on a deed of donation to a presumptive heir of the donor & therefore not bearing Lods & Ventes — That were this a donation to a stranger it would not bear Lods & Ventes in the opinion of some authors — but being to a collateral heir, it is evident it can bear no Lods & Ventes — the act is here made on condition of a pension Viagère —
2. Fonmaur. p. 13. — When the revenue exceeds the charges there are no Lods — Boutaric p. 143. 144. Des Lods — §. 7. — Livonière. Fiefs. p. 198 —

Considering the donation made to the presumptive heir, no Lods & Ventes can be claimed — Prudhom. 262 263 —
3. Guyot 394. §. 31 — Repre Lods. p. 656 §. 16 — Denizt — vo Lods & Ventes — p. 167. No 21 —

Mr Sewell for Pliff, demand of Lods on a Donation to Defendt — donation in the Collateral line bears Lods & Ventes because, property so acquired by the Donee is considered as an Acquet, and in case of a Fief Relief is due — Livonière. p. 283 — 3 Guyot. 395 — Rachat is due when donation is in ligne Collateral — Cout. Paris. p. 114. 115. — Prudhom. 257 — allows it when the Don. is a titre gratuit only. & p. 261 — distinguishes when donation is not gratuite, 5 Fremonville 248 — 747-8 Poth. Fiefs p. 142. confines exemption to the ligne directe — Dumoulin p. 91. 92. by Henrion de Pansy — Billecoq. p. 173 — Code des Seigneurs 104 — 2. Lange 344 — Arrêtes Lamoignon 1 Vol. 87. 1 Fer. 618. Gr. Comre No 1 — Repre vo Lods. sec. 17. p. 662 — 3. Guyot 396. 7 — Despasses p. 203 — sec 5. part. 5. No 23 — 3. Guyot 401. —

The Donation is not universal — not so stated & cannot be presumed. —

The ground that the revenues exceed the rent, will not exonerate the party from Lods & Ventes — in this case the act may be considered partly as a donation & partly a sale — 2. Fonmaur p. 4. — No 450 — No 451 — cites Poth. Vente. No 613. & d'Argentré —

Cherrier for Defdt —

No 1649
Hubbard
v
Mdougald
Mr Isaac & al

On Law

Mr Bleury for Defendr the action was brought for seduction & left to arbitration & the damages allowed to the father — The action ought to have been instituted in the name of the daughter to whom only the damages were due —

No 242. & No. 472
Chapman
v
Foucher —

On two actions — ments —

Mr McCord for Pliff action brot in Febry 1827 — for £45 — to this a promy note was filed for £50 — and an Incidental demand for £5 — in follows Term the 2 Chapmans brot their action in gt Credit was given to the Defendr of the £50 — & a balce due to Pliffs — In last June Term an agreement entered into as to a payt of a certain sum by Defendr the acts were to be submitted to the exn of Mr Badgley — & if the money was not pd in July —

Lacroix for Defendr in action 242 demands that action be dismissed & Judgt for Defr for balance — in the other action Pliffs have not made proof — there is no proof of the death of the person for whom the executor sues —

No 175
Archambault
v
Jeannot de
Lachapelle —

On Report of Experts —

Bourret for Pliff — The tiers expert confirms the report made by Pliffs expert — asks homologation

Mr L'Vigé for Defendr the parties are proprietors of a land which was originally granted in one whole & now divided between the parties —

Mr Vigé moves to set aside the report of Mr Vitrequain

No 1596
Stevenson
Roi —
& contra

action on deed of sale — for balance of price —
Hears on merits of both demands —
Mr Bleakley for Pluff — The plea is part payt — and compensation in part for work. yt — is admitted by Pluff — pleads further a deficiency of land sold — to meet this a proces Verbal of measurement is filed to shew quantity but diminution is not to be allowed until the expiration of 4 years under the lease made between them — There is an incidental demand on exh. No 3 — but this having been admitted by Pluff there was no necessity for this demand & it must be dismissed —

No
Flaherty
+
Foretier
&
Foretier

On opposition of Foretier —
Bleury for Oppt — the Pluff has not discussed the Defendt goods & chattels, as he was bound to do the Pluff allowed a long lapse of time before he sued out his exon agt the lands after having had the return of an exon agt the goods & another wrt of Exon should have sued out an alias writ agt the goods & he alledges here that Defendt had sufficient effects to satisfy the demand —
Moves to set aside the testimony of the bailiffs —

Robertson & Co
+
Dinwiddie

Mr Peltier for Pluff. Two executions were sued out agt the goods of Defendt — at different times & much difficulty in sued to sell the effects — 18 months after an exon was sued out agt the lands — There is no law to compel Pluff to a second discussion of his debtors moveables —
That at the time all the effects seized were sold — The Sheriff at the time of the sale not having been required to seize ~~more~~ the other effects, was not bound to do it —

Tuesday 13th October.

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke —

No 158.
Pillet
v
Hority
&
E contra

action for goods sold —
Mr Mondelet for Pltff — the action is supported by evidence — & that incidental demand be dismissed —
Mr Scott for Defendt — the demand is not proved — the acct produced is not proved to have been taken from the Pltffs books, nor that it was the acct produced to Defendt when he made the confession stated by Mr Adhemar —

No 1748
Guy
v
Pacement
&
Garants

Mr Cherrier for Maillet, arrieu Garant, contends that the action of Lemieux agt him is not founded inasmuch as Lemieux has not pd the purchase money this exception was dismissed in part, but the Court reserved to determine on the mints — & therefore Maillet should not be condemned to pay to Lemieux when he is indebted to him —

No ~~1779~~ 2208
Driscoll
v
Driscoll

To see if proof is complete —

No 1793
Fisher et al
v
Grant
&
E contra

The principal demand is admitted
Johnson for Incidental Pltff — founded for moneys paid to Pltffs —

Mr

Mr Fisher for Pltff — the Defdt rely on a retraxit to establish their incidental demand — this will not apply — The retraxit refers to a transaction between Pltff & Alex Grant. —

No 831
E Kemp
Conroy } action on a transport of a sum of money made to Pltff

Mr Adams for Defendt — the money was paid to the late Willis — the transfer was here made in fraud to compel Defendt to pay the money twice over — The Defendt has pleaded payt by sundry goods sold to the late Guy Mills — to this the Pltff has pleaded a demurrer —

Bourret the pleadings of Defendt are contradictory and inconsistent & cannot stand —

Warwick & al
Finstervalt } On rule to shew cause why Exon shd not issue agt body of Defendt

Bleeny for Defendt The proceedings agt Defendt were had by default agt Defendt up to the time of suing out the present rule — he now alledges that before the action returned into Court he paid the amount except £10 — for gt no action lay in this Court — That on 1st Oct 1823. the Defendt paid this balance of £10 to the Pltff — refers to the receipts filed —

Mr Boston for Pltff — The payments referred to do not apply to the bill of exchange in gt the Judgt here was rendered — these paygts were anterior to the bills —

No 1593.
Palsgrave
v
Porteous

On Pliffs mo. to close enquete —
Griffin for Defendt — Defendt has a right to go to evidence on the plea that stands before the Court.

No 1819
Dupuis
v
Richardson

On Pliff mo. to reject part of Defendts plea —
The plea joins matters of law & of fact in same plea which cannot go before the Jury —

~~on Petition~~
No 247
Clergy Reserve
v
McMillan

action for arrears of rent —
McCord for Pliff — the Defendts have pleaded chose jugée — and secondly a general denegation — to this it is answered that chose jugée does not hold, & at all events only for a part of the demand £105. 15. 4 — The former action was for the same object in part, but conceives that action ought still be maintained — at all events there is proof for a sum of £37. —
McMillan for Defendt — chose jugée has been pleaded, the present action is founded on the same deed of lease — and applies to this action. Poth. Obl. No 885. 7. 8. 9. 90 & 91 — the principle upon qh the Judgt. was given was founded on the letters patent, and any rent growing out of it cannot be maintained —

No 753.
Turnbull
v
Gilchrist
v
Watson ptr

On opposition of the Defendts wife —
Rossiter for Opposr claims the effects seized as being her property — she having been separated from her husband — The Defendt also opposes the execution of the writ, as having been paid — The testimony of Mr Valentine shews that one of Defendts gave the Pliff a draft for the Costs, which was accepted by the drawee & now in the possession of Pliffs attz —
McBoston for Pliffs the separation here set up

cannot

cannot avail — the goods were seized in the possn of the husband and there is no proof of these effects being the property of the wife — as to the draft in question there is no proof to connect it with Pliff

No 1748
Campbell
v
Wilson
&
E contra

Action for house rent

Walker for Pliff — action on a parole Contract for rent for one year — there was a written lease between the parties for the preceding year from 1826 to 1827 — there was a diminution of rent for the year now demanded, from £150 to £140 — gt is now demanded — & this in consequence of some additions to be made by the Pliff during the occupancy of Defdr and on the principle of the injury arising to Defdr from this circumstance they pretend that they sustained a damage of £150. — That the opinion of the Defendrs wits go to say that Defendr would be entitled to a diminution of rent for one half

Mr Adam for Defendr — contends that the Pliff is not entitled to any rent whatever, but on the contrary the Defendrs are entitled to £150 — damages for the injury sustained by them —

Mr Buchanan for Defendr — The property leased here was a Tavern, and let as such — the repairs here were begun & carried on without any notice that they were necessary — These repairs rendered the house untenant at the and it is in evidence that there was a loss of custom to Defendrs — The work was delayed & prolonged during a whole summer — Defendrs are entitled to damages. p. 185. 187 291 — Conventions sur les Conventions — Louage. No 69 — 76. 77. 78 — & 112 — Desgodets. p. 465 —
Pa 19. book. tit. 2. §. 48. & 50 & note 3. & sq — Poth. Pandects — rent pd. returned & another house furnished
lib. 19. tit. 2. law. 27 Pand. where principal rooms of the house

are

are exposed, then the proprietor ought to be allowed no rent — the principal rooms were hier exposed —
Walker in reply —

No 148
Green
Hilton & al

action for work & labor —
Mr Fisher for Defendt — has pleaded a plea of prescription & payt — & a tender of 14/— for balance due — The evidence for Pluff does not establish the particular items of the demand — a great part stands admitted by Defendrs aut — This a mercantile case & has proved by one Wit a payt of £10 — relies on plea of prescription for all items in the aut except a sum of £12. —

Mr Grant for Pluff. The case is not mercantile, as it is not proved that the Pluff supplied any materials — and therefore the Defendt payrs are not made out —

No 1675
Andrews
Crooks

action of Revendication —
Adams for Pluff — denies he ever retained or had in his possession the Piano forte in question — and the evidence adduced by Pluff shews that action is maintained. —

Mr Grant for the Defendt — The Defendrs plea is that the Piano was bro to his house by the daughter in law of the Pluff, whose property it appears to have been — Repr vs Revendication.

No No 124
Solquin
Jolicœur
& al —

action in Revendication
Mr C. Bruneau for Pluff — The Pluffs son, a minor made an exchange of the horse, this the Pluff refused to confirm, and offered to return the money recd by her son & take back her horse — but Defendrs refused — The Pluff has proved her property and also that Defendrs knew the horse was not the property of her son — The Defendrs have set up a plea that the son was in the habit of doing all the business of the

Pluff

Pliff and consequently warranted to make the exchange in question. —

Mr. Mondelet for Defendt. The Defendts have acted in good faith, and the contract made by them here ought to hold good — there is proof that the Pliffs son offered the horse for sale to different other persons —

No. 2321
Delisle. v. Alliance Fire assurce Co. —

Action on a policy of Assurance — on Law

Grant for Pliff. cites. 1 Wilson 129 — King v. Hollister — 8 T. Rep. 139 — Poth. Obl. No 157. — Dec. Droit vo arbitre. Pastien. v. Mizere July 1818 — Scott. v. Phœnix Co. in 1823 —

Rolland for Defendt. There are two pleas — in bar — It was a condition of the Contract — that there should be a reference to arbitrators — There is no debt accrued until established by arbitrators, and therefore no action. — 2d The Defendts plead, that they were always ready & willing to pay what may be adjudged by Experts —

Grant in reply — This action must be maintained for the whole amount, because there is a total loss —

No. 571
Giroux v. Robertaux

Action for price of land sold

Bleury for Defendt. The plea is founded on the Contract between them — the Defendts bound to deliver the quittances of the year preceding the sale, failing which the Defendts were to retain sufficient in their hands to pay the arrears — The Pliffs were bound also to shut up a communication by a road on the rear of their land —

Bruneau for Pliff — the Defendts have abandoned their plea, by not making proof on the first point as to the second the proof also is insufficient —

No 644
Froste & al
Wurtele Jr

Action to render account — on law

Walker for Defendt — To this action the Defendt has demurred — The partnership was dissolved on 1 Nov: 1828 — but no suffl grounds for this action — It was stipulated that in case of difficulty it should be referred to the decision of certain Arbitrators — but there are no causes of difference stated in the declaration — it merely says, that the Defendt hath not rendered any acct in the premises, which word cannot apply to any difference or object arising out of the partnership between the parties — There is besides a Cumulation of action —

Mr Scott for Pltffs — there is sufficient in the declaration to maintain the action — the refusal stated of the Defdt to render an account is alone sufficient —

No 645
Froste & al
Wurtele Jr

action of debt — law —

Walker for Defendt — The Defendt having revoked the authority given to arbitrators named in the articles of Copartnership, qt was made on the principle of any difference arising between them under the penalty of £5000 — and on this acct an action is brought for the £5000 — The penalty here is on failure of complying with the award of the Arbitrators & not a refusal to submit the matters to arbitration — Besides there should have existed grounds of difficulty fit to be submitted to Arbitrators — 7 East Repts 708 — Nor have the Pltffs assigned any damages having been sustained by them, without which the penalty can not be demanded. No 136. 140 —

Mr Scott in reply — The decln is sufft —

No. 416
Phillips & al
v.
Bagg
Wurtele Intrs

Action to recover amount of an obligation
— on Law —
Walker for Intervs party — Intervention to reduce the hypothecary Security of Pltffs — The Pltffs action is founded on the principle that no monies were paid on their obligation — The Intervenors party pretends that many payts have been made which should be imputed on this obligation, as there were no other transactions between Pltffs & Defendt subsequent to the date of their obligation to gt. the payts could be imputable —

Mr Scott for Pltff — has demurred to the Intervention as not stating sufficient to maintain it — as it is not alledged that any of those payts were made — subsequent to the Insolvency of the Defendt —

No. 343
Webb
v.
Bellamy

Action on Promissory Notes —
Adams for Defendt — The action is brot. on two Notes payable at a Counting house in Montreal, & that the notes were presented there and payt. not made but the only proof here is the proof of the Defendts handwriting — 2 Ph. Ev. p. 10 —

No. 1448
Benoit
v.
Dezery

On merits — on award of Arbitrators —
Mondelet for Pltff — action on the award of gt. he prays the homologation —
545. Repr. vo arbiter — as to power of arbitrators & that what they direct beyond their authority does not vitiate the award in far as it is right — nor are they bound to the same formalities as observed in a regular process in Court —

Mr.

Mr Cherrier for Defendt — On the allegations contained in the plea of exception pleaded by Defendt the Court admitted the parties to proof — But it is evident that the arbitrators have exceeded their power which annuls their award — Repr. 557. Vo Arbitrage — p 67. Decre des Arrets modernes — Vo Arbitres. Sirey. 11 Vol. — Jousse p. 706 — No 3 — By the compromis, it was submitted to the arbitrators to ascertain the actual damages suffered by the pleff, les dommages reelles — whereas they have allowed damages not only for the past, but also in future — This with the other conduct of the arbitrators shows their partiality there is besides evidence of this partiality in the conduct of the arbitrators — refers to testimony of Piccard & other Witnesses The want of notification is a fatal objection — submits mo. to reject testimony of the arbitrators —

Continued till to morrow to hear Pleff

Wednesday 14th October 1829.

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke. —

No 1448
Benoit
to
Dezery —

Mr Mondelet in reply — The time appointed by the Experts was known to Defendt he even declared that he would not attend — The Experts appear to have acted with regularity and impartiality — It was necessary to hold the meeting in a public house, as the only place where they could be admitted or where the trouble occasioned would be paid for — The arbitrators here were compelled to give their evidence and there is nothing illegal in the evidence they give touching the notice given to the Defendt — The authorities cited to shew that the award is null because the arbitrators exceeded the limits of their authority, will not apply. the law of the land extends only to say, that such excess is only surplusage —

but

but in truth the arbitrators have not exceeded their power — the object they had to assess was the damages of the Pliff, this they have done, & the distinction taken as to dommages reelles, is not understood — the consequential damages were a part of the object submitted. —

No 1387
Lecavalier
&
Cartier

Action on prom^y notes — on law

Plea that the Pliff is not entitled to maintain his action, not being the legal holder or proprietor of the notes —

Mr Lafontaine for Pliff — The Defend^t is not entitled to make this plea, — Bailey. p. 397. edit 22 to shew that the want of consideration is no plea for the Defd^t — Chitty. 70 — Rep^n v^o Billet p. 384 — Id v^o Indossement. p. 704. 5 —

Mr Rolland for Defend^t the Plea here is, that Poulin never indorsed the note to the Pliff with a view to transfer it to Pliff — it was found among the papers of the Succession of Poulin — & the Pliff can have no right or interest to prosecute this action — ~~Ref~~ N Denis^e p. 536. v^o Billet de commerce

Driscoll in reply — The Pliff is the holder — & Defend^t can have no interest, if he gets a sufficient discharge on paying the note — the Pliff may be considered as the mandatory of the Succession. & the Defend^t can set up his plea of compensation age him for what the Succession may owe to Defend^t —

No 1706
Forbes & al^s
Gilbert —

The cause inscribed as an ex parte cause —

Walker for Defd^t the same time Pliff inscribed his cause for hearing he moved for & obtained an order for ex. of Defd^t on facts sait — this was irregular and the inscription was premature — objection over-ruled

Note dated at Montreal 20 April 1827 — There is a variance in the note produced — not stated as made at Montreal the note produced is payable at 90 — days — that declared on is an absolute, and there is also a difference in the nature of the consideration for which the Note was made — Chitty. 60 — 1. pleading 275. Bill 376 377. 352 4 Pratts Index —

No 1886
Hays & al
Gerrard

On Pleff mo. to reject Defendts pleas —

Mr Buchanan for Pleff — there is a law issue tendered to the Country qt cannot be admitted —

The Plea of no deliverance de legs is also a defense en droit this not a special demurrer, qt goes only to the form, but not to the action — There is next a demurrer without grounds. & is a repetition of the first demurrer — & unnecessary There are also 4 a 5 pleas of affirmative matter, qt ought to have pleaded as exceptions peremptories, they are also all relating to the same point — & this to raise the issue regularly thereon — In none of the pleas is there any conclusion to the Jury — The last plea of payt is a plea of peremptory exception & ought to have pleaded as such — it is therefore informal & is besides hypothetical —

Mr Walker for Defendt — Has pleaded a general demurrer to the action — & considers the other pleas as requisite — As to the affirmative pleas, it was not necessary to qualify them by name — altho' in effect they are exceptions peremptories — it is a defense, qt is suffte — 1 Jousse 59 — on ht 5th & p. 60 — If the pleas are insufficient the Pleffs ought to demur thereto As to the conclusion to the Country it was immaterial to conclude to the Country, as Defd is bound to do so under the order already made in the Cause — That there can be no conclusion to the Jury upon the affirmative pleas — they can be determined only by the Court — Com. Dig. Tit. Pleader E 32. — 1. Chitty Pleads 535.

Mr Buchanan in reply — the interpretation & definition given by Jousse are not intelligible — & altho' there be no rule of practice as to give names to pleas, yet in practice it has been so held for the sake of regularity — There cannot be two trials — one by the Court & one by the Country —

No 1094
Donegany & al
Duborde } on Pleff mo. for Com. Reg. —

No 2287
Donegany & al
Walker } Action for Slander — on law
Fisher for Defendt. action is agt Defdt. for Slander agt the Pleff jointly not agt them as Partners — but accusing the Pleff of having subarned a witness to commit perjury in a Cause — To this the Defendt. has pleaded a demurrer, — that in this action the Pleff cannot join — cites Com. Dig. 1 Vol. Abatement. p. 55. letter E. 15 — refers to case where several are injured by a malicious prosecution
391 Vo. Action on Case for Defamation. G. No 2 p. 391 — H. p. 60 — 2 Viner. 54 — 1 Vol. pigeau. p. 61 —

Mr Driscoll for Pleff — action is brot. by Pleff as joint sufferers in the Slander — as Copartners in an action brot by them in this Court — It affected them in the suit they were jointly conducting in Court —

Mr Fisher in reply, it is the nature of the injury which must be considered — the occasion of the Slander was joint, but the gt of the action is the damage — as to the damage in their trade — there is nothing of this stated in the Decln — 3 Bos. & Pull. in 150 — Bull. N. P. No 5. —

No 119
Charbonneau
Pillet
Garants } Action by pothecaire —
Lafontaine for Pleff — The Defendt. says he is

not

not bound to give up land till his improvements are paid — Experts were named and report made on these improvements — The Experts have differed in opinion — Pluff asks for hom. of the report of the 2 Experts —

Mr C. Bruneau — There is no proof that at the time of his marriage Caisonne was proprietor of the lot of land in question altho' he purchased it in 1787 — so as to settle the mortgage upon it — The Defendt has denied all the facts in the declr and if the proof be sufficient, yet Defendt is not bound to give up the land until his improvements be paid — The expert of Defendt has deducted what may be considered as voluptuaire from certain objects & allow the rest — as the water spouts & chimney piece — the Pluff Expert allow neither spout nor chimney piece on acct of their being voluptuaire — and so in regard of many other objects which have been dissallowed as voluptuaires, which were not so —

No 1180
Shedden
v
Simpson }

On demurrer to declaration —

Driscoll for Defendt — the declaration has been amended & is still insufficient — But this attachment is not founded on sufficient ground, as the Pluff does not shew he might have proceeded in the usual course

Walker for Pluff — the writ of Vend. Exp. did not warrant the sheriff to attach any new property — & Pluff could not take out a new writ of fi. fa. until the Vend: Exp: was returned & the only remedy the Pluff had to secure those other effects but by attachment —

No 2233.
Boston
v
Cuvillier }

On law — Demurrer to plea —

Boston for Pluff — the plea sets up no right in Defdt to the dog, nor does he deny the title of the Pluff — but says that he ought not to be bound to deliver him up to Pluff without indemnification for the keeping him — this he is not founded in this plea, it would be encouraging bad faith

faith — he should have given notice in case he took him up or detained him, he should have given notice of his having him —

Bleeny for Defendt — Pleads that he is ready to deliver up the dog, which came into his possession & qt he has kept for 10 months, should Pliff prove his property, on being indemnified for keeping him —

No 900
Stewart & ux
v
Lacroix — }

action by one Tutor agt another —

Buchanan for Pliff. Defendt had administration of the estate of Minor Children of the late Narcisse Panet, & Pliff. the Tutors as to their persons — action is to compel Defendt — to contribute towards the maintainance of the minors & pay certain debts contracted by Pliff towards their maintainance — The Pliff complain that there are sufficient funds in the hands of the Defdt — to satisfy this claim. — There is a statement made in answer to the Defendt plea which will shew a balance in his hands due to the Pliff —

Mr Beaubien for Defendt — The action cannot be maintained — The Pliff never had the care of the minors it was Miss Panet — she is dead, & the Pliff were then appointed Tutors, from qt time the Defendt has paid yearly to Pliff £54. 4. 10 — the amount of the revenue — There was also £30 ff an. pd annually to Mr Stewart for her Dower — In answer to this action the Defendt has stated the amount of the revenue in his hands to amount of £54. 4. 10 — and with this the receipts for the payment of this money regularly every year The Pliff are not entitled to more than the annual revenue — The Defendt has no other monies in his hands — it is for the Pliff to prove this — this they have not proved — all that the Pliff have proved is the expenditure of monies made by them — That Mr Scott's statement is incomprehensible and founded upon allegations not proved —

Mr Buchanan in reply – Bretonnier tit Tutelle – 2 Pigeau 205. & 1 Vol. 69 – Repr. vo ~~Tutelle~~ Mineur – Dig. liv. 26. tit. 27. 3d law 2d § – 1 liv. 26 tit. Instit Fer. 442 – Merlé ch. 9. p. 243. 248. No 18 & p. 252 – more tutors than one tutor to Minors may be appointed some to person & others to the property – & the Tutors to the persons are the more dignified & has the action here instituted –

No 926
Kinsler
Dumont
&
Desmoulin opt

On opposition
Mr Mondelet for Oppost. states opposn is 400 pieces of wood claimed by oppt as his property which has been seized as the Defendants property – It appears that the wood is red cedar – prush rouge – the property is clearly proved & the only question is in regard of the Costs – & the Pliff having imprudently seized this timber he ought to pay the Costs. –

Bleury for Pliff – This opposition must be dismissed – there is collusion between ~~Pliff~~ Defendt & oppost – the timber was seized by the direction of the Defendt as his property –

No 1891
Archambault
&
Fontaine –

Action for value of a coupe de bois –
Rollin for Pliff, asks for hom. of report of 2 Experts –
Cherrier for Defendt moves to set aside the report of the two experts, as irregular, having been made on a Saturday, and the Defendt having been notified for the Monday after – refused to put off the visit to the Monday, so that Defendt had none of the witnesses to produce –
Mr Rollin for Pliff – the proceedings are regular & sufficient to enable the Court to give Judgment –

No
Fraser.
Stevenson
&
McCulloch

On opposition of McCulloch
Beaubien for McCulloch – opposition for defficiency of the land sold to him, or a deduction made on the price in proportion to quantity of land sold –

No 1337.
Morin
vs
Moreau
&
Lefrancois

Action for damages arising from unfounded opposition —

Boston for Pltff — The Pltff was indebted to one Ratté who had obt. a Judt. ag.t him — he sold a lot of land to one Mde Joubert who was to pay 5500# — & to effect this was to obtain a decret from the Sheriff, but was to have immediate possession of the lots — for this purpose the lot of land was seized upon Ratté's Judt — to this sale an opposition was made denying a right of way communicating to the Kings highway — but the even tho lots seized, to the first lot the oppos.n was made — and the other lot the Sheriff's officer sold — but the — arrangement being understood about this sale, so that no purchasers attended, knowing the sale was only to give a title to Madame Joubert — the Defend.t was the person who purchased the 2.d lot for less than half its value, which lot would not have been sold at all as the first lot was sufficient to have satisfied Ratté's Judgment & the 2.d lot would not have been ~~paid~~ sold at all — The damages accruing were occasioned by the opposition so made by Moreau the Defend.t There consist of the loss on the value of the lot sold the interest of the money, the long possession of the lot of land held by Mde Joubert & costs of opposition amounting all to a sum of £697 —

Rollin for Defend.t The Defend.t had purchased a land from Le Francois free of all servitude, and on seeing the land advertised for sale with a right of servitude on it, he was justifiable in making his opposition — The opposition was dismissed —

That Moreau could not have prevented the sale of his two lands, as he owed to other persons as well

as

as Rattee, as he was indebted at the time to Mad Raymond who had made her opposition before the Sale for a sum of £152.15— There was also V Bouchard's opposition for £116— which Pluff owed at the time — Besides the value of the land sold is very much less than that stated by the Pluff as appears by the estimation of very competent witnesses produced by Defend—

But in case the Defend. is condemned in any damages he ought to have his recourse ag Le francois —

Mr Le Vigé for Lefrançois. This action is founded on a new principle & the first of the kind — The Pluff founds it on the Provincial Statute — The Statute does not extend to this right — There was no fraud or collusion in the Defend by his opposition, he had an apparent right, and therefore did not come within the meaning of the Statute — The opposition was founded in so far as regarded the Defend — Rapin vo Dépens. — Domat. Liv. 3. tit. 5. Sec 2. § 14. tit. des Interets & Dommages — where these dommages & interets are demanded in the Cause — the Courts are authorized to adjudge them as the temeraire plaideur. — The Pluff has ought to have demanded his dommages & interets on the opposition made by Defd not having done so, he is now too late to institute a separate action for that object —

There is a motion before the Court calling on Pluff to shew Cause, why he should not be permitted to produce and fyle a certified copy of the return of the Sheriff upon a writ of Execution, inasmuch as the Copy filed is not a copy of the whole of the said return

Mr Boston in reply — The Statute of 1801 is positive, and the person who makes an opposition ought to look to the consequences — The Pluff has suffered an injury by that opposition, and by law he is entitled to a remedy & the Defend. being the Cause of that injury he is bound to indemnify the Pluff

Thursday 15th. October, 1829.—

Present

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke.—

No 2306
Rutherford
v.
McKay—

On Pltff's mo. to examine Henry & Fredk. Griffin Esqres as witnesses for Pltff—

Mr Sol. Genl objections have been taken to the testimony of Henry Griffin, as an interested wit— but then are releases of that interest pld—

Rolland for Defendt— The discharge produced, does not go to question of rights of partnership, but merely as to an indemnity which was due to him by the Defendt— and which he has received— but it is questionable whether an interested wit can be made a competent wit by any discharge— he must still be considered as having a feeling towards the Pltff in the cause— The wit— who gives a written declaration of his evidence, as Griffin has done so here, is an incompetent witness— Douse 399.—

399.

This is not a question to be governed by English rules of evidence—

Mr Sol. Genl for Pltff. a release is the usual means of taking off the interest of a witness— it puts the wit— in the same situation as if his interest had never existed—

No 1349.
Leroux
v.
Trottier et al
&
Cardinal et al
v.
Langevin et al

On motion of Mr Bedard for Cardinal— to be subrogated in the right of and to have his Judgt. of indemnity for the balance due by Langevin, the arrest Granted—

No 168
Gillespie & al
v
Jno Spragg & al
&
Jo Hutchinson
& al Intervs

On motion of Mr Bedard for the Intervening parties that the Cause be heard notwithstanding the Intervention of Blackwood and Larocque, inasmuch as that intervention does not affect the question of the contestation made on the declaration of the Garnishee Lamb —

No 1678
Plamondon
v
Laplante

On mo. for hearing on Interlor Judge to be drawn in this Case —

Mr Bruneau for Defendt moves to be permitted to change the conclusions of his plea, in consequence of Defendts having acquired certain rights of the Pltffs in the Cause —

Mr Green for Pltff — this application too late — & besides is not founded on any authentic document —

No 2000
Bye Laws
of Fire Society

Debt

No 810
Jacobs
v
Bender

Action in separation de biens —

Mr Bleury for Pltff — The action is founded on the insolvent state of the Defendant — of this there is evident proof before the Court, — It is not necessary that there should be an evident insolvency to entitle Pltff to her separation — the tendency to insolvency is sufficient — according to the Roman law when the Dot was in danger — Repn vs Sepr de biens Sec. 2. 1. Domat 117. — 1 Bony. 604. 605. — Poth No 510. Comte — From the state of the Defendts affairs he was compelled to call a meeting of his Creditors and obtain a delay from them on entering into some accommodation with them in order to obtain delay from some of them separately, but not by common Consent — qt may be hereafter called in question as to the rights given to such Creditors, should the Defdt be found to have been in a state of Insolvency —

But independent of this exhib. No. 10 — qt. is a letter from the Defendt. to the Pleff, is the strongest evidence of the state of the Defendants affairs —
Danty. p. 200 — Lebrun 322. No. 6. 7. 8. 9. Comté —
1 Despeisse p. 491. No 33. —

Mr Mondelet for Defendt — The question here is the insolvency of the Defendt — as that on qt. this action — depends — and whether there be any danger for the Pleff to lose her rights — The evidence in the cause will shew that there is no insolvency. — This cause originates in the habits of dissipation of the Pleff — in playing at cards, spending money & disposers of the very clothing of her children —

2 Pigeau. p. 176. 185 — There is proof here that four of the Creditors are satisfied. — refers to the evidence in the Cause, and to sundry facts not publicly insisted upon as not fit for public notice. —

Mr Bleury in reply

No 1503
Duncan.
v.
McDonald
&al —

action agt Defendts as parish officers for a bridge built on contract with them —

Rossiter for Pleff — contract of 26 Dec 1826 the parties agreed wr Pleff for the erection of the bridge — There is a charge for extra work of £15. 15 — but there is no Count in the declaration to cover this — The Defendts here must be condemned jointly & severally on their Contract —
2. Bourg. liv. 6. Ch 4. Sec. 4. No 33 — Poth. Ob. No 265. 6. 7 — this is a public administration —

Mr L. Vigé for Sous-voyers — The Pleff cannot have any Judgt. agt. the Defendts personally — as the contract between them shews that they became bound only in their public character of Sous-voyers — the whole transaction was conducted on this principle —

On

On the part of Mc donald the Inspector has pleaded payment — The agreement was for £ the bal^ce £116.8.9 — but of this there is nothing due — the Defend^t has filed exh. No. 6 — of 5 July 1828 — a general acquittance of all demands — to rebut this the Pl^ff files a receipt of same date at the bottom of an acct. q^r shews that Pl^ff owed Def^t on a private acct between them — and this bal^ce in the private acct. is presumed to have made up in a great part the consideration of the general acquittance above mentioned —

Mr Rossiter in reply — the receipt relied on by Defend^t was for private transactions between the parties — This is apparent from the evidence in the cause, and the receipt produced carries not that kind of evidence which a public transaction such as that of the public nature of the contract in question —

No 2044
Gillespie
v
Shipley —

ection of acct — on demurrer
Adams for Defend^t objection to first Count — that it does not warrant the conclusion taken in the declaration — which concludes to the pay^t of money — Forbes v Atkinson —
Grant for Pl^ff contends that demurrer is not founded

—

No 1366.
Burton
v
Desrivieres

On Defend^t mo. to set aside the Interlocutory Jugt entered in this Cause on 20 Oct 1827 as having been entered by error & not the Judg^t pronounced by the Court

Mr Beaubien for Pl^ff — The Court will see the Judg^t of 19 Feby 1825 — q^r. Manuel was authorized to carry into effect —

Bagg
v
Bour
&
Bour opp^r

On opposition of Def^t —
Mr Walker for Opp^r contends that he has made proof of payment —

Grant for Pl^ff — There is a forgery committed in the books of acct. which has been proved — ~~with~~ as to the receipt of Mrs Lane — it is not dated, nor was she authorised to receive money for Pl^ff — & appears to be in hand writing of Opp^t —

Mr Pichet & ux v Maninger & Provost & al & Berard oppt

On oppt of Genevieve Berard for her Dower
Mr Rolland for Pliff — the oppt is the Pliff in the Cause & has been condemned in the Cause —

No 904 Cattaford v Delisle & al.

action of damages for an illegal seizure —
Grant for Defendr — the case not proved. —

No 967 Bricault v Deshautels & ux & Laperche —

action for payt. of quantity of wheat —
on Law — on Intervention —
Mr Boston for Pliff has demurred to the Intervention as it shews no interest in the Cause & therefore must be dismissed —

Mr Fraser v Maitland & Forbes — oppt

Mr Buchanan for Oppt — the late Mr Garden was married to oppt in Scotland on 28 Oct. 1815 by the Mar. Contract a portion of £2000 — was stipulated to be paid by the father of the oppt — & from this date the Oppost. claims a mortgage as Mr Garden was resident & domiciliated in Canada. —

There is a difference of opinion among the writers on this point, but it is now held that the mortgage exists — Code 5. liv. tit. 13 law 1. Sec. 1 — the origin of all law on this subject in France —
2. Raviol on Perrier. p. 384 Mornac 8. liv. 18 tit. 12 law of Code — Lepretre Cent. 4. liv. 80. Chap. —

The Edict of 1629 — of King of France says no contract in a foreign Country shall ~~not~~ bind land in France, but

this

This never was in Force under Custom of Paris — see N. Denizt. vo Acte Notarié — & 1 Code Matrimonial — Edict was never enregistered in that Custom —

Edict. 1770. p 115 —

Repre vo Hypothèque p. 645. 6. & 644 — Arrets of Lacombe 23 Augt. 1737 — p. 123 & seq — to shew that the Dot here was admitted — & this arret explains the authority cited from the Repre vo Hypothèque referred to —

Repre vo Hypothèque there is another arret — L Lacombe p. 133. as to preference of Dot

Repre vo Dot p. 253. — similar Case

Lapeyrere vo Hypothèque — p. 47. —

3. Scipion Duperrier 280 — on notes —

Thevenau. p. 361 —

10. Thulliers p. ~~105~~ 121 —

Merlin vo Hypoth. p. 407. Questions de Droit —

N. Denizt. vo Hypothèque

Arrets de Lamoignon — cited from p. 132 of Lacombe

over till to morrow

No 1975

O'Sullivan
Solomon —

On Proof Note —

Walker for Defendt. note came to hands of Pliff by endorsement after its maturity — The Defend. is entitled to set up whatever defence he might have agt the original payee and he sets up a debt due by Spragg the payee for furs — for which he had not accounted — the prices of the furs were affixed to the Invoices — By acct. sales rendered by Spragg & Hutcheson it would appear that some of the furs were sold below the limited prices & therefore Spragg & H. are answerable to Defdt for difference — That besides it would appear that there is a quantity of furs not accounted for — & the accounts rendered by Sp. & H — are falsely copied & given to Defdt — as true so as to deceive him —

Grant for Pliff. The Defendt. is not entitled to set up any claim he might have had agt Spragg —

No 409.
Rowand
&
Keith
&
Persillier
& Rose & al opt

On Report of Stevenson, Surveyor & on motion for folle enchere —

Mr Peltier for Persillier & others mis en Cause — they became purchasers of No 11 —, and finding that there was a deficiency in the land they purchased of more than one half — refused to pay — on this a rule for the folle enchere was taken ag them. — to this rule they plead the deficiency of the lot sold — the whole was referred to the Surveyor Stevenson who has made his report — Rose. & Tassé — are proprietors of two emplacements which was included in the sale made by the Sheriff — The report of Stevenson is so precise, as to leave no doubt

No 123
Voyer
&
Wurdele
& al —

action on promy note —

~~Peltier~~ — Stanley for Wurdele — says he was a minor when he signed a Note — to this it has been answered that the Defendr — was a merchant and trader buying & selling horses — but there is no proof of this —

Walker for Knapp — that Knapp is not bound, he signed only as a security — refers to case of Stevens v Knower & Thompson — Knapp stands in the room of an Endorser & diligence must be shewn to have been done before Knapp can be bound — Pardessus refers to endorsements of this kind —

Peltier for Pluff — This is a different case — not a negotiable instrument — & Knapp is bound wt Murtete — As to Wurdele — he drew an advantage from the sale of the horse — and after he came of age — he agreed to the Contract —

Friday 16th October 1829.

Prest.

Ch. Just: Reid

Mr Justice Pyke

Mr Justice Uniacke. —

No. 502.
Filion
et
Simpson
Devins Lieut
De Beaujeu

On rule agt Thos McKozer for a contrainte. —
Objected — that there has been no personal service on the party —
Bedard refers to Repn vs Signification —

No 619
Hays et al
vs
Logan —
et
Econtra

On Defendts motion that the enquete be declared closed —
Sol. Genl. this is an old cause & stands on Roll d'Enquete and the party ought to get a day fixed before the Comn. & if party does not then proceed the enquete will be closed — mo: premature

No 2189
Paneton
vs
Ross et al

notpls —

No 52.
Chapman
et
Commissioners
of Lachine Canal

On mo. that the Defendts take up the instance
Sewell for Defendts a new Stat. made in respect of the Lachine Canal & Commissioners now appointed under that Statute are different from the former, & the authorities of the present commission are different principles — Stat. 9. Geo. 4.

Mr Beaubien — It is the Canal that is debtor here — & not the Individuals — the Individuals here represent that Canal —

No 618.
Cuvillier
&
Omeara

On Defendts. mo that the Pltff answer over to certain interrogatories proposed to him by Defdt.

Mr Beaubien for Defendt contends that the answers of ~~Defen~~ Pltff are sufficient.—

Fraser
&
Maitland
&
Forbes. oppt

Mr Rolland in answer— The authorities cited by opposte do not apply— There is no such thing as privilege for the dot in Pays Coutumier, as all the property of the wife are considered as Dotaux— There is no dot in this case— The father gives £2000. ~~as a Dot~~ in favor of the marriage. This is not the dot of the Roman Law— this is given to the husband, and the wife transfers to her husband all heritable and moveable estate— in consideration whereof the husband agrees to give his wife £400 of annuity & £2000 in money— & all the rights of the wife consist in this annuity & £2000, but the Dot is gone, it has— become the property of the husband—

16.17

The domicile of the husband is the law by which the rights of the married parties must be regulated. Le Brun Comte. p. 16. 17.— Poth. No. 14. Comte there is no privilege for the Dot— & there is Communauté de biens between the parties here—. 1 Despesses. tit. 15. de la Dot Sec. 3. No 32— The loi assiduiss is not in force in France except in the Pays de Droit Ecrit— The authority cited from the Repn vo Dot— must refer to a contract in the ~~coutume~~ Pais de Droit Ecrit, of which there were some within the Jurisdiction of the Coutume de Paris.— The dot en Pais Cout— is merely what the wife brings to her husband— as Dot there is no privilege, but the wife is entitled to her reprises— If the reprises are claimed, there must be a renonciation to the Community— All that the wife brings in the shape of Dot falls into the Community— The Cause de Remploi is not necessary to be made, it is given by law, but not the Reprises— so also the clause of

indemnity

indemnity is not necessary to be stipulated —
2 Argou. p. 100 — Dot — liv. 3. ch. 8 — & p 88 & 89. — 2. Prevot de la Jannes p. 72 — No 359. — & p. 78. — to shew that the reprises must be stipulated. — Lebrun Comté p. 249. liv. 2. ch. 2 No 53. — & p. 495. — No 46. 47. — p. 504 — No 97.
O Deniz. vo Dot Hypothèque — No 51. — The Repn vo Hypothèque the authority here cited by oppost — is directly contrary to Oppt
Acte de Not. de Denizart. p. 5. 6. 7 — p. 93. — p. 19. 20. —
Poth. Comté 379 —

In Canada, a wife with a marriage Contract sous seing privé is entitled to no reprise — without reprise — she cannot Dot nor Dower. —

Mr Buchanan for Oppost — The claim here for the dot must be considered as the same sum stipulated to be paid by her husband to her ~~on~~ his death — this is a re-paymt of the Dot — Skinner's Etymology — tocher, is the money advanced by parents on marriage of their children — That there is an ~~renonciation to~~ exclusion of the Community here — this is apparent from the words of the Contract — the Oppt. here makes the husband the proprietor of all her property by the Contract — Erskines principles of the Law of Scotland. p. 70 — The Contract ought to have a favorable construction when passed in a foreign Country — Inst. de Rei uxore actione — Bacquet not necessary that Law asiduus should be in force in France — but the general principle holding throughout all France is the privilege given to the Dot —

N. Deniz. vo Dot. 5 Sec. No 3. p. 105. & No 10. —

A clause de reprise not necessary, when there is no Community —
N. Deniz. vo Hypothèque — 3d Sec. 4e Sec. No 15 —

Basnage Hyp. ch. 12. p. 148 — this hypothèque is general In Droit des gens — That the principle of Etranger here will not apply, the contract being executed according to the forms of the Country where it was made —

2 Argou p. 98 — To shew that the dot is payable — immediately on the death of the husband —

No. 737
Porteous
Eno de Deschamps

Action in the nature of an action populaire

Sewell for Puff - Puff lives on Isle Bourdon - & had a ferry from thence to Island of Montreal - to Repentigny and to Lachenaye - on Point of Repentigny there was a landing place at a bank on which lay the public highway - this place was called the côte du Rem aux ~~publique~~ - gt. submitted to 1826, when it was stopped up and all communication thereby to Puff fury was shut up - This was a public communication & to which all the Kings Subjects had a right - The evidence establishes this - Alex. Mabbut - says it has been a public highway for 50 years past - Manchester 23 years Junan - 50 years - Payet de St. Amour for 40 years - Vincent Verdon 12 years - Ls Trudelle - Michel Revet for 70 years - Stebbins 23 years. Turgeon - 56 years past - This road has existed from time immemorial - Payet de St. Amour says his father told him the road had always existed during his lifetime - Ls Trudel - says he heard from his father, the same thing - & Thos. Stebbins - The greater number of witnesses say that the stopping up the road is a damage to the Puff and to the public - This road has been shut up by the Defendant, and is even admitted by him - but he seemed to think because the road was on his land, he had a right to move it to any place he chose - he says that there were barriers formerly on this road - but then there was no lateral barrier, & these barriers were only placed there at times & to prevent damage from cattle & were left open for the free passage of the public - If two or three persons asked leave to pass there this will not operate to the prejudice of the public - It is said the road has been narrowed & washed away & between the corner & his garden there is no longer

room

room to pass — but there is still room sufficient — & if it was once a road, it must remain so —

The Defendt says, he has given another road — but the object of this was to turn away passengers from the Pleß ferry — & which was publicly used to communicate with the cote de remüe. —

In considering the testimony for the Defendt shews a strong bias for him, but on their cross-examination the truth is in many instances elucidated —

Repn vo Chemin roads exist without P. Verbals, and before P. V. were thought of — Roads in this Province were originally made without the intervention of the Gr. Voyer — they existed by usage, and immemorial Custom — and particularly on the banks of all rivers — as the road here appears to have existed — Reglement Police 1 Feby 1706 — see ~~170~~. 1 Arrets & Reglements p 170 — see. 8 of this arret — 4 Freminville p. 335. & seq. N. Denizt vo Chemin p. 524 sec. 3 No. 1. — They also say that Sentiers ought to be ranked among public roads — when once the use of them has been had for any length of time — Code des Sentiers. p. 383 — the public may prescribe a right to a Sentier after a use of 30 years — 4. N. Denizt — p. 527. vo Chemin — 4 Freminville p. 414 — Demod to Prescription as to what is time immemorial ~~[illegible]~~ — p. 8. 85. 86 — & 213. — Bout. Instit. Justinian. p. 130 — marginal note — 4 Freminville. p. 68 — width of roads — Freminville Tr. des Biens des Habitans — p. 153 — p. 525 — N. Denizt — 4 vol. altho' road was ploughed & sown upon at times, makes no difference as to the public —

p. 8. 85. 86. & 213.

This must be considered as a front road — upon Defdts land and was occasionally kept in repair by Defdt — yt he necessarily must do, being on a public river & having no neighbour —

This is an action populaire — Freminville Droits des Habits p. 160. 161 — cites digest — 4 N Denizt. 524. sec. 3. No. 4 — 4 Freminville. 413. Dig. de Locis — Barbeyrac in Grotius 457 —

Mr

No. 736.
Porteous
Envd Deschamps

In the other case the action for damages for having injured the pleff in the use of his ferry —

Mr ~~Vigé~~ Cherrier for Defendt — It is of importance to ascertain what length of time will constitute a public road on the property of an individual. 4 Freminville p. 414 — refers to Païs de Droit ecrit — Lalaure, Traité des Servitudes 229. — & 231 — Dunod. p. 85 — des choses imprescriptibles — where usage begins in an act of familiarité — it cannot be converted into a public right — & Id. 84 — N. Denizt — p 524. §. 3. — Chemins Publics Royaux ou non Royaux — p. 525 — an arrêt explaining the principles of this kind of usage — All the witnesses of the Defendt shews that there existed at all times barriers on this road which the Defendt kept up there. —

Mr Louis Viger for Defendt — Before the Defendt established his traverse from Isle Bourdon to Repentigny there was no mention of any côte publique at the points A & B. on the plan, nor known — The Defdt at first established a floating bridge from Isle Bourdon to the points A & B. & from thence went along the beach by the water side to the Cote where the public high way coming from Quebec terminates — But from some difficulty in this communication — permission was given by the Defendt to mend up the cote at A & B — and to open this new communication on shutting the barriers on the road above the Cote — The proof of this fact alone, if satisfactorily proved must destroy the pleff — action —

It is in proof that there were two fixed barriers on this road, one near the Defendts garden — one at the extremity of the Defendts land on River Lassomption and another between these two — which shews the power retained over this road by Defendt — particularly

as

as every passenger was obliged to shut these barriers on passing — That it is only about 7 a 8 years past that these barriers have been left open, when the Defendt constructed a horse boat as a ferry boat, and with the view of facilitating the communication to this bend of — ferry boat — but this road having become dangerous at the corner of his fence — he shut up this road entirely, as he had a right, and opened a new road —

Repairs to the testimony of the Grand voyer — he says the Pltff applied to him to lay out a road in front of the river on the Defendt property, but found it impracticable from the narrowness of the communication at the corner of the Defendt garden, and directed to be made in the direction laid out on the plan, marked in yellow — He says he always considered this road on the bank of the River as not a public road — The Chemin de front, he considers to be the road that leads to Quebec — The cote publique he considers to be that joining this road — but Had there been a cote publique at the rivière, the sous-voyer would have directed it to be repaired & kept up, as they did at the other Cote — but there is no proof of this —

Mr Sewell for Pltff in reply — Considers that nothing has been shown to controvert the principles on which his action is founded — a constant, immemorial and prescriptive right and enjoyment of a road by the public, and useful to the public — This is apparent and the growing communication shews the necessity of maintaining this public right — From the evidence it may be presumed that this road existed at the time of the reglement de Police he has cited — which would at once stamped as a public road — That there must always be a road along all public and navigable Rivers and this presumption will operate in favor of the road here having existed as a public road from the long use which has been made of it —

Saturday 17th October.—

Prest

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke.—

No 2142
Dumoulin
&
Boyer.—
&
Bender, Intervs

Action en Separation de biens—
Hearing on exception to the Intervention of Bender.—

Grace of Pltff, the pretention of the Intervening party heres to stay proceedings in this cause until he shall have established a claim against the Defendant in another Cause— But the Plaintiff ought not to be staid in her proceedings agt the Defendant whatever the claims agt him may be by his other Creditors—

Bender for Interv's party— This action is instituted by collusion between the husband and wife to defraud their Creditors, as he will be enabled to shew that the facts alledged by the Plaintiff her are not founded upon which her action is instituted— The Defendant is not insolvent as pretended. provided the Intervening party can be allowed to stand in the Cause and to shew the means he still possesses, and thereby prevent the Pltff from getting hold of his property wrongfully—

№2342.

Bedard
vs
Chaput

Parties heard on the error alledged to exist in the Report of the Practiciens in this Cause Action to establish rights of plff in the Succession of Chaput & wife his ~~step~~ father in law & mother in law — Cherrier for Defendt The question here is as to the right accrued to the plff under an Institution contractuelle contained in his marriage Contract — The intention and effect of this stipulation was to bind the property of the Defendant and hold him accountable for the property he possessed at the time of this marriage Contract and to tie up his hands in such manner as not to dispose thereof by deed of gift or otherwise to the prejudice of the plaintiffs right — allowing this principle in its fullest extent still a great many of the sums admitted & charged against the Defendt in their report ought to be deducted, as the acts of liberality exercised by the Defendt to which they refer were done previous to the date of the marriage Contract in question and ought not therefore to fall within the stipulation of the Institution Contractuelle — and particularly a certain rente & pension reserved and to become payable to the Defendant after the death of his father and mother by an act of 19 July 1806. whereas the marriage Contract of the plff is dated in 1814 — which ought not upon any principle of law or right to affect Contracts made prior to it — That in this case the costs ought to be compensated from the nature of the conduct between the parties —

Mondelet for Pleff — This was an avantage made to the Defendt. it is true before the marriage Contract in question, but as the Defendt. as heir of his father is claiming rights in his Succession he ought to be held accountable for what he has so received and the Practicians have — allowed this upon that principle — The reasons for this are fully assigned by the Report

No
Molson
v
Himsworth
&
Himsworth
& wife opp^ts

On opposition of the Defendants wife for Dower on the property seized —

Rossiter for the Oppost. Although in this Case the Dower be not yet open by the death of the husband yet from the nature of the claim here, he considers that the moment the estate of the husband is seized the claim of the wife may be made in order to secure her right of Dower — The oppt. & her husband were married in Halifax in Nova Scotia, where by law the Dower of the wife attached upon the Estate of the husband without Marriage Contract or Stipulation to this effect, agreeable to the laws of England That the property here taken in execution was property held in free and Common Soccage upon which the right of Dower of the wife equally attached, and therefore her dower should be separated from the land seized or it ought to be sold subject to the exercise of this

this right at some future day — It may even be questioned whether the Sheriff can by law sell lands held in free and Common Soccage as in England this cannot be done —

Buchanan for Plff — By Stat. 5 Gw. 2. ch. 7. Su. 4 — all lands in the Colonies are declared to be assets and liable to be sold for the payment of debts — That the land here seized being liable to the debts of the husband and to be sold in satisfaction thereof no dower can attach thereon — nor can Dower be allowed until assigned which has not been done here —

No 709. —
St Julien
vs
St Onge. }

Action on notarial obligation —

On Defendts motion to be admitted to adduce verbal testimony to controvert the facts stated in the obligation in consequence of the answers given by the plaintiff to the faits & articles proposed to him. —

Mondelet for the Plff there is no Inscription en faux in this Case, and therefore under no circumstances can verbal testimony be admitted to contradict an authentic act — and besides there is no ground for verbal testimony on the score of any commencement de preuve par ecrit growing out of the answers of the Plaintiff who in every particular confirms the statement contained in the obligation as to the mode and manner in which it was executed with the full knowledge and consent of the Defendant who provided his own interpreter on the occasion.

No. 1827.
Weekes. — vs Girouard & Girouard oppt —

On motion of the pleff that the Sheriff be held to amend his return to the writ of execution sued out in this Cause and to bring into the Court the amount charged by him for poundage —

Mondelet for Pleff — The execution sued out in this case directed specially that the amount of the purchase money should remain in the hands of the adjudicataire on his giving good and sufficient security to the Sheriff to pay over the same upon a Judgment of Distribution being made — That therefore the Sheriff having received no money incurred no responsibility, and was entitled to no poundage — This was held in the Case of Plenderleath vs Burton & oppos^t — June Term 1818 —

Sewell for the Sheriff, shewed cause on the rule, and stated, that the Sheriff was entitled to his poundage although the monies had not come to his hands — that by the Judgt of Distribution to be hereafter made these monies must come into the hands of the Sheriff to be paid in conformity to such Judgment — and besides the Sheriff here incurred a certain responsibility in regard of the Security taken by him from the adjudicataire — should that Security prove insufficient he might be liable for the money — That there are oppositions

filed

filed to nearly the amount of the whole monies
That should the principle here contended for be admitted it would establish a dangerous precedent and deprive the Sheriff of a great part of the rights of his office, as it would become a constant practice to sell lands in this way so as to avoid paying poundage — That the law establishing the sale by Decret Volontaire admits the right of the Sheriff to claim poundage even when Security has been given — The Case cited as decided in this Court does not apply — as there the monies remained vested in the hands of the purchaser in conformity to the dispositions of the will of the Testator —

No 445
The King
vs
Devins, Cur

Action for legacy. —
Sol. Genl for Pltff — This action is founded on the last Will and testament of the late General Christie, to obtain from the Residuary Legatee of the Testator represented by the Defendt who has been appointed to him, as being an absentee from this Province, the sum of £1500 Stg & interest accrued thereon, being the amount of a legacy left by the late General Christie to Gabriel Plenderleath one of his natural Children, who died without issue after he came of age and without having received the said legacy — He submitted the Case on the evidence adduced

No 1657.

Torrance et al Exrs. — vs Durocher —

Action on a promy Note made by the Defendr to the testator of whom Plffs are the Executors —

Rolland for Defendr The Executors here bring their action after the expiration of the year and day, and do not shew by their declaration that that they have any authority under the will beyond what the law gives them — To this action the Defendant has pleaded the want of authority in the Plaintiffs to maintain the action — and the Plaintiffs sensible of the defect have endeavoured to bolster up their demand by stating in their replication that by the last will and testament they were empowered to act beyond the year and day limited by law and until all the affairs and concerns of the demand were closed and determined — This the Defendr holds not to be sufficient, as this ought to have been stated in the declaration so as to give the Defendr an opportunity to answer thereto, and to traverse or avoid the right, which he is shut out from doing by this mode of pleading —

Trahan for Plffs contends that this is running to the regular course of pleading as it brings in issue the power of the Plffs to maintain their action —

No. 423.
Langlois
v.
Lawson

Action en separation de corps & de biens

Mondelet for Defend.r — pleads. reconciliation — the suspicious character of the witnesses adduced to support the action — the provocation given by the pltff, and her violent character and disposition —

Grant for Pltff — There was subsequent ill treatment to the reconciliation, and therefore the action is maintainable as it would have been before that reconciliation took place cites Rep.n v.o Sep.n de Corps. p. 227. — But the evidence adduced will shew sufficient cause of action admitting the reconciliation in question

No.
Henderson
v.
Proctor
&
Midgley
&al. opp.s

On Opposition afin d'annuller —

Walker for Oppos.ts — The opposants claim certain bales of goods which were put into the hands of the Defend.r as an auctioneer and broker for sale and which have been seized by the Pltff for house rent due to him by the Defend.r According to the article of the Custom the priviledge of the landlord for rent extends only to what is considered les meubles meublans qui garnissent la maison, that is household furniture — see Gr. Cout. art. 171 p. 1263. No. 15 art. 161. p. 1044 No. 14 & 15. p. 1048. No. 1. p. 1051. & 1052

No.

Nos 21 & 22 — see also on art. 162. — And this is strongly elucidated in the case of Sous-locataires, whose property although brought into the house to remain there, yet may be liberated on the payment of the rent due by the Sous-locataire — the case of third persons is much stronger who put their property there momentarily and with no view to furnish the house, but to be sold by the Defend[e] a contrary principle would be destructive of all confidence in commercial transactions —

Mondelet for the Pltff, admits the property seized to have belonged to the Opposs and that it was put into the hands of the Defr for sale, but contends that the Pltff has his privilege thereon for the payt of his rent — refers to Potts. Louage Nos 236. 237. — 241. 246. 8. 9. shewing that merchandises are equally liable to the privilege of the landlord for rent as household furniture — see also opinion of Ricard on 162 art. Coutume —

Walker in reply — according to the principle of the Roman law the property of third persons in the house paid only rent in proportion to the space they occupied in it, and Pothier refers to this principle — but in regard of goods given en dépot or nantissement, they are not by the law of France subject to any rent — see Louage. Nº 245. —

Monday 19th October 1829.—

Prest.
Mr. Justice Reed
Mr Justice Pyke
Mr Justice Uniacke.—

No. 1153. Pothier. v Robertson	V	Action dismissed — saving recourse — no proof of signature of Pltff to contract —
No. 1298 Wilcox sal v Hall. —		Action dismissed — proof of a departure from Contract —
No. 178. United States Bank v Pearl —		Defendr. motion to quash writ of Ca: Sa: rejected —
No. 2291. Jones v Wood & al & E contra	V	Action dismissed — and Incidental demand maintained —
No. 134. Pothier. v Huntoon	V	Judgt. for Pltff —

No 540 Stearns. v Dewey. & Sweetmain	√ Judge for Pleff – see Judge Pykes note –
No 250 Bent & al v Spraggs & Oppost	√ Judge – dismissing claim of Mortgage –
No 1247. Corporation of Clergy Reserves v McMillan	Action dismissed –
No 1241. McRae v Donaldson & Donaldson oppr	Rule for folle enchere absolute. –
No 967. – Bricault & Deshautels & Laperche Intervs	Intervention dismissed – This a personal action ag Defendt – no question affect3 Interv's party or the mortgage on the land – Interv's comes in to defend action as Garants of Defendts – he cannot do so on that principle – for if they sold the land to him they are his garants –
No 2287. Donegani v Walker	√ Defenses en droit of Defdt dismissed

No. 644. Froste & al v. Wurtele		Demurrer pleaded by Defdr. dismissed
No. 645. Froste & al v. Wurtele	V	Demurrer maintained & action dismissed
No. 709 St. Julien v. St. Onge		Defendts. motion rejected
No. 416. Phillips v. Bagg. & Wurtele Intervs	V	Intervention dismissed —
No. 2306 Rutherford v. McKay		Testimony of H. Griffin admitted
No. 1827. Weekes v. Girouard & Girouard	V	Plaintiffs motion rejected —
No. 1704 Henderson v. Proctor. & Midgley	V	Main-levée granted of the effects seized

No 2142.
Dumouchel
Boyer
&
Bender Intz

Intervention maintained

No 728.
Freeland
v
Bridge

Judgt for Pltff

No 599.
Walsh
Tibbets & al
&
Thorn opt

Action dismissed on principle that affidavit of Pltff was not that of the credible witness required by law to ground application for a notice in Gazette to call in Defdts

No 1571
De St Ours.
Dufresne
& al.

√ Judgt for Pltff

Tuesday 20th October 1829.

Prest.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke.

No. 409. Rowand vs Keith, Cur. & Oppos.ts	Adjudication of lot of land to Persillier set aside
No. Tetrau v Patenaude	Rule on Sheriff discharged — Rule that Sheriff should pay Pltffs debt because he had adjudged land to the Defendt
No. 148 Green. a v Hilton & al	Judgt for Pltff — Defendts books not admitted in evidence — nor presumpn of year & day
No. 824 Ritchotte v Langlois	Judgt for Pltff — for 1/2 Dower in lieu of aliments
No. 123 Voyer v Wurdile & al	Judgt for Pltff
No. 2321. Delisle vs Fire Insurance Co	Defendts exceptions dismissed

No. 1657.
Torrance sal
v.
Durocher } Judgt for Plaff

No. 706.
Bent sal
v.
Spraggs
&
Howard sal
Appts } Intervention dismissed

Domat. Louage - book 1. tit 4. sec. 2. ~~p. 55~~ § 55. art. 8 - 10

The amount of rent & also damages may be demanded when the tenant quits before expiration or by bad faith -

JUILLET. Le Soleil entre au Lion le 23

Premier Quartier le 9 à 1h 37m matin, | Dernier Quartier le
Pleine Lune le 16 à h 48m matin, | Nouvelle Lune le 3

Lev.	Cou.	Cl.	MOIS.	SEMS.	FETES.
H.M.	H.M.				
4 13	7 47	b	1	Mercre	Oct. de s Jean Baptiste,
4 14	7 46	b	2	Jeudi	Visitation de la B. V.
4 14	7 46	r†	3	Vendre	s Basil, év. doct. (14 Juin
4 15	7 45	r†	4	Samedi	s Guillaume, abbé, (25 Ju
4 15	7 45	r	5	DIM.	4
4 16	7 44	r	6	Lundi	Octave des Apôtres,
4 16	7 44	b†	7	Mardi	ste Marguerite, r. (10 Jui
4 17	7 43	b†	8	Mercre	ste Elizabeth, reine,
4 17	7 43	b†	9	Jeudi	s Léon, pape, (28 Juin)
4 18	7 42	r†	10	Vendre	VII Frères Martyrs,
4 19	7 41	b†	11	Samedi	De la Ste Vierge,
4 20	7 40	b	12	DIM.	5 DEDICACE,
4 21	7 39	r†	13	Lundi	s Anaclet, *Incipit.*
4 21	7 39	b	14	Mardi	s Bonaventure, év. doct.
4 22	7 38	b†	15	Mercre	s Henri II. empereur
4 23	7 37	b	16	Jeudi	N. D. du Mont Carmel,
4 24	7 36	b†	17	Vendre	s Alexis,
4 25	7 35	b	18	Samedi	s Camille de Lellis, conf
4 26	7 34	b	19	DIM.	6 Oct. Dédicace, sol s. J
4 27	7 33	b	20	Lundi	s Jérôme Emilien,
4 28	7 32	b	21	Mardi	s Jean Gualbert, ab. (12
4 29	7 31	b	22	Mercre	ste Madeleine,
4 30	7 30	r	23	Jeudi	s Appolinaire, év.
4 31	7 29	b	24	Vendre	s Vincent de Paul, (19) M
4 32	7 28	r	25	Samedi	s Jacques, apôtre,
4 33	7 27	b	26	DIM.	7 ste Anne, mère B. V.
4 34	7 26	r†	27	Lundi	s Pentaléon, *Incip. Or.*
4 36	7 24	r†	28	Mardi	ss Nazaire, &c. marts,
4 37	7 23	b†	29	Mercre	ste Marthe, vierge,
4 38	7 22	r†	30	Jeudi	ss Abdon & Sennen,
4 39	7 21	b	31	Vendre	s Ignace de Loyola.

AOUT. Le Soleil entre à la Vierge

Premier Quartier le 7 à 5h 19m soir, | Dernier Q
Pleine Lune le 14 à 5h 32m soir, | Nouvelle

Lev.	Cou.	Cl.	MOIS.	SEMS.	FETE
H.M.	H.M.				
4 40	7 20	b	1	Samedi	s Pierre aux Liens
4 41	7 19	vr	2	DIM.	3. *Dom.* 1 *Aug.*
4 42	7 18	r†	3	Lundi	Invention de s Eti
4 43	7 17	b	4	Mardi	s Dominique,
4 45	7 5	b	5	Mercre	N. D. des Neiges,
4 46	7 14	b	6	Jeudi	Transfig. de N. S.
4 47	7 13	b	7	Vendre	s Cajétan,
4 48	7 12	r†	8	Samedi	*Jeûne.* ss Cyriaque
4 50	7 10	r	9	DIM.	9. Sol. s Laurent,
4 51	7 9	r	10	Lundi	s Laurent, diacre,
4 52	7 8	r†	11	Mardi	De l'Octave,
4 54	7 6	b	12	Mercre	ste Claire, vierge,
4 55	7 5	r†	13	Jeudi	De l'Octave
4 58	7 3	vl†	14	Vendre	De l'Oct. Messe d
4 59	7 2	b	15	Samedi	*Jeûne.* ASSOMP
5 0	7 0	b	16	DIM.	Joachim, Off. l'Aso
5 1	6 59	r	17	Lundi	Oct. s Laurent
5 2	6 57	b	18	Mardi	s Hyacinthe, (16)
5 4	6 56	b†	19	Mercre	De l'Octave,
5 6	6 54	b	20	Jeudi	s Bernard, abbé
5 7	6 53	b	21	Vendre	ste Jeanne de Char
5 0	6 52	b	22	Samedi	Oct. de l'Assompti
5 10	6 50	b*	23	DIM.	13. s Phil. de Benit
5 11	6 49	r	24	Lundi	s Barthélemi ap.
5 13	6 47	b	25	Mardi	s Louis, roi,
5 14	6 46	r†	26	Mercre	s Zéphyrin, mart.
5 16	6 44	b	27	Jeudi	s Joseph de Calasa
5 17	6 43	b	28	Vendre	s Augustin, év. doc
5 19	6 41	r	29	Samedi	Décol. de s Jean Ba
5 20	6 40	b	30	DIM.	14. ste Rose de Lin
5 22	6 38	b	31	Lundi	s Raymond Nonnat

SEPTEMBRE. Le Soleil entre à la Balance le 23

Premier Quartier le 6 à 7h 6m matin, | Dernier Quartier le 19
Pleine Lune le 13 à 1h 35m matin, | Nouvelle Lune le 27 à

Lev.	Cou	Cl.	MOIS.	SEMS.	FETES.
H.M.	H.M.				
5 23	6 37	b	1	Mardi	s Gilles, 2 *Or Fid.*
5 25	6 35	b†	2	Mercre	s Etienne, roi,
5 26	6 34	vr†	3	Jeudi	*Rép. Dim.* 1,
5 28	6 32	vr†	4	Vendre	22 Mars 1829
5 29	6 31	b†	5	Samedi	s Laurent Justinien,
5 31	6 29	vr	6	DIM.	15 & *Dim.* 2 *de Sept.*
5 32	6 28	vr†	7	Lundi	*Or Fidelium,*
5 34	6 26	b	8	Mardi	Nativité de la B. V. M. *Oct.,*
5 35	6 25	b†	9	Mercre	De l'Octave, M
5 37	6 23	b	10	Jeudi	s Nicolas Tolentin, év. M
5 38	6 22	b†	11	Vendre	De l'Octave,
5 40	6 20	b†	12	Samedi	De l'Octave, [*Dim.* 3
5 42	6 18	b*	13	DIM.	16 Nom de Marie, Sol. Nativ.
5 43	6 17	r	14	Lundi	Exaltation de la ste Croix, M
5 45	6 15	b	15	Mardi	Octave de la Nativité,
5 47	6 13	r	16	Mercre	4 *Ts.* ss Corneille, &c. *Inc,* 2M
5 48	6 12	b	17	Jeudi	Stigmates s François, M
5 50	6 10	b	18	Vendre	4 *Tems.* s Joseph Cupertino,
5 51	6 9	r	19	Samedi	4 *Ts.* ss Janvier &c. 2M [*D.* 4
5 53	6 7	r	20	DIM.	17 ss Eustache &c. sl. Math. M
5 55	6 5	r	21	Lundi	s Mathieu, évang.
5 56	6 4	b†	22	Mardi	s Thomas de Villeneuve, M
5 58	6 2	r	23	Mercre	s Lin, pape mart,
6 0	6 0	b	24	Jeudi	N. D. de la Mercie,
6 1	5 59	vr†	25	Vendre	*Rép. Dim.* 4.
6 3	5 57	b†	26	Samedi	De la Ste. Vierge, M
6 4	5 56	b	27	DIM.	18 Sol. s Michel, *Dim.* 5
6 6	5 54	b†	28	Lundi	s Vinceslas, mart,
6 7	5 53	b	29	Mardi	s Michel, Archange,
6 9	5 51	b	30	Mercre	Jérôme, ptre.

OCTOBRE. Le Soleil entre au Scorpion le 23

Premier Quartier le 5 à 6h 55m soir, | Dernier Quartier le
Pleine Lune le 12 à 10h 35m matin, | Nouvelle Lune le

Lev.	Cou.	Cl.	MOIS.	SEMS.	FETES.
H.M.	H.M.				
6 10	5 5	b	1	Jeudi	s Rémi, évêque,
6 12	5 48	b	2	Vendre	ss Anges Gardiens,
6 13	5 47	r†	3	Samedi	ss Côme & Damien, (27 S
6 15	5 45	b	4	DIM.	19 Sol. s Rosaire, *D.* 1 C
6 16	5 44	b	5	Lundi	s François d'Assise, (hier
6 18	5 42	b	6	Mardi	s Bruno, abbé,
6 19	5 41	b†	7	Mercre	s Marc, pape, *Oratio Fi*
6 21	5 39	b	8	Jeudi	ste Brigite, veuve,
6 23	5 37	r	9	Vendre	ss Denis, &c. martyrs,
6 24	5 36	b†	10	Samedi	s François de Borgia,
6 26	5 34	vr	11	DIM.	20 *Post Pent. et* 2 *Octo*
6 27	5 33	vr†	12	Lundi	✓ Oratio Fidelium,
6 29	5 31	b†	13	Mardi	s Edouard III., roi,
6 30	5 30	r	14	Mercre	s Callixte, pape, mart.,
6 32	5 28	b	15	Jeudi	ste Thérèse, vierge,
6 33	5 27	vr†	16	Vendre	
6 35	5 25	b†	17	Samedi	ste Hedwidge, veuve,
6 37	5 23	r	18	DIM.	s Luc, évang. *Dim*
6 38	5 22	b	19	Lundi	s Pierre d'Alcantara,
6 40	5 20	vr†	20	Mardi	
6 41	5 19	b†	21	Mercre	s Hilarion,
6 43	5 17	vr†	22	Jeudi	
6 44	5 16	vr†	23	Vendre	
6 46	5 14	b†	24	Samedi	*Jeûne,* De la Ste. Vierg
6 46	5 12	b	25	DIM.	N. D. de Vict. *d.* 4 2M s
6 49	5 11	r†	26	Lundi	s Evariste, pape M *O*
6 51	5 9	vl†	27	Mardi	De la Vigile,
6 52	5 8	r	28	Mercre	ss Simon et Jude, ap.
6 54	5 6	vr†	29	Jeudi	*Leçons du* 5 *Dim. Ré*
6 55	5 5	vr†	30	Vendre	*Lec. f.* 2 *post. D.* 5 *Ré*
6 57	5 3	vl†	31	Samedi	*Jeûne.* Vigile de la Tou

NOVEMBRE. Le Soleil entre au Sag

Premier Quartier le 4 à 4h 57m matin, | Dernier Q
Pleine Lune le 10 à 8h 52m soir, | Nouvelle

Lev.	Cou.	Cl.	MOIS.	SEMS.	FETE
H.M.	H.M.				
7 58	5 2	b	1	DIM.	TOUSSAINT,
7 59	5 1	vr.	2	Lundi	Trépassés, *Incp.*
7 1	4 59	b†	3	Mardi	De l'Octave,
7 2	4 58	b	4	Mercre	s Charles Barrom
7 4	4 56	b†	5	Jeudi	
7 5	4 55	b†	6	Vendre	De l'Octave,
7 7	4 53	b†	7	Samedi	
7 8	4 52	b	8	DIM.	Oct. Toussaint, M
7 10	4 50	b	9	Lundi	Dédic. Basiliq. S
7 11	4 49	b†	10	Mardi	s André Avellin,
7 12	4 48	b	11	Mercre	s Martin, év.
7 14	4 46	r†	12	Jeudi	s Martin, pape,
7 15	4 45	b†	13	Vendre	s Didace,
7 16	4 44	b†	14	Samedi	De la Ste. Vierge
7 17	4 43	b	15	DIM.	ste Gertrude, vie
7 18	4 42	vl†	16	Lundi	*Rép. Dim.* 4 *O*
7 19	4 41	b†	17	Mardi	s Grégoire Thaun
7 20	4 40	b	18	Mercre	Dédic. Basili. ss
7 21	4 39	b	19	Jeudi	ste Elizabeth, ve.
7 22	4 37	b	20	Vendre	s Félix de Val. *In*
7 23	4 36	b	21	Samedi	Présentation de la
7 24	4 35	b	22	DIM.	ste Cécile, vierge,
7 25	4 34	r	23	Lundi	s Clément, pape,
7 26	4 33	b	24	Mardi	s Jean de la Croix
7 27	4 32	b	25	Mercre	ste Catherine,
7 28	4 31	b†	26	Jeudi	s Pierre d'Alexan
7 29	4 30	vr†	27	Vendre	*3e Leçon, Incip*
7 30	4 29	vl†	28	Samedi	*Jeûne* De la Vigi
7 31	4 29	vl	29	DIM.	I de l'Av. sol. An
7 32	4 28	r	30	Lundi	s André, ap.

DECEMBRE. Le Soleil entre au Bouc le 21 à 8

Premier Quartier le 3 à 1h 39m soir, | Dernier Quartier le 18 à 1
Pleine Lune le 10 à 8h 44m matin, | Nouvelle Lune le 25 à 10

Lev.	Cou.	Cl.	MOIS.	SEMS.	FETES.
H.M	H.M.				
7 33	4 27	vl†	1	Mardi	
7 34	4 26	r†	2	Mercre	ste Bibiane, vierge,
7 34	4 26	b	3	Jeudi	s François Xavier, M
7 35	4 25	b	4	Vendre	s Pierre Chrysologue, 2M
7 36	4 24	b†	5	Samedi	Messe de la Ste Vierge, M
7 37	4 23	vl*	6	DIM.	1. Sol. de s. François Xavier,
7 37	4 23	b	7	Lundi	s Ambroise, M
7 38	4 22	b	8	Mardi	CONCEPTION, (*d'oblig.*) M
7 38	4 22	b	9	Mercre	s Nicolas, (6) 2M
7 39	4 21	b†	10	Jeudi	De l'Octave, 2M
7 39	4 21	b†	11	Vendre	s Damase, pape, 1M
7 39	4 21	b†	12	Samedi	De l'Octave, M
7 40	4 20	vl*	13	DIM.	3. De l'Avent, M
7 40	4 20	r	14	Lundi	ste Luce, mart. (hier) 2M
7 40	4 20	b	15	Mardi	Octave de la Conception, M
7 40	4 20	r†	16	Mercre	*Jeûne* 4 *Ts.* s Eusèbe, m. M
7 41	4 19	vl†	17	Jeudi	*Ant De Sion, Ad Mag O Sag dup*
7 41	4 19	vl†	18	Vendre	*Jeûne* 1 *T. Ad l et h. Ant Const*
7 41	4 19	vl†	19	Samedi	*Jeûne* 4 *Ts. Ad L et H. Ant*
7 41	4 19	vl*	20	DIM.	sol. Thomas, [*Ecée ven* M Vig
7 41	4 19	r	21	Lundi	s Thomas,
7 41	4 19	vl†	22	Mardi	
7 41	4 19	vl†	23	Mercre	
7 41	4 19	vl	24	Jeudi	*Jeûne* De la Vigile,
7 41	4 19	b	25	Vendre	NOEL, (*d'obligation,*) M
7 40	4 20	r	26	Samedi	S. ETIENNE, 1er mart. D év.
7 40	4 20	b	27	DIM.	S. JEAN, ap. évangél, 2M
7 40	4 20	vl	28	Lundi	ss Innocents, martyrs, 3M
7 40	4 20	r	29	Mardi	s Thomas, 4M
7 39	4 21	b	30	Mercre	Du Dim. dans l'Octave, 4M
7 39	4 21	b	31	Jeudi	s Sylvestre, pape. 4M