Kings Bench. Montreal.

Civil Pleas.

February Term. 1832.

April Term. "

June Term. "

October Term. "

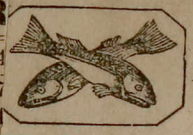


JANVIER

Le ☉ entre au ♒ le 20 à 6h. 4

● le 2 à 10h 19m Soir. | ☉ le 17
☽ le 10 à 7h 57m Soir. | ☾ le 24

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
39	4 21	b	1	DIM.	CIRCONCISION, *d'obligat*
38	4 22	r	2	Lundi	Octave de s. Etienne.
38	4 22	b	3	Mardi	Octave de s. Jean.
37	4 23	r	4	Mercre	Octave des ss. Innocents.
36	4 24	b	5	Jeudi	De la Vigile.
36	4 24	b	6	Vendre	EPIPHANIE, *d'obligation.*
35	4 25	b	7	Samedi	De l'Octave.
35	4 25	b	8	DIM.	1. ap. l'Ep. *Incip.* 1 *Ad. Cor.*
34	4 26	b	9	Lundi	De l'Octave.
33	4 27	b	10	Mardi	De l'Octave.
33	4 27	b	11	Mercre	De l'Octave.
32	4 28	b	12	Jeudi	De l'Octave.
31	4 29	b	13	Vendre	Octave de l'Epiphanie.
30	4 30	b†	14	Samedi	s. Hilaire, évêque.
29	4 31	b	15	DIM.	2e. s. NOM DE JESUS.
28	4 32	r†	16	Lundi	s. Marcel, pape, mart. *suffra*
27	4 33	b	17	Mardi	s. Antoine, Abbé.
26	4 35	b	18	Mercre	Chaire de s. Pierre à Rome.
24	4 36	r†	19	Jeudi	s. Canut, roi, mar.
23	4 37	r	20	Vendre	ss. Fabien et Sébastien, mar
22	4 38	r	21	Samedi	ste. Agnès, vierge, mart.
21	4 39	vr	22	DIM.	3e. ap. l'Epiphanie.
20	4 40	b†	23	Lundi	s. Raymond de Pennafort.
18	4 42	r†	24	Mardi	s. Timothé, évêque, mart.
17	4 43	b	25	Mercre	Conversion de s. Paul, apôt
16	4 44	r†	26	Jeudi	s. Polycarpe, évêque mart.
15	4 45	b	27	Vendre	s. Jean Chrysostôme, év. dr.
14	4 47	b	28	Samedi	s. Paul, hermite, (15 janv.)
13	4 48	b	29	DIM.	s. François de Sales, évêque
12	4 49	r†	30	Lundi	ste. Martine, vierge, mart.
11	4 50	b	31	Mardi	s. Pierre Nolasque.



FEVRI

Le ☉ entre aux ♓ le 20

● le 1 à 5h 23m Soir. | ☉
☽ le 9 à 6h 20m Mat. | ☾

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
8	4 52	r†	1	Mercre	s. Ignace, évêque, mart.
7	4 53	b	2	Jeudi	Purification de la ste. V
6	4 54	r†	3	Vendre	ss. Vincent et Anastase,
4	4 56	b	4	Samedi	s. André Corsin, év. [22
3	4 57	b	5	DIM.	5. ste. Agathe, v. m. *sl.*
2	4 59	r†	6	Lundi	ste Dorothé vierge et r
0	5 0	b	7	Mardi	s. Romuald, Abbé.
59	5 1	b	8	Mercre	s. Jean de Matha.
58	5 2	r†	9	Jeudi	ste. Appoline, vg. mart
56	5 4	b	10	Vendre	ste. Scholastique, vierge
55	5 5	b†	11	Samedi	De la ste. Vierge.
53	5 7	vr	12	DIM.	6e. ap. l'Epiphanie.
52	5 8	vr†	13	Lundi	
50	5 10	r†	14	Mardi	s. Valentin, prêtre, mart
49	5 11	r†	15	Mercre	ss. Faustin et Jovite, mar
47	5 13	v †	16	Jeudi	
46	5 14	v †	17	Vendre	
44	5 16	b†	18	Samedi	De la ste. Vierge.
43	5 17	vl	19	DIM.	SEPTUAGESIME.
41	5 19	vl†	20	Lundi	*Or. Fid. Missa. Sine Tra*
40	5 20	vl†	21	Mardi	
38	5 22	b	22	Mercre	Chaire de s. Pierre à An
37	5 23	b	23	Jeudi	s. Pierre Damien, docteu
35	5 25	vl†	24	Vendre	De la Vigile.
34	5 26	r	25	Samedi	s. Mathias, apôtre.
32	5 28	vl	26	DIM.	SEXAGESIME. *Sol.* Matl
30	5 30	vl†	27	Lundi	*Or. Fid Mis. Sine Trac*
29	5 31	vl†	28	Mardi	
28	5 32	vl†	29	Mercre	



MAR

Le ☉ entre au ♈ le 20

● le 2 à 10h 21m Matin. | ☾
☽ le 9 à 2h 20m Soir. |

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
27	5 33	vl†	1	Jeudi	*Ad. Magn. Ant. de P*
26	5 34	vl†	2	Vendre	
24	5 36	b†	3	Samedi	De la ste. Vierge.
22	5 38	vl	4	DIM.	QUINQUAGESIME.
21	5 39	b†	5	Lundi	s. Casimire, roi, (hier
19	5 41	vl†	6	Mardi	*Ad. Magn. Ant. Pro*
18	5 42	vl	7	Mercre	LES CENDRES.
16	5 44	b	8	Jeudi	s. Jean de Dieu.
15	5 45	b	9	Vendre	ste. Françoise, veuve.
14	5 46	r†	10	Samedi	ss. 40 Martyrs de Sébas
12	5 48	vl*	11	DIM.	1e. du Carême.
10	5 50	b	12	Lundi	s. Grégoire, pape et do
8	5 52	b	13	Mardi	s. Thomas d'Aquin, d.
7	5 53	vl†	14	Mercre	4 *Tems.*
5	5 55	vl†	15	Jeudi	
4	5 56	vl†	16	Vendre	4 *Tems.*
2	5 58	b†	17	Samedi	4 *Tems.* s. Patrice, évê
0	6 0	vl*	18	DIM.	2e. du Carême, *sol.* s. J
59	6 1	b	19	Lundi	st. Joseph, 1r. pat. du pa
57	6 3	vl†	20	Mardi	
56	6 4	b	21	Mercre	s. Benoit, Abbé.
54	6 6	vl†	22	Jeudi	
52	6 8	vl†	23	Vendre	
51	6 9	vl†	24	Samedi	
49	6 11	vl*	25	DIM.	3e. du Carême.
47	6 13	b	26	Lundi	Annonciation, (hier) ni d
46	6 14	vl†	27	Mardi	[de D
44	6 16	vl†	28	Mercre	
43	6 17	vl†	29	Jeudi	
41	6 19	vl†	30	Vendre	



AVRIL

Le ☉ entre au ♉ le 20 à 1

● le 1 à 0h 9m Mat. | ☉ le 14 à 7h
☽ le 7 à 8h 56m Sr. | ☾ le 22 à 11

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
39	6 21	vl*	1	DIM.	1e. du Carême.
37	6 23	b	2	Lundi	s. François de Paul.
35	6 25	vl†	3	Mardi	
33	6 27	b	4	Mercre	s. Isidore, év. doct.
31	6 29	b	5	Jeudi	s. Vincent Ferrier.
30	6 30	vl†	6	Vendre	
78	6 32	vl†	7	Samedi	*Cessant Suffragia.*
27	6 33	vl	8	DIM.	De la Passion.
25	6 35	vl†	9	Lundi	
24	6 36	vl†	10	Mardi	
23	6 37	b	11	Mercre	s. Léon, pape et doct.
21	6 39	vl†	12	Jeudi	
20	6 40	b	13	Vendre	N. D. de la Pitié.
18	6 42	r†	14	Samedi	s. Herménégilde, mr. (hier)
16	6 44	vl	15	DIM.	DES RAMEAUX.
15	6 45	vl	16	Lundi	
13	6 47	vl	17	Mardi	
12	6 48	vl	18	Mercre	
10	6 50	b	19	Jeudi	Saint, 1 classe.
9	6 51	n	20	Vendre	Saint, 1 cl sse.
7	6 53	b	21	Samedi	Saint, 1 classe.
6	6 54	b	22	DIM.	PAQUES, 1 classe.
4	6 56	b	23	Lundi	Fête de Dévotion, 1 classe
3	6 57	b	24	Mardi	Fête de Dévotion, 1 classe
1	6 59	b	25	Mercre	De l'Oct. ni Abstinence ni
0	7 0	b	26	Jeudi	[ces
58	7 2	b	27	Vendre	
57	7 3	b	28	Samedi	
55	7 5	b	29	DIM.	1. Quasimodo.
54	7 7	b	30	Lundi	ste. Catherine, Abstinence
					[cession de s.



MAI

Le ☉ entre aux ♊ le 20

☽ le 7 à 3h 12m Mat. | ☾
☉ le 14 à 0h 31m Soir. | ●

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
53	7 7	r	1	Mardi	ss. Philippe et Jacques,
52	7 8	b	2	Mercre	s. Athanase, év. doct.
50	7 10	r	3	Jeudi	Invention de la ste. Cro
49	7 11	b	4	Vendre	ste. Monique, veuve.
47	7 13	b	5	Samedi	s. Pie V, pap. [Phil.
46	7 14	r	6	DIM.	2. s. Jean, Porte Latine
44	7 16	r	7	Lundi	s. Stanislas, év mt.
43	7 17	b	8	Mardi	Apparition de s. Miche
42	7 18	b	9	Mercre	s. Grégoire de Naz. év.
41	7 19	b†	10	Jeudi	s. Antonin, év. m. M c
39	7 21	r	11	Vendre	s. Marc, évang. (25 avri
38	7 22	r†	12	Samedi	ss. Nérée et Achillée, m
37	7 23	b	13	DIM.	3. ste Famille,
36	7 24	b	14	Lundi	s. Anselme, év. doc. (2
35	7 25	r	15	Mardi	s. Fidèle de Sigmar. mtr.
34	7 26	b†	16	Mercre	s. Ubalde. év.
32	7 28	b	17	Jeudi	s. Paschal Baylon.
31	7 29	r†	18	Vendre	s. Venant, mart.
30	7 30	b	19	Samedi	s. Pierre Célestin, pap
29	7 31	b*	20	DIM.	4. ap. Pâq.
28	7 32	r	21	Lundi	s. Pierre, martyr. (29
27	7 33	r†	22	Mardi	ss. Sotère et Caïus, mtrs
27	7 33	r†	23	Mercre	s. George, mart. (23 avr
26	7 34	r†	24	Jeudi	ss. Clet et Marcellin, m
25	7 35	b	25	Vendre	s. Grégoire VII, pape.
24	7 36	b	26	Samedi	s. Philippe de Néri.
23	7 37	b	27	DIM.	5 ap. Pâq.
22	7 38	b†	28	Lundi	*Rog.* s. Bernardin, (20 m
21	7 39	b†	29	Mardi	*Rog.* ste. Mag. de Paz. (2
20	7 40	b†	30	Mercre	*Rog.* De la Vigile,
19	7 41	b	31	Jeudi	ASCENSION. *d'obliga*



JUIN.

Le ☉ entre à ♋ le 21 à 4

☽ le 5 à 10h 6m Mat. | ☾ le
☉ le 13 à 2h 51m Mat. | ● le

Lev.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
19	7 41	b†	1	Vendre	De l'Octave.
18	7 42	b†	2	Samedi	De l'Octave
17	7 43	b	3	DIM.	Du Dimanche dans l'Octa
17	7 43	b†	4	Lundi	De l'Octave.
16	7 44	b†	5	Mardi	De l'Octave.
16	7 44	b	6	Mercre	s. Norbert, év.
15	7 45	b	7	Jeudi	Octave de l'Ascension.
15	7 45	b†	8	Vendre	
14	7 46	r	9	Samedi	*Jeûne* de la Vigile.
14	7 46	r	10	DIM.	PENTECOTE, 1 c
14	7 46	r	11	Lundi	Fête de dévotion, 1 classe
13	7 47	r	12	Mardi	Fête de dévotion, 1 classe
13	7 47	r	13	Mercre	*Jeûne des 4 Temps*, sémi-d
13	7 47	r	14	Jeudi	De l'Octave.
13	7 47	r	15	Vendre	*Jeûne des 4 Temps.*
13	7 47	r	16	Samedi	*Jeûne des 4 Temps.*
12	7 48	b	17	DIM.	1. STE. TRINITE'.
12	7 48	r	18	Lundi	s. Barnabé, ap. (11 juin.)
12	7 48	b	19	Mardi	ste. Julienne, vierge
12	7 48	b	20	Mercre	s. Jean de *Facundo*, (12 jui
12	7 48	b	21	Jeudi	FETE-DIEU, *d'obligati*
12	7 48	b	22	Vendre	De l'Octave.
12	7 48	b	23	Samedi	*Jeûne* M de la Vigile à la
12	7 48	b	24	DIM.	s. Jean Baptiste, 2M Proc
12	7 48	b	25	Lundi	s. Guillaume, Abbé.
13	7 47	r	26	Mardi	ss. Jean et Paul, mart.
13	7 47	b	27	Mercre	De l'Oct. de la Fête-Di
13	7 47	b	28	Jeudi	*Jeûne*, Oct. de la FETE-I
13	7 47	r	29	Vendre	ss. PIERRE & PAUL, Oc
13	7 47	r	30	Samedi	Commémoration de s. Pau

A.

Alger	Berthelet	128			
Archambault	Ex parte. Pet.	do	160		
Ainse	Aymond	180			

B.

Bostwick	Donegani & al	4	9	38	86
Boston	Grey	8			
Bertrand	ex parte Conf. of lith	8	18		
Bellamy	Gilbert & E contra	12	43		
Bent	Bethune	15			
Brock & al'	Smith & op.	19	74	77	
Barrow	Lecourse & op.	31			
Bruneau	Bruneau & op.	34	122	139	141
Bullis	Douglass & al	38	90	134	
Bell	Cartier & op.	40	131		
Bleury	Roi & al.	60			
Bradbury	Filgiano	64			
Burton	Terrien & Gar.	65			
Bellair	Bray	72			
Bent & al'	Ferguson	72			
Beaudry	Bricault & ux	74			
Barrow	Lacourse & op.	74			
Bourdeau	Lavoïe & J. S.	92	148	172	
Baron	Ker	107			
Burton	Grace & op.	116			
Brown	Buchan & op.	128			
Badger	Dewitt	138			
Beaubien	Massue & Gar.	144	154	158	
Bagg	Seeleye & op.	153			
Bastien	Tait & Grant op.	158	214		
Bruneau	Bruneau & op.	160			
Boileau	Boileau	164			
Bradbury	Burroughs	172			
Bostwick & al	Driver	174	181		
Bostwick & al'	Boardman	174			
Berthelet	Ste Marie & op.	178			
Bender	Jackson	179	215		
Bourgeois	Parent	182			
Breard & ux	Beauchamps	183			
Barnes	Galipeau	184			

Cowan	Turgeon	16	
Cuthbert	Montanary	25	
Charon	Pratt & opp.	28	
Carcie	Kollmeyer	44	
Charlebois	Saraulet	64	76
Cooke	Davis	71	76
Courcambec	McIntosh & al.	90	
Cuvillier	Boucher & opp.	117	
Chapman	Bagg & ux	120	
Classon	Curran & opp.	138	
Courselles	Cleghorn	170	184
Crevier	Liberdaas	177	217
Coupal	Roi & al.	177	
Coyteux	Couvillon & opp.	203	

Desjardins & ux	Joukin	10		
Delorme Ext.	Roi	10		
Delorme	Perrin	52	82	132
Donovan	Rogers & al.	60		
Durocher	Talon	70		
Dubrul	Fifi	104	132	
Douglass	Bullis	107	184	
Dunn	Snedden	117	142	152
Desforges	Beauzelle & al.	118		
Drolet	Gaudet	124	200	
Dion	Langevin	138		
Doré & ux	Dumont	152		
Drolet	Allison	156		
Davis	McEachern	164		
Desjardins	St. James & al.	166		
Downes & al.	Proctor & T. S.	167		
Driscoll	Ferguson	178	217	
Desjardins	Larocque	190		
Dandurand	Sauvé	202	215	
Dallaire	Bonin	205		

English — & Lavery. — — 167

Freeland & al & Harkness & ors 29
Fisher. — — & Proper & ors — 52 75
Forbes — — & Gilbert — — 87
Fraser — — & Stevenson & ors 103
Fraser — — & Leslie & Bank — 159 161
Fisciau — — & Meunier — 164
Farral — — & Hilton & Baird 179 215
Forsy & al' — & Atkinson — 180
Falconer — & Smith. — — 202

Gamelin — & Sarrault & ors 65
Griffith. — — & M'Intosh — 68 114
Gillespie & al & Spragg & al — 68 102 214
Goselin. — — & Pearson — — 115 133
Grant — — — & Grant & E cont. 124
Guichaud — & Cleland — — 133
Guichaud — & Day. — — — 133
Gauthier. — — — & Knapp — — — 139
Gillespie & al' — & Spragg & al' — 157
Gagnon. — & Peeling. — 167
Gales & Co — — & Ogden. — 195
Gregory — — & Chisholm & al 211

H.

Hyde	Lovis & ors	1				
Henry	Caine & ors	2	18			
Harwood & ux	Whitlock	2	36	134		
Howard	Bender & ux	3	18			
Hodgson	Simpson	7	43	78	84	
Handyside	Dongani & ors	12	76	182	204	
Hunt	M'Kay, Cui	36	134			
Hutchinson	Hutchinson	52	89	93	116	
Herrick	Tarble	53				
Hunter	Calder & al'	58				
Hedge	Aberdeen & al	64				
Hart	Hart	82	88			
Henshaw	Henshaw & al	86	132			
Holmes	Vandandaigue	90				
Hart	Spragg & al	111	160			
Hodgson	Simpson	137				
Hart	Grant	171				
Howard	Farrs	205				
Hart	Campré	205				

I. J.

Johnson	Brown & ors	31		
Jessops & al'	Field	56	134	
Jessops & al'	Smith	57	76	
Jacobs	Bender	68		
Joyal	Kollmeyer	44		
Jones	Chadborn	84	89	
Johnston	Strothers	84	89	
Jalbert & ux	Pacquet	127		
Jones	Shepherd	169		

K.

Kuper	+ Cartier	125	132
King	+ M^c donald	134	
King	+ Henry	144	
Kerr & Biggar	+ Handyside & al	170	

L.

Leslie & Co	+ Hagan & al	2	17	74
Lemieux	+ Belanger	2	41	133
Lester	+ Davis	9	18	
Legault	+ Crevier	33	201	
Lindsay	+ Cuvillier	58		
Lambe	+ Annesley & ors	68		
Low	+ Wragg	71	162	
Laberge	+ Monpetit	105		
Lusignan	+ Roi & al'	106		
Lanergan	+ Cook	123	132	
Lacombe	on petition for Ratif^n	152		
Lindsay	+ Cuvillier & T. S.	159		

M'Vey.	Wyatt.	1	6	8	
Millar & al'	Spragg & al & ors	2			
Morin.	Careau.	2			
M'donald	Eager & al'	6	82		
M'Vey.	Wyatt	6			
M'Nee	Brown	33	38		
Mercier	M'Master	64	131		
M'Gennis	Wood	63	75		
Mills	Smith.	64	75		
Morris.	St Dizier.	70			
Miler	Corbeil	74			
Masse	Laroque & ux	84			
Molson	Meyer & op't.	89	176		
Mellis.	Armour	96	161		
Miller	Devins Cur. & ops	101			
Main.	Shaw & al'	106			
M'Kenzie.	M'Gill & al'	106			
M'donald	Decarry.	121	169		
May.	Sarles	127			
Magnan & p.	Leroux op'p'r	130			
M'dougall	Tiffin & Davis	143			
Mogé	Marchand & al	157			
Marion.	DeRocheblave	157			
M'Intosh	Fraser	153			
M'Pherson	Durocher	162	168	206	
Monjeon	Guertin & ux	169			
M'donald	Groux	171			
Molson.	Meyer & op't.	176	211		
Molson & C°	Richardson	190			
Muner	Hall, & E contra	205			

P. Q.

Page	& Burley & al'	1				
Piercy	& Rhodes & al'	3				
Same	& Dayton	4				
Pozer	& Donegani & al.	9	43	65	134	
Pierce	& Wilson	16	73			
Panet & al'	& Torin & al'	34				
Prevost & ux	& Breux	57	72			
Penn & al'	& Lindsay	80				
Pothier	& Bingham & al	100	115	172	216	
Pothier	& Lovis	106	136			
Peck	& Hobart	127				
Pellier & ux	& Duchantal & al'	146	161			
Pratt	& Pearl	154	175			
Prendergast	& Després	164				
Phoenix Bank	& Pearl	175				
Poitras	& Marcotte	176				
Poissant	& Montanary &	194				
Porteous	& Deschamps	200				
Panet	& Leprohon & al	212				
Pacquet	& Samothe	215				
Quintin	& Raymond	126				

R.

Robertson & al	& Beaubien & ob's	7	18			
Raymond	& Douglass	17	75			
Ross	& Lacroix & & con.	22	28	162		
Roi	& Turgeon	29	76			
Ritchie & al'	& Watson & al	32	73			
Rex. Dominus	& Tetu	59	74			
Roi	& Merleau & op's	75				
Rolland	& Ayer & al & op's	80				
Robert & ux.	& Marchisseau	91				
Racette	& Chebrou & Gar't	125	132			
Rolland	& Pothier & op's	148	154	159	162	
Robert & ux.	& Stuart	151	182			
Reid	& Meikle	163	165			
Rodier	& St Denis	176	203			
Robertson	& Jones & op's.	176	199			
Ross. Cur'	& Desgrés	177				
Robertson & al	& Dubois & al	192				
Roi	& Lionais & al	212				
Rouville	& Grant	213				

S.

Soupras	Godu	5	8	27	
Scott & al'	Try	5	31		
Squares	Stoddart	27	77	95	
Smith	Blanchard & op^t	42			
Stevenson & al	Lebœuf & op^t	65	102		
Sanguinet	Lecuyer	72			
Smith	Porteous	74	151		
Smith	Mills & T. S.	78	137	140	145.
Smith	Medical Board	87	132		
Scriver	Devins & al'	107			
St. Ours	Henault	118			
Smith & al'	Ferguson	121	133		
Shaw	Cameron & T. S.	155			
Smith & al'	Reeves & al'	156			
Smith & al'	Glagow & al	165	180	190	
Shuter & Wilkins	Boardman	172			
Smith	Porlier & al	184			
Snowdon	Langevin & op^t	203			
Soll^r Genl	M^c donell	214			
Same	Henry	214			

T.

Tarble	Herrick	53			
Todd	Landell & op^ts	73	76		
Truteau	Whinfield	85			
Tessier	Sabourin	92			
Truax	Simpson	109	160		
Terrien	Dupras & al'	117			
Taylor	Mitchel & E cont	135	136	142	
Turgeon	Robitaille	154	210		
Tate	Blackwood & op^t	182	216		
Turpin	Choquet	194			
Talon	Bells	210			

Wright & al	Harvey & al	11	45	53	
Wheeler	Holmes	59			
Wher.	Gerrish	68			
Warwick & al	Hobbs	69			
Waterhouse & al	Desrivieres & al	69	76	79	85
Wait	Perrault & al	77			
Waterhouse & al	Desrivieres	95			
Wright	Sparkes & al	104			

February Term. 1832.

Wednesday 1st February.

Present.

Ch. Justice Reed
Mr Justice Uniacke
Mr Justice Rolland

No 665
Hyde
vs
Lovis
vs
Blondeau
oppr

On opposition for house rent ex parte. — Mr Mondelet for Oppost. states that his proof is sufficient.

No 2276
Page
vs
Burley Lal

On Defendt. mo. to quash for short notice — dischd

No 2704
Mrs Vey
vs
Wyatt —

Action on note —
Stanley for Defendt — action on note as no demand at place of payt —

Henry
v
Caine —
&
Coit & al opt

On Judgt. of distribution —
Mr Driscoll for Pliff contends that he is
privileged for his costs 1 Pigeau 420 — §. 4

Mr. Nye for Oppost. contends that there is no
privilege for the Costs — The opposition has not
been contested —

No 296
Harwood & ux
v
Whitlock

Order for rehearing on the 6th +

Millar & al
v
Sprägg & al
&
Hutchinson
Oppt

Similar order +

No. 1201.
Leslie & Co
v
Hazeau & al

Similar order —

No 1801 —
Lemieux
v
Belanger

Similar order —

No 2382 —
Morin
v
Cazeau & al

Order for hearing Pliff on oath. —

Thursday 2d Febry 1832. —

Prest

Ch. Justice Reid

Justices Umacke & Rolland. —

No 2352 —

Howard & Binder & ux } On motion of Mr Blenny Attn of the Defds wife that distraction de frais be granted cited Poth. No 58 Puissn de Mari & No 74 —

Mr Guy for Pleff the authorities cited do not apply here the wife pleaded without the authority of her husband — refers to 224 art. Custom, to shew that the wife cannot prosecute or defend a Cause without authority — neither could she contract any obligation in favor of her Attorney without the authority of her husband — the advocate her could have no action agt the wife for his fee & consequently no privilege — when the wife separates in her defence from her husband in the Cause she ought to be authorized —

Blenny in answer — The wife here had authority to purchase the articles for qt the action is brought — The husband here was silent & must be considered as approving the conduct of his wife —

No 2257.

Piercy & Rhodes & al } On Pleff's mo. for a Com. Rogr & Defendr mo. for a non-suit —

Mr Day for ~~Pliff~~ Defdl — on day of trial Pliff's did not appear — ~~yet~~ the Rule of Prac. ~~permits~~ concludes the party from have's another day —

Mr Rossiter ~~also~~ for Pliff. rule of prac. does not apply the Defendt. ought to have sued out the venire if the Pliff was in delay — The Pliff could not proceed from want of witnesses — also moves for a Com. Rogn. to ex. Stik

Mr Day in reply — the Pliff should have countermanded the trial — if he was not ready —

No 2238
Piercy
Dayton } On Defendt. mo. for non-suit —

Mr Adams for Defendt — when day of trial is fixed, the parties must be prepared — here the Pliff. gave no countermand of trial — but Pliff did not appear when called. —

Mr Rossiter for Pliff — gave no notice of trial, nor of proceeding in the Cause & then Defendt. had no right to expect a trial being had in the Cause —

No. 253.
Bostwick
Donezani &al } On Defendt. mo. to ex. Pliffs on facts & art — & to enlarge return to Com. Rogn —

Walker for Defendt. application was made during the Enquete for Com. Rogn to ex. a witness in U. C. — & granted & Pliff's evidence was closed — & Defendt. is entitled to have a delay given to obtain return of Com. Rog — which has issued — & appears to have been executed —

Ex. Orbanto the fact of prac. be amended —

Mr Driscoll for Pliff — a sufficient time has elapsed for the return of the Com. Rogr —

No 2028
Soupras
&
Godin —

On Pliffs mo. to discontinue without payt of Costs —

Mr Cherrier for Pliff, the Defendt did not admit nor contest the demand — but stated that he had made improvements — a reference was made to experts to ascertain the amount of improvements — The Pliff wishes now to withdraw his action from the amount of these improvements. — There cannot therefore be any Costs on the action — there was no contest — as to the Costs of the Expertise — this having been agreed to ~~at~~ the Costs of the Defendt, is an answer to this object — but generally no costs are granted on the reports of Experts —

Mr Mondelet for Defendt — The cause must be considered as ill founded, when pliff prays leave to discontinue it — The Court here cannot know on what other principle Pliff wishes to discontinue —

No 1622
Scott & al
&
Try —

On Defendts mo. for a Com. Rog — & for facts & act.

Driscoll for Pliff — the issue was joined last April — & no further delay ought to be granted —

Walker for Defendt not necessary that he should sue out his Com. until the Pliff had produced their evidence —

No 1194
Mc Donald
vs.
Eagu et al

On Defendts mo. for a prolongation of the return of Com. Rogn

Walker for Defendt the affidavits shew that the Com. has not been executed from circumstances which could not be controlled — Moves also for a Com. Rogn to examine Pltff on facts & articles

Day for Pltff The Defendts enquete was declared closed except as to the ex. of wave by 1st Febry — but no motion of this now before the Court — The mo. for a Com. Rogt to ex. Pltff is merely to retard Pltffs from his Jugt —

—

No 2704
McVey
vs
Wyatt

Gay
McNull

On law.

Stanley for Defendt action on note, but no demand stated to have been made at the place where the note was made payable —

Boston for Pltff The fact is not before the Court, plea is premature, besides a demand is sufficiently stated, by the general refusal of Defendt to pay, which must comprehend the place where the note is payable as well as every other place —

Friday 3d February

Prest

Ch. Justice Reid

Justices Pyke. Umacke & Rolland

No 2385.

Hodgson
Simpson

On Pliffs mo. to prolong day of return of Com Rogr

Walker for Defendt objects — no diligence — delay already extended for 3 terms. —

Driscoll for Pliff — if delay can accrue here, it must be at instance of Defendt — The Defendt has obtained delay for his Com. Rogrs to first day of next April —

No

Robertson & al
Beaubien
Girish —
Bank of Montreal Ptr

On opposition of Girish & Bank

Mr Stanley for Girish — claims amt. levied under obligation made by Defendt — The Bank also claim this money, as creditor of D. Robertson & 2d in sous-ordre of D. Robertson, on the principle that at time of transfer made by D. Robertson he was in a state of insolvency — but contends that evidence is insufficient to prove the fact —

Mr Sewell for the Bank — the only question is as to the insolvency of Robertson — There evidence to shew this insolvency — The acknowledgt. of the party that he was insolvent is before the Court —

No 2664.
Boston v Grey — } On Defendr mo. to be permitted to file his plea —

Mr Buchanan for Defendr — delay had been granted to Defendr to pyle plea to 10 Decr last ~~& by understand the counsel considered he had got to the~~ — but a notice was served on 19 Novr to plead in 3 days — this notice was afterwards was withdrawn — & cannot now be considered — refers to deposition of Mr Clarke the former attorney of the Defendr —

Mr Walker for Pliff, that he acceded that Defdr should have to 10 Decr to pyle his plea — a few days further were granted to other persons similarly situated with Defendr — but no further delay was ever asked or given to Defdr —

No 2704.
Mr Vey v Wyatt — } The Court maintained the plea of defenses en droit pleaded by the Defendr and gave leave to Pliff to amend on payt of Costs —
see case of Gary v. McNie — April 1828. —
also — Chitty on Bills. p. 150 — notes —

No 2028.
Soupras v Godu — } The Court rejected Pliff's motion, & held that he could not discontinue without payt of Costs —

Ex parte Antr Bertrand } On Petition for confirmation of title —
Petr moved to reject opposition of the same being filed on 24 Jaws & not 8 days before day of Confirmation as required by law. —
Mr Gale for Opposr — opposn is in time — cites Denizr vo delai p. 134. —
3. T. Rep. 623. — day of filing should be included in the 8 days —

Saturday 4th February.

Presᵗ

Ch. Justice Reed
Justices Pyke, Uniacke & Rolland

No. 253. Bostwick & al v. Donegani & al

On Defendᵗˢ mo. to be permitted to fyle an affidavit in support of his motion for a prolongation of the return of the Com. Rogᵒʳ

Driscoll for Pliff this is irregular & too late. and the papers have not been communicated to him. The case is now before the Court for Judgᵗ on the evidence adduced —

No. Pozer v. Donegani & al

On Defendᵗ mo. to ex. Pliff on facts & articles —

Mr Pickel for the Pliff, opposes the motion as the Com. obtᵈ by Pliff will be returned on 6ᵗʰ instᵗ and the present mo. if granted would delay the Cause till next Term — granted for the 15ᵗʰ instᵗ —

No. 1644 Lester v. Davis —

On law —

Hart for Pliff — 2 counts in declⁿ for assault & battery — & 2ᵈ false imprisonment — there are 2 pleas, general issue & defenses on fond en droit — to the declaration — has demurred to this plea — because the pleas are inconsistent, being a denegation and a justification — 3 T. Rep. 298. Taylor v Cole —

Mr

Mr Grant for Defendt – The decln contains 3 Counts 2 for assault & 3d for false imprisonment – to this Defendt has pleaded general issue, and 2d The special matters of defence – that 2d plea is that of son assault de mesne. – 1 Saunders 77. 295. 8. T. R. Gregory Lux & Hill –

Hart in reply. the justification is irregularly pleaded he ought to have admitted the assault stated in the declaration & then have justified – he pleads a defence on fond, a denegation of the fact –

No 148.
Desjardins Lux
Toupin –

action d'injures. –
Mr Cherrier for Defendt submits the case.

—

No 1229.
Delorme Exc
Roi. –

Demurrer & plea of exception pleaded by the Defendt was dismissed – dissts Mr Justice Rolland –

The opinion of the Court was founded on the nature of the trust contained in the will, by which it was provided that the several legatees should not be entitled to their respective legacies until they shewed they had property equal to their legacies so as to secure such legacies to their children, in qh case they were to demand & receive their respective legacies from the Executor & administrator appointed by the will – That this was not alledged nor appeared that the legatees possessed such property, the trust vested in the Executor must necessarily continue. –

Monday 6th February.

Prest.

Ch. Justice Reid

Justices Pyke, Uniacke & Rollard.

No. 714

Wright sal
vs
Harvey sal

On Pliff's mo. for a Com. Rogr to U. Canada & to discharge the inscription of the Cause made by Defendr

Sweeny for Pliff — action in revendication for timber a Com. has issued at instance of Defendr to prove the laws of U. Canada, and Pliff now asks for a Com. Rogr. to rebut the testimony so adduced by the Defendr —

Walker for Defendr — The Pliff have examined Wits on the question set up by the Defendr & cannot have another day for evidence they closed their enquete without any reservation — The Commissions sued out by the Defendr were returned & published last Oct Term, and Pliffs are now too late to sue out any commission after had commn of Defds evidence — The only reservation made by Pliffs when they closed their enquete was to ex. one Daly at Quebec — After commns were returned on October last, a day was given for Enquete on 5th Decr last, when the whole Enquete was closed save as to the Commn to ex Daly at Quebec — & Pliffs are thereby now concluded, as no diligence has been done even as to that Commission

Mr Sweeny in reply — The testimony adduced by Pliffs on the point of defence cannot deprive them of the right to

testimony

testimony in rebuttal — The Commissions of Defendr were not opened last Term, but subsequent thereto by the consent of the Pliff's counsel — Pliffs. even moved for the publication of the evidence under these Commissions which was resisted by the Defendr, and the reason given was that Pliff had reserved a right to his Commission to Quebec —

No 1846
Bellamy
Gilbert
&
E contra

On Pliff's mo. to open enquete & to ex. a Witn —

Mr Nye for Pliff — one Allen a material Witn — for Pliff remains to be examined — & the enquete was closed in January last during absence of Pliff. attg — altho' the deposition of the Witn had been begun —

over to 8h —

No 524
Peck.
Hobart

over to 8h —

Handyside
Donegani
&
Donegani
oppo

On merits of opposn

Mr Walker for Oppost — oppn by which Defdr sets up certain debts due by Pliff in extinguishment of Pliffs Judgt — The Pliffs. action was not for a debt, but for a breach of contract, the Defendr could not set up anything in compensation — The debts now set up by Defendr are for notes & acceptances of the Pliffs which may be set up in extinguishment of the Judgt —

One of the sums demanded is for a quantity of 250 chaldr Coals sold by the Pliff to the Defendr which was an accommodation sale, to obtain mercantile paper from Defendr to the amount of £291.- the Coal was never delivered by the Pliffs except a small quantity of ~~59~~ 102 chaldrons ~~[illegible]~~ value - £180. 2. 9. to be set off agt the Judgt -

Exh. No. 5. of Defendr is Pliffs receipt for a note of hand of Defendr £140. 13. 4 for Geneva wh Pliff never delivd

Exh. No. 9. filed by Pliffs proves several of Defendr claims - the charge of interest is made by Defendr is made on a course of transactions between the parties -

A paper B - also shews other debts due by Pliffs - £164. 18. 7 - balce due. -

Letter C - shews that interest was allowed on the transactions between the parties -

refers to testimony of John England, as well - acquainted with the transactions between the parties -

Compensation ought to be allowed in this case, & is allowed on the principle that the other party may become insolvent - Repn p. 271. vo Compensation - and debts of this kind - 1. Pand. de Pothier. p. 166.
a liquidate debt is allowed when it may be easily proved
Dic. Droit. vo. Compensation -
335 Instruc. sur les Conventions. p. 335. -
O. Denozt. vo Compensation -.
Boucher 1846. 1847 - Instit. Com.

There has been a Saisie-arret in the hands of the Defendr - but has not been returned -

Mr Boston for the Pltffs — The opposition contains two principal grounds — 1st the attachment in their hands on the part of a Creditor of the Pltffs — The Dept has sworn to this, altho' the fact is no such attachment existed at the time —

Contends that the Compensation set up ought not to be allowed — the notes set up — are not due to the Defendt but taken up by Defendt to meet this Judgt which cannot be allowed —

Art. 105. Cont. Paris. —

1 Pigeau 663 —

2. Bourg. 561. — the debt here set up is contested — The Defendt here might have set up an Incidental demand but in matters of dommages & interests compensation cannot be admitted — & if Defendt could not have pleaded such compensation agt the action, he cannot agt Judgt — Poth. obl. No 628 — debts must be liquidated to be set up in compensation — Id. No 630 —

Pltff not bound even in case of compensation to accept a part of his debt — Defendt could not by a offer of a part arrest the ~~Oppos~~ Execution —

Repr. p. 273. Vo Compensation — there must be a similarity of the debt set up in compensation with that by Judgt —

N. Denizt. Vo Compensation — p. 2. —

There would be no end of a contest, if such compensation were allowed by the Judgt — In France the party sued out an execution parée, without calling the party before the Court — p. 141. Proc. Civ. Poth. but when a party is called into Court he ought to offer all he has to offer agt the action brot agt him — ~~art. 35~~. Ordce 1667. tit. 35., which is the law to regulate the question —

1 Pigeau 490 — In affaires appointés & en délibérés no compensation —

But

But by the acct. filed by Pliffs there appears an acquittance for all the objects claimed by the Defds except a small balance — about £72.—
a receipt for £35 for a box — for this a receipt is produced —
a special action would be requisite to maintain the demand for the Coal claimed by Defendr —
The coals used by Pliffs have been accounted for —
Full credit is given to Defendr for the amount of the Geneva —
The paper B — is comprehended in the acct. Curt. of Messrs Handysides —

Walker for Oppots The debt claimed by the Appt has been rendered certain and liquidated by the evidence adduced —
It is not intended to impeach the Judgt rendered but only to satisfy it, & therefore the authorities cited from Poth. Proc. Civ. & from ordre of 1667 — does not apply —

Bent & al'
Bethune } action for work & labor
Stanley for Pliff — plea is payt. of a part — Mrk. examd. to substantiate demand — receipts filed by Defendr for small sums — do not apply to the demand —

Mr Buchan for Defdr only £6.4.4 — has been proved, a larger sum is tendered by Defendr — the books of acct — are not evidence — not before the Court. Peake's Ev. 16 — where books are received in evidence — Books were not regularly kept — Bent's answers — Subsequent accounts between the parties settled. —

No 1025
Pierce
v
Wilson —

Action for work & labor & transport of goods —
Boston for Defendt — Puff bound to deliver the grain to the Steamboat Co at Laprairie —

2653.

produce receipts only for 548 bags — of 2 bushels each making 1090 bushels instead of 2653 bushels he had undertaken to transport — neither the cartage, nor the entry & duty on the importation of the wheat, can be allowed —

The quantity delivered by Puff is clearly ascertained & even the bags were weighed. — a deficiency of 123 bushels Rye & 150 bushels corn, amounts to £143. 6. 8½. — and even by evidence of Cheeseman, a deficiency of 23 bushels would appear —

Mr. Adams for Puff. on reply — no evidence to shew that Puff ever received any greater quantity of grain than that which he forwarded to Laprairie. —

No 1152.
Cowan
v
Turzeon

Action agt Indorser of Note

Driscoll for Puff. only question as to notice of dishonor of note — protest 5 May 1827. delay expired on 15th — accords to situation of parties — Notary said he gave verbal notice — but date not stated — verbal notice is sufficient. Chitty on bills — The law requires notice, but does say of what kind — The notary answers to Puff's letter of the 16th May, that he had given notice — but does not say when — this answer is dated 31 May —

Mr. Lafontaine for Defendt — no proof of any notice to Defendt — Verbal notice not sufficient when parties are not ~~sufficient~~ merchants — Copy of the protest must be notified

No. 1201.–
Leslie et al.
v.
Hazan et al.

Bleakley for Pltff – says he has discont^d as to Defend^t Flavey – That Hazan is liable to a portion of the demand – refers to the evidence.

Driscoll for Defend^t – The Defend^s are sued as partners – but no partnership proved – only two of the 3 individuals were in partnership – & two Gow. p. 190 – the Contract declared on must be proved No proof of value of types delivered. –

No. 564
Raymond
v.
Douglass

On re-hearing – action for a malicious arrest.

Mr. Mondelet for Pltff. there is evidence of a malicious intention – there was no evidence that any debt was due to the Defend^t. The Indg^t given by Jobson in favor of the Defend^t – does not appear to be the debt for which the Pltff was arrested at Plattsburgh And even if it were the same debt – it is evident that the Indg^t was coram non Judice. – The writ of Execution sued out on this Indg^t – was addressed to Brisset & not to the Pltff –

Boston for Defend^t – action ag^t the son of Defend^t Douglass – There is no act established ag^t the Son – he was only the bearer of a letter from his father to the Attorney, but took no active part for the arrest of the Pltff. – But the sueing out of Capias in Plattsburgh is a writ of right, & the usual course for instituting an action. –

Tomlins Dig. T. Rep. – p. 5. Malicious Prosecution
Bullers N. P. p. 11. – 1 T. Rep. 518 –
2 Esp. N. P. 525. 529.
2 Ph. on Ev. – 253. – 260.

Robertson & Co. v. Beaubien & Gerish & Montreal Bank opp^ts

The opposition of Gerrish was maintained, and that of the Bank dismissed W Costs —

Lester v. Davis —

Pliff's demurrer to the Defend^ts plea over-ruled —

Henry v. Caine & Cort & al op^ts

Claim of priviledge of the plaintiff's advocate to be paid in preference to the creditors of the Defendant, the amount of his Costs of which he had obtained distraction out of the monies levied on the goods & effects of the Defend^t disallowed, inasmuch as the attorney could exercise no greater priviledge in this respect than the plaintiff his client could have done —

Howard v. Bender & ux

Motion of the wife of the Defendant for pay^t of Costs ag^t the plaintiff on her plea to the action in consequence of his discontinuing his demand against her disallowed, on the principle that she had no right to plead to the action, which regarded the husband alone, & had no authority to make any plea —

No. 150.

Ex parte Ant^e Bertrand & Gerrard opp^t

Judg^t dismissing the petitioners motion to reject the opposition & claim of Gerrard, — the Court considering that it was filed within the time required by law. —

Tuesday 7th February.

Witness.day.

Wednesday 8th February.

Pres.t

Ch. Justice Reid.

Justices Pyke, Umacke & Rolland.

No. 1932.
Brock & al
Smith
&
Abbot op.t

Mr Beaubien for oppt. oppn. for 10 years rent on a lot of land sold under the exon. sued out in this Cause. The oppt. title by Deed of Sale by Robertson to Wm. Streeter. Lot No. 17. in first range. Robertson ~~died~~ will on 18 Decr 1809 bequeathed his property to Marie & Sutherland died 8 April 1810. Sutherland sold the property devised by Robertson to Revd Richd Bradford. He made his will 1 May 1817 & bequeathed usufruct of his property to Sarah his wife during her life & on her decease to his son Wm Bradford. Sarah Jeffrey died 3 May 1826. The lot No 17. is seized subject to annual rent of £3. 10. payable to the resp.t of Sarah Jeffries. That Wm Bradford made an exchange wt. the oppost. 27 Jany 1830. Two Wrks. are produced by oppt. to shew that rents formerly paid to Col. Robertson were paid to Bradford.

Mr. Adams for Austin Adams an oppost. he denies the right of the opposant Abbot.

The ~~first~~ 2d act produced by Oppost is a Sale by D. Sutherland as Attg of Maria & Louisa Sutherland — and as tutor of Maria Sutherland — & as authorised by the consent of Creditors of P. Robertson — & as Attg of Jas Hallowell — whereas the deed described is very different from that produced & nothing to shew he had any of the characters in which he acted —

That Wm Bradford, had only an usufructuary enjoyt — the property belonging to his children — therefore Wm Bradford had no right to sell or exchange this property wt the Opposte —

There is no proof to shew that the lot sold was a part of the 5000 acres yt belonged to Col. Robertson

This property must be regulated according to the laws of England, and therefore the titles produced are not sufficient, — the deeds ought to have been regularly produced & proved — The Stat. 6. Geo. 2d & 9e Geo. 4th — The Stat. 1. Wm authorises the King to assent to any act or acts passed by the Legislature of Lower Canada to pass any law that should in future only regulate the mode of Conveyance of lands in free and Common Socage —

The Provincial Statute sets aside the act of Parliamt — this was an unconstitutional act — & it besides recd the royal Sanction too late to give it effect as a law within the Province — the Provincial Statute was a dead letter before the consent was given by the King. & could not by such consent be revived. —

cites Law. Dec. vo Mortgage —
1. Powell on Mortgages — p. 277. 138. 140.
Bac. Ab. title Mortgage —
N. Denizt. vo Alienation. No. 369.

Mr Beaubien for Oppost in reply — The allegations in the sale by Sutherland are consistent with the deed it is not necessary to produce the authorities under gt Sutherland acted, as the property has been sold subject to the rent in favor of Sarah Jeffries, a subsequent deed gt acknowledges the act of Sutherland & the claim of the oppost who is proved to hold the rights of Sarah Jeffries — While Wm Bradford lives he has a right to the rents, & it is not stated that he is dead — There is no plea that the lands in question were subject to the laws of England — only said that the lands are held in free in Common Soccage — but even in this case the English laws will not apply — The treaty of 1763 says, that Canadians became British subjects, by which all their rights were preserved to them By the laws of Nations the rights of the Conquered are preserved unless immediately altered —

The proctn of 7 Oct 1763 introduced the Criminal & Civil law, of England into Canada, but this was an introduction ex facto, but not by law, or the King could not by his own act do it —

The Stat. 14 Geo. 3. ch. 83 — Sec. 8th — Then P. that the Canadians shall enjoy their laws & usages, & all contests be determined by those laws — the reservation as to lands in free & Com. Soccage are not specially excluded, as no rule of law is established in regard of them, & therefore they remained under the rule of law as existing in the Country — The reservations as to lands in free & Com. soccage could regard only the tenure & no other questions touching them — express enactment

was

necessary to introduce the laws of England. —
The Stat. 6 Geo. 4. is not declaratory and can be construed to have an effect only in future —
Elison. Fowler. v Elderkin & Phillips & al Appt. 20 April 1807 — ~~so~~ Laws of Canada held to apply to lands in free & Com. Socage Domat Liv. prelim. p. 3. Som. 12. 13. 14 —
It has been left to the Legislature in Canada to change the law — by Prov. Stat 15 March 1829, the French laws are introduced instead of English laws on this subject ~~—~~ this law has been duly confirmed — by Act 1 Wm. 4th passed on 10th March 1831 — this to provide for laws not assented to within the two years —

—

No 2229.
Ross
Lacroix
& E Contra

Boston for Pliff — action on 2 Obligations, for money and for value of potashes gt. late Jos. Lacroix father of Defendt. undertook to pay and deliver to Jno. McKindlay — Contract for potash dated 23d March 1804 — In the obligation for the payt. of £1200 — it is stipulated, that on default of payt. of any of the instalments, interest should be due thereon — 21 Dec 1804 these obligations were transferred to the Pliff — the balce then due was £1050 in money — £35 tons potashes —
The Pliff employed the House of Henderson Armour & Co ~~was~~ as his agents to receive the potash & account to him for it — but as to the money oblign this house had no concern — Lacroix delivered at diffe. times to this House diffe. quantities of potash — The acct. now offered by Pliff combines both obligations, in the same acct. & charges interest on the balces due from time to time of the potashes —
The Defendt. shews no payt. beyond those admitted by the Pliff, except lately from the time Henderson & Co acted

for

for him, when he rec.d several sums of money himself
This is a mercantile transaction, & according to the Custom
the debtor of an article of potash failing to deliver it, the Custom is
that he becomes liable not only for the difference in price, but also for
interest thereon — the Custom here forms the law —
Interest is allowed by the laws of this Country on all
Contracts — Rep.re v.o Interets. 469. 476. — the law of
the place where the Contract is made must govern the
question of interest — refers to decisions. p. 468. —
There is an express stipulation that on failure of delivery
the debtor shall pay all costs interest & damages thereby
accruing Poth.r 2 No 119. Tr. Usure — party entitled to interest
when money not returned at time agreed —
Poth. Vente No. 47. — 6. Denisq.t — p. 693. 4. & 704 — v.o Dommages
Blanchard le Terrier — Obl. No. 171 & 2 — & No. 346. where in appeal it was held
that interest was due on an oblig.n not performed.
Rep.re v.o Commination. p. 79. where no interpellation necessary.
By Roman law — Id.e v.o Demeure 396 where there is an express stipulation
to perform a thing in a certain time, the failure produces
damages without any demeure. — It is only where there
is no time stipulated for the performance, that interpellation
becomes necessary —
p. 463. Rep.re v.o Interets — & p. 472 — as to mode of charging interest
oblig.n No 533 where debt is of a nature to produce interest
& No 532 — where 2 debts are of a similar kind & of same
day, the pay.ts should be proportionably applied to each
2 Barn: & Cress. 624 — 15 East. 228 — 3 Camp. 466 —
2 Ph. Ev. 122. 2 T. Rep. 212 Shepherd v Johnson —
interest is the quantum of damages for the injury of non performance
Boucher Instit. Conc. No 614. 16. 17. & No ~~1750~~ 1751. —
The Defend.t has acted upon the principle that he
owed interest, & has made pay.ts accordingly —

refers to note of 17 May 1823 given by Defendt and Pliff's receipt thereon, that the Defendt understood he was a debtor to the Pliff
Domat. liv. 1. Sec. 2 No. 19. p. 22. – the interpretation to be given on the Contract according to the usage of the place where made – Id. No 27 – explains what demeure is

Mr Mondelet for ~~Defendt~~ Pliff – The only question here is that of imputation – If the payts on acct of the potash are to be applied on the money Contract, the Defendt – The Potash obligation is the most onerous as being frugifere. – liable to change in value – The obligation to furnish potash bears no interest – the stipulation as to the interest not applicable unless there be a demeure words of Stile – vo Comminatoire & Demeure. Repre applicable in this Case – Obl. No 145. – in fine. –

Mr Beaubien for Defendt – The Pliff can claim only his damages, but not interest on those damages – There is novation – ~~Lacombe~~ 2. Repre 233. vo Novation – 2 col. – Deniz. – vo Novation – Lacombe – Boucher. – Instit. Com. This being a contract not of a Commercial nature, the Custom of Merchants will not apply – Domat. liv. 3. tit. 5. p. 197. 8. 9 – As to the interest on the potash, the Pliff cannot have his damages, the value of the article on the day of delivery & the interest thereon also – Domat. Cont. Vente. liv. 1. tit. 2. Sec. 2. Somr. 16. 17. 18. page 19. Repre vo clause Comminatoire – demand necessary – Id. vo Clause penale – is merely comminatory – vo clause contractuelle – demeure necessary before penalty is incurred p 70 – Lacombe. vo Clause – Repre vo Demeure – Poth. Ob. 169 – 143. 4. – 5 – Dic. Droit. vo Demeure – Dom. & Interets. – Id vo Interets – for goods sold – Repre vo Interets – p. 466 Domat. liv. 3. p. 236. tit. 5. Sec. 5 –

Repre vo Intents Judiciaires — Tr. des Int. Camus — p. 76 — 125 — 129 — 146. — 97. — 106. 125. — 146. — 154. — 160. —

The payments made here were made without imputation on either part, & Defendr has a right to apply it to the debt bearing interest. Boucher Ins. Com. §. 622. — §. 623. — §. 624. — Id. Ch. 34. — §. 1750. p. 353 — Poth. Obl. No. 567. — Repre vo Imputation. p. 91. Domat p. 287. liv. 4. tit. 1. Sec. 4. somr 1. 2. 3. 4. 5. — Poth. Obl. No 533 — 534. — — Lecamus 226. Imputation —

The Potash delivered to Henderson Armour & Co were delivered on account of the Obligation for money and not on account of the Obligation for potash. —

Argument contd till to morrow

—

Cuthbert vs Montanary Curr & Tellier oppr

On Pleff's mo. that Oppn of Tellier be dismissed as unnecessary wt Costs & a Writ Vend: exp: be granted. —

Cherrier for the Oppr The Pleff admitting that the lot of land claimed by the Oppost had been seized under the execution sued out in this Cause, and by the first advertisement had been notified to be sold by the Sheriff, the Oppost had a right to make his Opposition, notwithstanding the notice recd from Pleff that he had withdrawn the Oppost lot from the seizure & in the subsequent advertisements for sale had so declared, because such mode of proceeding was irregular, and the Oppost had no security that his lot might not still be sold under the first advertisement, and he was not bound to take notice of such change of intention in the plaintiff, who ought to have begun

his

his seizure anew, as he could not make a legal sale of a part of what had been seized, by changing the notices required by law of such seizure. — That the original seizure here was besides illegal, inasmuchas the Defr by his plea states that he was not in the possession of the lot claimed by the Oppos.r and could not therefore by his delaissement have given up a possession which he had not, and of which the pltff was bound to take notice. —

Mondelet for the pltff — This opposition was unnecessary, as on the 26.th October the pltff caused the advertisement of seizure and sale in which the Oppos.t lot had been at first included, to be corrected and by which corrected advertisement (of which the Oppos.r and all persons interested were bound to take notice,) the Oppos.ts lot was omitted; and of this a particular notification was given to the Oppos.t on that day; still the oppos.r persisted, and afterwards on the 4.th November, made his present Opposition, without cause or necessity — That the Sheriff in this cause was regularly sued out, and the lot of land abandoned by the Defend.t seized, the Pltff having at the time no knowledge that the Oppos.t lot made a part of that lot. — Conceders proceedings on the part of Pltff regular, and that he had a right to alter and limit his seizure to a smaller extent than as originally made. —

Thursday 9th February

Prest.

Ch. Justice Reid

Justices Pyke, Uniacke & Rolland

No. 1846
Squares v. Stoddard

On motion for a new trial —

Hart for Pltff — refers to grounds of his motion. —

Mr. Goddard for Defendt — The verdict was given for Pltff wr. damages. — no new trial for small damages. —

Mr Hart in answer. The Verdict agt the charge of the Judge — only 25/ damages gt is not a satisfaction of the injury, & must prove a damage to the Pltff —

Stevens on pleads 127 —

5 Price 354 It has been usual to grant new trials where no evidence was given on the part of the Defendt — 5. Price. 354. —

No. 2028
Soupras v. Godu —

On Pltff mo. to discontinue his action on payt. of such costs as may be reasonable on their being divided between the parties —

Mr. Mondelet for Defdt — The Court has nothing before it to guide their Judgt as to dividing the Costs nor is it informed as to the rights of the parties so as to modify the Costs —

Mr Cherrier for Pltff, the Court is possessed of the cause sufficiently to see the grounds of his demand.

No. 2475.
Charron & Pratte & Soupras opt

Mr Chessier for Oppost. moves that Pleff be condemned to the Costs of his opposition — Mr Bleury for Pleff. The seizure was made of the land qt. oppost. had purchased from Defdt. —

No. 2229
Ross. — & Lacroix & E Contra

Boston in reply for Pleff — The first point here is whether the Contract here as to the potash is a mercantile transaction — this is however evident — There is no novation. Poth. Obl. No 559 — our mercantile Contract for another —
Boucher. No. 1754. p. 151 — the law merchant must be followed in mercantile transactions —
Merchants have been examined as to this Custom in the case of the delivery of potash, where there is a failure that the debtor must pay not only the value of the ashes but the interest on the amount — Ashes is a ready money article, — The Defendt. has disposed of the ashes to Henderson, Armour & Co. and instead of furnishing the ashes to the Pleff. has sent money to him, which monies were applicable to the payt. of an Obligation qt. the Pleff held agt. the Defendt. The damages claimed by Pleff are for the non-delivery of the ashes at the stipulated term — and the damages are the value of the article at the time of delivery and the interest on that value up to the present time — That no demeure was necessary where there is a specific term of performance — the lapse of that term gives rise to the damages of the Creditor, —
No. 172. Poth. Obl. said to be a beautiful reflection —

Mr Beaubien — cites Boucher. §. 73. 70. 71. 74 —
Commercial transaction does not arise from one or two acts. —
Lacombe. vo Contrainte. p. 108 +
The monies which have been paid, are agreed upon —
The declaration does not state what the ~~value~~ damage
accruing to the Pliff by the non-delivery of the several
quantities of potashes when due, but a general conclusion
~~up~~ for damages upon both the obligations. —
Refers to the testimony of Mr Leslie as to the mode of making
out a merchs acct. —

No. 727. No. 2000
Freeland & al
vs
Harkness.
&
Rutherford
vs
Harkness
&
Connolly & al opts

On motion of M. Connolly that the inscription
be discharged & new evidence adduced —
Mr Adams for Defendt objects, as no notice has
been given of it. — Motion rejected —
Mr Boston, for an Oppr says the only question
arises on the opposition of Mr Connolly. —
over to 10h

No. 2639
Roi
&
Turgeon

On law —
Mr Turgeon for Defendt — The Defendt is not
bound to warrant the debt, but only on discussion
to which the Pliff answers he is not bound to this without
tender of money and points out property of Debtor
cites Dec. Arrest. Fournier & faire valoir. — here the
Repr vo Garantie 722. — Garantie only after discussion
& here the party agreed to make the discussion —
Lacombe. vo Garantie — bound to advance the expences
of Discussion when he undertakes to make it — &
has even here undertaken to make it —

The Pltff & Debtor appear to have agreed not to make the discussion of the Debtor's property — this was a convenance between them —

Lacombe. vz Garantie — Pltff should have given Defendt to be present at the discussion of the debtors property —

Mr Lafontaine for Pltff. The Pltff not obliged to any discussion — as Defendt does not shew that the debtor had any moveable property to be discussed — The consent of the Defendt was given to put off the sale — The exception de discussion is not peremptoire, but only dilatory —

Poth. Obl. № 409 — Creditor not bound to make a discussion which is too difficult —

Poth. ob. № 410 — & № 414. —

D. Denizt. v. Garantie. pp. 500. — 501. — № 37. 38 —

№ 569. Poth. Vente. — 1 Pigeau 187. —

Rép.re vz Caution - 772 & seq. —

D. Denizt vo Caution —

The authority from Lacombe applies only to case of a Rente. —

Turgeon in reply — It appears that there were moveables this is enough they ought to have been discussed — The discussion becomes necessary — The Cedant is bound only to the insolvency of the Debtor only at time of Cession — Lacombe. vz Garantie —

The Cedant is more bound in case of a rent than for a simple debt —

No 704
Barrow
Lacourse
Moreau opt

On opposition of Moreau —
Adams for Appost — the opposition is made out, claiming a dividend on the money levied on the principle of insolvency —

Mr Sewell for Pliff — oppn by the Defendts Attys for defending the Cause — The Appost has not established his claim of insolvency — or if he has, it must have been acquainted with the fact sought not to have incurred expence in the Cause —

Adams in reply — the evidence is sufficient. —

—

No 15
Johnson
Brown
Johnson opt

On opposition that property seized be sold subject to the retrait Conventional. —

—

Johnson
Brown
Brown opt

On oppn afin d'annuller —
Bourret for Appost — the lands were under seizure at the time the Exon & seizure were made — No proof —

No 1194
Scott sal
Try

action by indorser agt. the Indorser —
Chitty. p. 397 — proof of signature of maker admitted by endorsement —

Walker for Defdt — The note was not in the Cause when the evidence was given — Judgt. given on note

in

in favor of Pemberton & Co at Quebec, and Pluff ought to shew what value he gave for it.

№ 2172
Ritchie & al
Watson & al

Action on a Contract of Garantie

Walker for Pluff. Defendr became security for the delivery of a quantity of timber by one Eager + dated 8th Jany 1830 — delay was given on obtaining the additional security from Defendr on pt action is brot — The evidence is complete. +

Driscoll for Defendr — The must be a principal contract on which the accessary contract of the Surety must apply — no such proof here —
Chitty on bills. p. 3 — note (d) — No consideration passing from a Creditor to a Debtor, obligation is not binding — This must appear on the Contract & cannot be supplied by verbal testimony +
The Contract is evidenced by 2 witnesses, but who have not been produced — but other witnesses — the subscribing wits being absent in Lr Canada ++
1 Ph. Ev. p. 218. & 225 — 462. & 463 5th edit. +

Walker in reply — This is not the case of a Specialty where witnesses subscribing must be adduced — the witness not within the jurisdiction of the Court — no objection was made to this evidence when taken — Has proved the signature of the subscribing Witnesses — The two Contracts are united, & obtaining time to Eager to complete his Contract was a sufficient consideration — There is nothing in Equity to preclude the right of Pluff & the whole consideration not necessary to be set out +

Full

Fell on Garantie p. 36 — states that at first a consideration not necessary to be set out — the case here different from that of Wain. v Walters p. 37. — the consideration not necessary to be expressed — it is enough that it may be implied — app. Fell — Lyon. v Lamb. — other papers may be had recourse to, to prove the consideration — Ellen. 270 — Starkie on Ev. 603. — 6 Eart. 308 — Holt. N. P. p. 453 Wallace. v — 9 Eart. 348 — Starkie 613. — 14 Vezey. p. 188. — 15 Vezey. 286. — 16 Eart. 372. — a suspension, or a relinquishment of right to the original debtor is sufficient consideration. — 3 Bur. 1672 — Pillans. v Vanmierop — 3 T. R. 654. — B. No 1 action on can on assump. Com. Dig. — Ellen & Co 158. 9 — 1 B. & ald. 690 — where the original garantie is in writing a parole extension of it is suff^t —

The terms of the Contract may be collected from several & distinct papers — Starkie 603. —

603 2 Bos. P 238. Woolrich 247. 8. 7 Moore. 252.

No 2495
Legault
Crévier } action of damages for not completing a house for Pltff on contract —

Day for Defend^t — There is no evidence whatever on the second contract —

No 2009
McNee
Brown — } Inscription irregular — notice served at office of Mr Day —
Inscrip^n Dec^d —

Friday 10th February.

Prest.

Ch. Justice Reid.
Justices Pyke Uniacke & Rolland

No. 1711.
Panet & al
Lorin & al

On Mr Lafontaine's motion to dismiss the action in consequence of an agreement between the parties —

Mr Guy for Pltff contends that the action cannot be dismissed in this summary manner. —

No. 864
Bruneau
&
Bruneau
&
Charbonneau
oppt
Aubertin Intervs

Mr Sewell for Charbonneau —
On 4 July 1785 — marriage between Jac. Aubertin & archange Dubuc — she held an estate coming from her parents — on 28 June 1827. she died leaving a child Arcange, who died a few days after her mother — & heir of her mother of the pre
3d May 1787. a mutual testament between the husband & wife — Aubertin kept possn of his wife's estate under this will, until it was seized about 2 or 3 years ago — The heirs of Arcange Aubertin now make their opposition to have the land. on the principle that Jac. Aubertin had no title & could not sell to the Bruneaus. —

Mr Casimir for Pltff — The Pltff obtd Jugt. agt Defendt. in Octr. 1828 & seized this land. now claimed by opposts on this Jac. Aubertin intervened as the Garant of Defendt

to

to whom he had sold the land — Jac. Auberton claims the property under the will of his wife, and has possessed as proprietor for 30 years & upwards & has acquired a prescriptive title, even without title The Stat. of 1801 has merely interpreted the Stat. of 1774. & even if the will in favor of the husband be null yet the title is good under the prescription — cites Repr. v. Nullité. p. 267. —

Sewell in reply — the plea to the opposition admits the allegations in the opposition, but sets up a prescription agt. it — now this admits the will of the wife as a right of claim — here the wife could make no such will, it was a nullity —

2. Fer. Gr. Cout. p. 426. No 4. — no prescription agt. a title that is void & null — cites ~~an~~ arrets to that effect — the vicious title may be set up agt. this prescription. Poth. Prescrip. No 172. 192. — The article 282 prohibits donations between husband & wife p. 1552. Fer. Gr. Com. Desgodets. prescrip. p. 384. — p. 266. 2. Vol. Fer. small Custom — 2. Gr. Cout. p. 425. No 1. — Dunod. p. 16 — 21. — 34. — cites 113 art. p. 342. No 29. — no prescription can be founded in favor of a husband on a donation from the wife. —

Repr. in the page preceds that cited, says that a nullité absolue cannot create a title on which any prescription can be founded. —

Repr. v. Prescription. p. ~~378~~ 318.

—

The wife cannot make a will in favor of her husband. Perrault v. Davaine — Lally & Boston

her cannot present p. 38. Dunod.

Repr. 323 Prescrip. v. Beaumont widow Racine — Oct. 20 — 1805. —

Bruneau in reply — the oppos. does not set up any title but that of prescription — the 2d plea, is the will, but the Cause

ought

ought to be judged upon the first plea of prescription to which the Oppost replies generally, but sets up no vicious title to that prescription. —

No 2683.
Hunt
McKay, Cur'

Action to rescind a deed.

Rossiter for Pluff — the deed was obtained by fraud from the Pluff by the absentee — refers to evidence adduced — claims the fruits & revenues — cites 1 Bourg^n p. 130. — 132 —

No 296.
Harwood
Whitlock

On re-hearg.

Buchanan for Pluffs — there is sufficient to shew the Defend^t adopted the purchase made by his attorney — The Judg^t was rendered on Confession — the property was sold by the Sheriff for £1500 — this the Defend^t never paid, but merely £450. — This makes up the stipulated sum of £1050 — g^t Defend^t was to pay for the Fief on the original Sale — Fonmour Sec. 803 & 814. — There are many means from which the truth of the Contract between the parties may be discovered —

The Defend^t is evidently proprietor — and the Retract ought to be granted — leaving to Pluff to reimburse what the Defend^t may have paid for the Fief — this is the Judg^t g^t ought here to be granted — Retract. 317 — he refers to p. 154 as to the course to be taken — The Defend^t may be called to affirm on oath the true price he has p^d for the property — Fer. on 136. art. Cont. small & Dct.

The

the adjudging of the retrait is a preliminary matter — A. Denoz. vo Retrait Feodal — p. 320. No 13. — 3. Hervé. 271. — 4 Guiot 195. — Levonnere Fiefs. 505.

Mr Gale for Defendt — There is no evidence to shew any sale made by consent of the defendt — no authority to his attorney — no possession of defdt under that sale — The Defendts gave no authority to his agent to purchase

Buchanan in reply = the short time after the transaction of the Judgt & proceedings under it is a strong presumption The Court may call party on oath

Saturday 11th February.

Prest.

Ch. Justice Reid.

Justices Pyke, Uniacke, & Rolland

No. 253.
Bostwick et al
v.
Donezani et al

mo. of Defendt. to revive rule for ex. of Pltff on facts & articles —
Driscoll, the rule is gone & cannot be revived —

No. 2009.
McNee
v.
Brown

On Pltff mo. to ex. Defendt. on facts & articles at the Enquete Sittings. —
Mr. Moreau for Defendt. resets the application as contrary to the rules of practice —

No. 1042
Bullis
v.
Douglass
&
Boston et al
opts

On opposition of Douglass —
Taylor for Oppost. — on 19 ~~Oct~~ April last, a Judgt was rendered — there was then no motion made for the distraction de frais — & therefore by the law of the Country, a compensation was effected between the Pltffs costs & Defendts debt — The distraction de frais was obtd. on the 20 April — Actes Poth. Mandat. No. 135. 137. — Denizt. vo Distraction de depens su. 4. — 1 Pigeau 419. 20 — Repn. vo Distraction de depens —
That the Pltff has paid a part of the Costs to the Attorney qt. is now demanded by the distraction — and of this he says he is entitled to make proof. — Denizt. vo Dis. No. 9. — 1 Pigeau. 420. 421 — O Denizt. vo Frais. No. 9. —

That divers sums of money have been included in the bill of Costs which the Attorney has not disbursed and constitute no part of his frais & Salaires & debourssements — here the expenses of the Witnesses & experts have been included in the bill of Costs — Repr de Jurisprudence. vo Distraction de depens — Eq de Jurisprudence vo Eod. —

That divers sums of money have been included in the bill of Costs which have been paid by the Defendt — Serpillon tit. 31. p. 576 — & Pigeau — above referred — 2 Raviol. p. 445 —

There is a slight miscalculation in the bill of Costs — of 2½ —

Boston for Oppost — The Judgt in this case was really given on the 20th April, although announced on the 19th & so noted. — The notice of the application for the distraction was made to the Attorney on record — That the Term may be considered as one day & the mo. may be considered as made simultaneously with the Judgt — As to the application whether in the name of the Pliff or his Attorney is now immaterial as it was granted & must have effect. —

Cuvillier Greenfield & Warwick. & Hart. — Hendr. T.S. costs allowed to Attn —

That distraction may be obtained at any time before the suing out of the execution — and even if a Saisie arret is sued out, it will not divert the right of the advocate — Repr

The Defendt should have made an offer of what was due by him & set up his claim for compensation as to the balance —

The whole costs were taxed, and the balance settled. and even at less than there was due to him. — that he has included the expences of the Wits in his bill, as he generally pays the Wits of his clients. —

Taylor in answer — the Judgt. was rendered on the 19th April. refers to records of the Court — The Judt. must be reckoned from the day on which it is given —

That when distraction is granted after the day of Judgt compensation will apply —

That no offer here was necessary — as he contends the opposition afin d'annuller will apply here without it

That it is no part of the Attorneys duty to advance money for the witnesses, if he does it must be considered as advanced on acct. of the client, & forms no part of the Salaries for which a privilege is given to the advocate —

That the bill of Costs presented here is that between advocate & client, and not the privileged costs of the advocate. —

No. 2154.

Bell
Cartier
&
Cartier & al opts

On opposn. afin d'annuller. —

Greece for oppt. the farm on which the Cattle & utensils on it were seized, were bequeathed to opposts. on their coming of age — & The Defdt remained in the possn. of this property, but being now insolvent, the present claim was made — The Defendt made a transfer of these articles & cattle he then held to the amount of one half of what had been so bequeathed to the Opposts. & other cattle on other farms to make up the amount — That the Opposts. here were seized of this

property

property under the will, and the transfer here is merely a settlement — Poth. Cont. Orleans. tit. 16. No 66 — and although the cattle are not the same they must be considered as replacing those which were bequeathed. Lacombe — vs Hypoth. sec. 7. — Poth. Orleans. No. 101. tit. 16 — The cattle here were estimated at a certain sum, and the cattle now seized were put on the farm to answer the value of those which had been sold —

Mr Griffin for Pliff. The claim of Oppts is founded on 2 Not. deeds — the cattle here were the property of the Defendt — and taken by Opposts in payt of a sum of money stated to be due to them — By these acts the opposts acknowledge to have received the whole amount of this sum ~~except~~ besides a small balance ~~beyond~~ it. — It is proved that when these acts were made the Defendt was insolvent — some of the claims of the opposts are grounded in other causes on this principle. — Opposts admit identity of articles seized to have been those transferred to them by Defdt —

Sewell for Pliff. There is nothing to shew the subrogation of the cattle here —

No 1801.
Lemieux. vs Bellanga

On action hypothecaire. —

Grace for Pliff — Question here as to the right of the Defendt to retain the property mortgaged, purchased by Defendt until his improvements be paid. —

Lacroix for Defendt — is entitled to his improvements

before

he delivers up the property – Poth. hyp. p. 439. 40. Sec. 4. O. Denoz. v. Deguerpissements, No. 21. 22.

Domat. 46 – liv. 1. tit. 2 Sec. 9 & 10. –

Repn. p. 347 v. Ameliorations – Dec. Droit v. impenses – & Meliorations – Jugt. Beaubien & Morley. Charbonneau & Pillet & Pillet –

Greece for Pleff. This action is founded on 101 art. of the Custom – Repn. 663. 8 vol. 2 col. –

2 Argou. 411 – 1. Pigeau 594. – 596. – 2. Gr. Cout. p. 85. – Observations – Loyseau, Degt. – p. 167. liv. 6. ch 8. No. 8 – Id. No 25 – Guy p. 293. Chorier – The art. of Ordce. refers only actions possessoires – when the property is to be given up to the proprietor, ~~whereas~~ as in the case of Hypothequer, the property is delivered up on Justice –

No. 482.
Smith
v.
Blanchard
&
Blanchard
opt

On oppon. of payt. of the Jugt. –

Bruneau for Pleff – The Defendt. has paid only a small sum – The Defendt. appeared in the Cause – but did not plead to the action – the Defendt. swears that he had paid the whole – when only a small sum has been paid –

Monday 13th February.—

Enquête day.—

Tuesday 14th Febry.—

Prest.—

Ch. Justice Reid
Justices Pyke, Uniacke & Rolland.—

No. 1577.
Pozer. v. Donegani } Walker for Defendt moves to discharge the inscription of the Cause as the return of the Com. Rogr. Pickel for Pliff. the cause regularly inscribed.

No. 1846.
Bellamy v. Gilbert & E contra } On Pliffs mo. to re-open enquête & for being allowed to adduce further evidence in support of his demand.—

Mr Day for Defendt contends that the application cannot be granted — as the enquête was regularly closed—

No. 2385.
Hodgson v. Simpson } On Pliffs mo. for publn of Defends. Com. Rogr. Walker for Defendt there can be no publication for benefit of Pliff, until he has closed his Enquête.

No. 797.
Joyal dr. Carcie
Jos. S. Kollmeyer

Sewell for Pliff. action to rescind a deed of sale set aside on grounds of fraud — The Pliff was universal legatee of her husband — & in whose succession was the house in question — she held the property up to April 1826 — The ~~Pliff~~ defdr obtained a consent of Pliff to make sale by auction of this house & to obtain the house, he dissuaded several persons from bidding, saying it was for a settlement of family matters and the house was adjudged to the ~~Defd~~ Defdr — The ~~Pliff~~ Defdr obtd the property at a low rate, £240 — while it was worth £400 — refers to the testimony in the cause —
Bro dr. Pomainville is a principal witn — says he was requested by Defendr not to bid — & to tell others not to do so —

Mr Peltier for Defendr — The Pliff has not established the facts stated in the Declaration — the only two witnesses are Pomainville & DeChantal, but they are in contradiction on material facts that their testimony must go for nothing — Pomainville says that he alone spoke to DeChantal — while DeChantal says, that Defendr also spoke to him on the subject of the sale — Pominville is also in contradiction with what Hall, Duplessis, Delorme, Castonguè — Pomainville is given to liquor, & his memory is affected by it — several witnesses ascertain this — particularly Dr Vallée — The declarations made by the Pliff long after the sale of her being satisfied with the sale, and with the conduct of the Defendr — see testimony of Williamson — & the admissions of the pliff in her answers on faits & articles —

Mr

Mr Sewell for Pliff persists in the grounds of his action being supported by the evidence. —

No 714
Wright & al
vs
Harvey & al

Sweeny for Pliffs action to recover from Defendts certain quantities of timber, & several other articles belonging to Pliffs — action of revendication. —

The Defendts have pleaded 4 Special pleas — stating that the timber in question was cut on the Crown lands without license — that it was seized by Mathewson a sheriff in U. C. and was by him sold publicly — & that the Defendt O'Donoghue became purchaser, who made over part of the timber yt was delivered to them in consequence and under which title the Defendts hold the timber. To this the Pliffs reply, that there was an authority given by the Crown to cut down the wood on the Crown lands for the fulfillment of a contract entered into between Thomas Wood & the Commissioners of His Majesty's Navy for the supply of the Navy Yard in England — Copies of this Contract have been produced certified by the Secretary of the Province. Our Campbell was appointed the Agent of Mr Wood who came to Quebec and agreed with one of the Pliffs touching the cutting down the timber in the Crown lands in U. C. — The Contract between Campbell and the Pliffs is also filed — it does not specify clearly the object of Mr Woods Contract, this was more specifically expressed in another Contract of the same day between the parties ~~of the~~ exh. No 5. In July 1825. the wood was brot down to the

Chaudiere

Chaudiere falls, where it was seized by one Alex^r Mathews on the Sheriff of Bathurst, as having been cut without a license — he would not recognize the contracts under which the Plff. had cut down the wood — & persisted in making a sale of it as forfeited to the Crown — on 25th July the raft is forcibly removed by the Sheriff to the ~~South~~ side of the River St. Lawrence the sale was made within 3 hours after the publication of the sale, and persons were brot there purposely to purchase the raft — one Donoghue, a man of no property purchased, and immediately made it over to the other Defendants — This was a contrivance to get the timber from the possn. of the Plff — altho' the Sheriff declared the sale abt. he made for ready money yet he rec^d a draft on the House of Atkinson & Co. at Quebec, which was never honoured, & never was ever rec^d for the timber —

The question here is, whether the Sheriff had a right to seize this timber, and if he had such right yet that he had no right to sell it — This is answered by the Atty General of U. C. —

Mr. Walker for Defend^ts The Plff on 25th July 1825 had not the legal possession of the timber in question — The plea here is a possession under a title from the Kings Officer in U. Canada — & it cannot here be disputed — that title here cannot be impugned being made in another province over which this Court can hold no Jurisdiction — The timber was cut on the waste lands of the Crown in U. C. — & reserved

for

for the use of the Crown, it was red pine, which is of a particular quality & held in great value — a new District was formed in that part of the Province & Col. Powell ~~was~~ appointed his Deputy Sheriff, in order to arrest the depredations committed in that part — Exhib. No 1 of Defdr letter in 1824 — from Attys Genl to Col. Powell — also letter exh. No 2. — as to the mode by which persons having licences should conduct themselves. — The licence of the pltffs here was never made known to the public officers in U.C. No 3. Bill of sale by the Sheriff to O'Donoghue on 28 July 1825 — No 4. Transfer from Donoghue to Defendrs of 30 July — No 5. letter from Col. Hillyard to the Sheriff to arrest the depredations on the lands of the Crown — No 6. letter from the Attys Genl to Col. Powell — of same nature as that written in 1823. — The constant practice was for the Sheriff to seize and sell all timber cut down on the Crown lands. — That information had been given to the Sheriff that the pltffs had committed considerable trespasses on their lands — and on their first raft passing the Sheriff called on the Pltffs to shew their licence — yt they promised to produce, as it was then at Quebec — asked for a few days to produce the Contract — it was produced and on examination found that the timber had been cut nearly a year before the date of the Contract — this he considered as a trespass, on this acct the Sheriff took advice from our Bolton & Reddenhurst, & was told that the licences produced

were

were good for nothing — on this the timber was sold — After the seizure the Pluffs were disposed to carry off the timber after the seizure, and on this the Sheriff took people & seized the Raft — it was not then on or near the L.C. shore, but lay in the stream, not above 1/3 across the river. — The time of sale was communicated to the Pluffs — who again attempted to carry off the raft — The sale took place the next day — the Pluffs. again produced their papers — but the Sheriff declared that the papers were of no value, and the sale was made in the presence of a great number of people many of whom were bidders — The sale was made on the 26th July but the Deputy Sheriff chose to be advised by his principal before executing the bill of sale to Donoghue, & being advised that he had done right, the bill of sale was executed on the 28 July — The raft was delivered to the purchaser, and proceeded to market — it was seized in this district —

The paper № 1. produced by Pluffs. is a copy of a license supposed to have been granted by D Bathurst in 1824 — also a copy of Woods Contract of 12 Febr. 1824 — the quantity of timber was to be delivered half before march 1825 & the other in March 1826 — The license refers to the obtaining the license from the Surveyor General of the woods and Forests in the Province, which was a necessary precaution to prevent depredations beyond the quantity of timber it specified the license is dated the Surveyor General — The Copy here is certified on 31 May 1830 — but the original ought to have been produced, or a sworn Copy — The exhibit № 2. is also a copy — not sworn to — it is a certificate of Mr Montgomery in 1825. about one month before the Seizure № 3. is a power of Attr from Wood to Campbell

and

and is dated 26 Feby 1825 – one year after the trespass
& can have no retrospective effect – no verbal authority
could be of any avail here, nor could such have been
given – This document is not authentic and was never
deposited in any public Office – only a Mr Campbell
& notary public certifies that the original was produced
to him & he certifies the copy accordingly in May 1825 –
The exhibit No. 4 – is the only paper that has any appearance
of authenticity – the Contract of Pluff & Mr Campbell in
Dec 1825 – by wh they agree to deliver 60,000 feet red
pine timber at Quebec on or before 31 July 1825 – but
is stated as Merchantable timber, wh is different from
Government timber – could not be in execution of the
Government Contract – but Mr Campbell contract for
himself & there is no mention in the Contract of
Woods Contract – and besides it was too late for
this timber to reach the Kings wood yard in England
by the 25 March 1825 – The Pluffs had cut much
more than the 60,000 feet of timber – as the quantity
seized was 70,000 & he had been allowed to pass down
a cut of 18,000 on a promise to produce the licence in
question – The exhibit No. 5 – has been fabricated –
to supply the deficiencies of the Contract No. 4 – No 5 –
purports to be a Contract between R. Wright & Campbell
dated 23 Dec 1824 – a date corresponding with exh. No. 4.
it is sous seing privé & is singular when same day
the parties had executed a Notarial act the same
day – This sous seing privé is the only one that has
any reference to Woods Contract – it is subscribed by
Chas Fowot a N. P – but no date to this certificate –
which is suspicious & meant to blind the Sheriff &
Assistant – the Sheriff formed a right opinion upon
such a paper and seized the timber – Ruggles Wright was

at

at Quebec, when the papers were written for, & it is probable it was then manufactured — John Saxton Campbell is produced to prove this Contract — the very party who made it — there is no witness to it — which is unusual in contracts of this kind — The copy shewn to the Sheriff is dated in Decr. 1825 — instead of 1824, which it was intended to be done to give a colour to the Contract — The copy is said to be under the hand & seals of the parties but the original produced by J. S. Campbell has no seals to it — this original bears date in Decr 1824 — & the paper carries the manufacture mark of 1824 — which could not well have been trol to Canada before 1825 — The signature in the copy is differently written from that in the original — The notarial contract of Decr. 1824 — is stated to be between Ruggles Wright on behalf of himself & others, whereas the contract sous seing privé it is described to be between R. Wright & Sons — These are words entertained in the copy, "should be delivered" are not to be found in the original produced by W. S. Campbell — all these discrepancies shew this contract to be a fabrication of 1825 — P.L. Ev. 475.6 — party cannot be allowed to prove his own deed —

Exh. No. 6 — a letter of July 1825, from authorities of York to Mr Campbell — this is the first notification of woods contract — one year after the depredations committed, — and a few days before the seizure — If this contract of wood were not communicated, but produced occasionally as circumstances required, it might be abused in a way to cover all the Contracts made in the Country for private purposes —

As to the testimony of the witnesses — refers fact to Andw Wilson, a magistrate, a witness for Pltffs — he assisted the Sheriff to make the seizure — he is contradicted by other witnesses, & is addicted to liquor not to be depended upon — he speaks as to place where the raft was seized —

he

he has produced a plan, on which he had put down some remarks, and from which it would appear that under the three depositions given to the Pleffs raft, it was in U. C. — This Wt is materially contradicted as to the Sheriff allowing a third raft of Pleffs to pass as being covered under the same Contracts — whereas it was seized and sold to the pleffs themselves —

O'Hara's testy — states that pleffs claimed his protection for the timber they were then rafting —

The Contract made by Pleffs with Tilton in 1824 which was verbal and only afterwards reduced into writing in Dec 1825, was also to have a retrospective effect — but this contract is not produced —

Campbell says he first intimated his being agent on this Contract in 1824 — June or July — Tilton made his subcontract about that time & began to cut down timber — Two Witnesses exp. say they were hired by Tilton in May before, two months before Campbell communicated his agency in the Contract of Wood —

Tilton Davis & Wilson have sworn that the raft was not seized on the Sunday the 25 July, that the Sheriff did not seize it till next day — contradicted by O'Hara — McReady — and Tilton's deposition before the Commissioners to enquire into the Conduct of the Sheriff

The timber when it arrived at Quebec was sold by Mr J. S. Campbell & Co Campbell & Shepherd & sent to England as common Merchant timber, and was never sent to the Kings Navy Yard — & was never so intended —

Argument continued till to morrow

Wednesday 15th Febry

Presd.
Ch. Justice Reed
Justices Pyke Uniacke & Rolland. —

No. 1230.
Delorme & Perrin — } On Defendts mo. to discharge inscrip^n as parties are not at issue. —

Mr Bourret for Pliff — the parties are at issue & the delay to reply is expired, even if party were entitled to it. —

No. 494.
Fisher & Proper. — & Proper opt } On oppos^n afin d'annuller. —

McCord for Pliff — the deed of sale set up by the oppost. was obtained by fraud & collusion with the Defendt. —

Mr Walker for oppost — The oppost is the father of the Defendt & was never the proprietor of the lot of land in question — the property was acquired by the oppost & the deed was originally given to the Defendt as representing the oppost. —

No 529.
Hutchinson & Hutchinson &c } On Defendts mo. to quash the attachment sued out in this Cause —

Walker for Defendt — The affidavit is insufficient — the ground of action is not disclosed sufficiently — 1 Wilson 232 — Doug. 467. 745. 1 M. & Sel. — otherwise insufficient. — The attachment is agt the widow

of

of Spragg - in her capacity of Tutrix, noths said agt. her & ~~and~~ the partnership insolvent - yet the partnership ~~her~~ property here has been attached - Scott & al v Sterne & Co. in appeal - 1. Montague p. 100 - note. 2. 3 - p. 184 - 198 - no separate Com. can be maintained where there is a Joint Commn - 2. Bell. 536. ~~540~~. It is not alledged that the widow is insolvent -

Grant in reply - the affidavit is sufficient -

No. 2090.
Herrick v Tarble } On ~~Defend~~ Pliff's mo. to dismiss Inscrip: en faux be discharged for want of proceeding -
Walker for the Defendt - this appn. irregular. as there is yet no inscription en faux made in the Cause -

No. 2202
Tarble v Herrick } On Defendrs mo. to dismiss the action for want of security for Costs -
Walker for Pliff - application premature -

No. 714.
Wright & al v Harvey & al } argument continued from yesterday -
Walker for Defendt - The exh. No 1. has not been deposited, but is certified by the Notary Campbell - The ex. No. 2 is a copy of a copy - and neither is authentic - I. S. Campbell produces the original on his examn - & there is a difference between it

st and the copies agreed. d is addressed to the Surveyor General of the woods & Forests in N. America — & in the copies, the direction to the Surveyor General is not contained — The power of attr of 25th feb 1825 from Wood to J. S. Campbell, he says he cannot say when it came to his possession & it was never to be posted or exhibited any where — The pretended letter from J. S. Campbell to the Plffs. in July 1825 — has not been produced — without any such information given of the Contract it appears that Felton had cut nearly 100,000 feet of red pine in fall of 1824 — Campbell even agrees to take the timber after the term of delivery by Plffs at a lower price than Contract with them — The advances made by C. were not charged as wages — but to Plffs —

As to the law of Case —

None of the document any evidence is sufficient, — not authentic — Ph. Ev. 403. 424 — 1. Starkie 151 — 155. 156. 157. —

The practice of making Contracts has been sworn to by two wits — namely that the party must first ascertain when the timber is to be found & even to have cut down a quantity of it — this not consistent with the right of the party — The Surveyor Genl. of the woods under this license, should be first approved this authority obtained as to place a quantity of wood cut —

The conditions of Sale made by the Sheriff — this the general course on such seizures — refers, evidence — adduced — The law has been spoken to by two Attornies as to the authority of the Sheriff to seize & sell —

refers

refers to the examination of the Att. Genl. of U. C. ~~Stat.~~ Doug. historical acct. of first settlements in Colonies p. 378. 484. refers to 9e Ann. Ch. 17. — & 8 Geo. 1. ch. 12th — in 1721 — sec. 5th — the wood cut down is declared forfeited to the Crown — This law has been extended 2 Geo. 2. ch. 35. — 1729. — The Courts of K. B. in U. C. cannot entertain any prosecution in rem on property seized as belonging to the Crown —
Chitty on Prerog. 138. 9. 140 — 208. — 334. 5. — Com. Dig. Vo — Chace. (A) —

Mr Sweeny in reply — The copy of the licence produced by the pleff, was exhibited in the Secretary's office in U. C. and a certified copy produced. The other copy is certified by the Prov. Secretary of L. Canada — The power of Attys of Is Woods is proved by the admission of the Attys for Deptl — it has a retrospective effect — & was not even necessary, as the authority to Woods goes to his workmen & servants — exh. No. 4 & 5. These contracts are for different quantities of wood & on different principles, gt is the reason the contracts were made separate — The date is an error as the paper was filed in this Court in Oct 1825. — The Secretary's letter in July 1825, shews that the documents in question were recognized as authentic documents. all these papers were read to the Sheriff ~~&~~ for the seizure. But no other paper was necessary to be produced but the licence & contract with the Crown — The Sheriff ought to have suspended all further proceedings after seizure, on seeing these documents — the property was intended for the use of the King — The opinion of the Attornies consulted by the Sheriff could give no authority to the Sheriff — The opinion of Attys Genl. is more guarded —

guarded, he says the Sheriff should have stopt after seizure. — there is no proof of any instructions from the Government to sell property so seized — there was an examination into the conduct of the Sheriff, and he was superseded & another appointed O'Hara is obliged to admit that timber brot down a merchantable timber may be made fit for Govt purposes & it is generally made so —

No 1234
Jessopp & al
Field

Action for penalty —

Buchanan for Plffs — the Defendts have received into their possession goods contrary to the provisions of the Stat. 6. Geo. 4. ch. 114. — circumstances only can be relied on to shew the knowledge of the party — the goods in question, shoes were found some of them in a concealed situation, & on hearing of the approach of the Custom house officers — the shoes were scattered about Attn Gen. vs. Good — McLellan & Young. 1 vol. 286 — The goods were placed wt Defdt by one Wheeler, who lives in a distant part where smuggling is carried on — they were brot into province in a Canoe & not entered at the Custom House — Yet Defendt is heard to say that Defdt did not know from whence the goods came, altho' he was present when they were brot to his store —

6 Geo. 4 ch. 114

Boston for Defdt — There is no evidence that Defdt had any knowledge of these shoes having been brot to his house — were brot there during a sale — Defdt had not seen them — the case even had not been opened —

No 1256.

Jessup. & al
v
Smith —

Action for penalty

Buchanan for Pltff — some kegs of tobacco were found in possession of Defend^t — when called on by Pltff — the Defd^t was agitated, could give no information about the tobacco, but on search^g found 2 kegs in the Cellar — went to the Outhouse, where tobacco was found in flour barrels over which ashes had been thrown — found also some Cutt tobacco among some sugar —

Mr Mondelet for Defend^t — In a doubtful case the balance ought to hang in favor of the accused — there is no intention shewn of Defend^ts concealing the tobacco — The Defend^t was sick when the tobacco was brot to his house & he had no knowledge of it — The testimony of the custom house officers is suspicious, and their character here is brot in question.

No 219.

Prevost & ux
v
Breux

On law —

Cherrier for Defend^t — action for share of Pltffs wife in the succession of her father — the wife is a minor, but claims under her emancipation by marriage there does not appear that any immoveable right in question — still defend^t contends that she cannot maintain her action without the assistance of a tutor ad hoc. The minor may administer but cannot alienate his capital nor dispose of it in anywise as certain capital without special authority — The question is interesting as moveables constitute the greater part of the fortune of individuals — 1. Bourg. 74 — par. 27 — refers to arret

cited

cited from Deniz^r v^o Emancipation. N° 28. — Id. v^o Compte. N° 22. —

Lafontaine for Pliff cites 239^e art. of Custom — Fer. on this article says there is no necessity for a tutor or Cur^r — art. 233. — the action here is merely for moveable property — the husband alone might have brot the action — Rep^re v^o Curateur — p. 194 5. — refers to case of a minor married — refers to v^o. Autorisation — 1. Pigeau 75. Rep^re v^o Emancipation — O. Deniz^r v^o Mineur. 342 — Id. v^o Emancipation — art. 239 — Rousseau Com^te — p. 40. N° 1 — p. 27. N° 5. 6. — O. Deniz^r v^o Curateur N° 5. —

Cherrier cites p 74. Bouq^r §. 29.

N° 852
Hunter
v
Calder
Wall^r & by reprise d'instance —

action for house rent —
Mondelet for Pliff — bat^r due of £26 Def^rs were authorised to lay out the rent in sundry objects of repair — but they have expended part of the rent in objects which they were not authorised by the lease — Poth. N° 97 obl. —

Boston for Def^ds The Defend^rs are justified in the expenditure laid out by them — it is agreed that the work was done, it only remains to settle the right — refers to ex N° 1, bannister of a stair case on Cherry objected to. —

N° 1311
Lindsay
v
Cuvillier

action by indorsee ag^t the drawer —
Walker for Pliff — action of Oct. 1827 — the plea is general issue, under it has produced

a

a new agreement between the parties since the action was instituted, but which cannot be received without a plea to support them — Pltff moves to reject the papers produced —

Becumbin for Defendt — Pltff agreed to accept a dividend of 12/6. on the whole debt on 4 actions & notes accepted in part — these are produced —

Thursday 16th. Febry.

Pres.t

Ch. Justice Reid
Justices Pyke, Uniacke & Rolland.

No. 751
Wheeler
Holmes

Question as to Costs —
Bliss for Pltff contends that all the costs ought to be paid —
Boston for Defendt — the sum awarded to Pltff is under £20 stg & Pltff ought to reimburse the deftt

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No. 1941.
Rex
Chs. Tebo

On writ of Certiorari to ex. Indt of a Justice of Peace —
Mr Cherriè for ~~Defendt~~ Mr refers to Stat. 1830 Ch. 1st & art. 6. The party is not entitled to any remedy when his fences are in bad order — It is true the article 9th applies to persons allowing their cattle straying on the highways —

Mr Bleury for the Inst. of Peace + the Judgt is correct –

No 2719
Bleury
Roi & al } action on bill of Costs

Mr Mondelet for Defdt + admits that Defdt have not been maintained & Judgt must be given in favor of the Pleff – but there ought to have been but one action. +

Mr Bleury for Pleff – the reason why he brd 2 actions is – that one of the actions is founded on a writing subscribed by the mark of the party and that there was doubts as to its sufficiency when the demand is above 100th + Boucher p. 107 + refers to the law as previously existing + No 1749 +

No 1045.
Donnovan
+
Roger & al } cause by default –

Bleury for Pleff – action for having sold the effects of the pleff without authority. +

No. 1387
Charlebois
Sarault

On law –

Bleury for Defendt. this action cannot be maintained, the only action is that of reddition de Compte – qt. right of action the Pltffs. even reserve their right to institute – the papers claimed are the gage of the party for his trouble & expenses, & he could not render an account without them –

Mondelet for Pltff. This is not an action of revindication, but a right to obtain those papers which the Pltffs. put into the hands of the Defendt. and which they now claim as the Defendt. retains injustly

No. 739
Mercier
&
McMaster

Action for damages for breach of Contract.

Bleury for Pltff. damages have been proved to the amount of £150 – Two Wits. produced ~~were~~ by Defendt. were rejected – and Pltff was examined on facts & art. who admits that he had given delay to Defendt. to perfect his contract to 1 May after on the Defendts. going before a notary to resume the first Contract – on this other testimony has been produced by Defendt. the right to hear whom has been reserved – The Pltff now contends that his consent to extend delay being conditional, & the condition not having been complied wh he has his remedy still entire –

Sewell for Defendt. the conclusions in the

declaration

are double - a demurrer was dismissed - the plea now before the Court that the lease did not commence before May 1831 under a new Agreement. - The Pltff has not made out his Case in damages - the Pltff grounds his damages on the want of a Shop, altho' it appears that he had given up working before 1 Decr - and had he been anxious another Shop might have been found - On the 2d plea the Pltff in his answers admits that he had said that he did not want the Shop as he had a plan for the winter - The Notary has been produced to say that the Defendt had frequently called on him for making a new lease in the terms he states - and even that the Notary went to Mr Bleury the pltff atts in order to ascertain the terms & Notary to pass the new lease - all was done which pltff required to execute the new agrmt -

Boston of counsel for Defendt - if the testimony of Defendt be admitted this action will be dismiss if this testimony be rejected, the damages still must be very low -

Hart for Pltff in reply - there was a house as well as a Shop leased - the qt house Pltff was to open a tavern - the written contract between the parties cannot be set aside by a verbal one - there must a com. de preuve par ecrit, - the Pltff therefore entitled to his damages - If the Court admits the testimony it goes to nothing & proves facts subsequent to the action

No 1434

Masse + Lavock sup } Bourré for Pliff — action on obligation contracted over —

No 2409

McGinnis + Wood } McBuchanan — action on a guarantee — Pliff sold a case of bonnets to one Dutton, for payt of which Defendt became liable. — moves to reject the testimony of McDonnell as an interested witness. —

Mondelet for Defendt — the promise of Defdt is as certificateurs de Caution — if there be no Caution, this action must fail — McDonald & Dutton got from Pliff bonnets from Pliff to extent of £75 — for gt they became jointly & severally bound — Wood became bound for the contract of McDonald alone — McDonald alone ~~contracted~~ never contracted wt the Pliff — there being no principal obligation the accessory fails. — Defdt became bound for a case of Womens bonnets & there is no such Contract between Pliff & McDonald for such a case — nor is the value of such a case ascertained There is no liason between the two obligations — It is in any case impossible to ascertain for what amount the Defendt can be held liable — It is not proved that Dutton ever received the bonnets —

596. 597. Obl. — But there is a novation in the Contract, if it ever existed, because the Pliff has taken the note of McD — in payment of the debt —

That McDonald is not interested — at least not more for one party than another — 2 Stacker ~~746~~ — 751 — 746. — 747. —

McBuchanan

Buchanan for Pluff. – The parties Dutton & M'D were not joint traders – they agree to have rec^d the hats & bonnets – & the guarantee is confined to the case of bonnets – to g^t it ~~might~~ must be limited – the admission of M'd – that he rec^d the bonnets is suff^t proof of the delivery – There is no novation proved – the taking a note which is not paid, is no pay^t –

No 554
Hedge
~
Aberdeen

Action for goods sold –

Mr Lewell for Defend^t – denies that any partnership existed between Defend^ts

No 2637
Bradbury
~
Filgiano

Action for goods sold

Peltier for Defend^t – The Pluff^s can have Ing^t only for £250 – he agreed to pay the whole bal^ce on condition of getting delay for the pay^t – There is not proof of the delivery of the goods, only of the Defend^ts acknow^t –

3 items not proved
Billet de Gavoy
Do – de Wm Douglas
Tmoney pd

Grant for Pluff. The evidence of the demand is sufficiently made out. –

No 2447.
Mills
~
Smith

Action for house-rent –

Fisher for Pluff admits 2 sums £18 – & £24 for price of a Shed –

Mr Nye for Defend^t the only object in contest is as to the value of the Shed – the estimation of Manson is objected to –

No 2607
Stephenson
et
Lebœuf & ux
&
Lebœuf & ux Opts

On opposition afin de charge –
Driscoll for Pltff – the claim of Oppt. is subrgt to the Mortgage of Pltff –

Bleury for Oppts – the opposn is afin de charge payable in case the wife survives her husband – That even if the Mortgage of Pltff be prior to that of the Pltff. yet this is no bar to the Oppn –

No 1733.
Burton
&
Therrien fils
&
Therrien pr Gar

Mondelet for Pltff prays for Indgt. agt Deffr
C. Bruneau asks his Indgt agt his Garant –

No 1501.
Gamelin
&
Sarault
&
Sarault opt

On opposition of Mr Sarault –
Bleury for Opposts – the proceedings here ought to be set aside, The advocate obtained distraction of Costs – but the Exon is irregular and null – the exon is sued out for the whole Costs accrued in the Cause which the party never laid out – That the Defendts goods were under surprise at the time this Exon issued

No 1577
Pozer
&
Donegani

action on promy note – by Indorsee agt. the ~~Indorsee~~ Drawers

Mr Pickel for Pluff objects to testimony of D. W. Eager, the Indorser of the note, as being interested in the action — as the effect of his evidence is to destroy the note —

Mr Walker for Defdt moves that Campbell a witness for Pluff be also rejected as ~~an~~ interested — The plea here is that of Usury — refers to the evidence, as to the agreement made between Campbell & Eager — the note ~~is~~ therefore is null under Ordce of 1777. This Ordce founded on Stat. of 12 An. ch. 16. and the same interpretation should be put upon this Ordce as has been held ~~on~~ the Statute — 58. Geo. 3. ch. 93 — 1 Selw. N. P. 326. 7 — Woolrich. 396 — on Com. Law illegal consideration of Usury renders note void in the hands of third persons —

A release has been given by the Defendt to Eager to relieve him from his responsibility — That Campbell was the agent of the Pluff, refers to his letter to the Defendts touching the page of their note — 1 New. Rep. 101. — a release was necessary to Campbell. Peak ev. 160 — app. letter B. No 2 — 1729. 30. 31. 3d Starkie the agent in certain cases incompetent, as where the event of the cause depends upon his misconduct. — Ph Ev. 125 - 130 — 133 — where agents are not received as witnesses — when party acted as principal he cannot be admitted to prove that he acted as agent for Pluff — Ph. Ev. 56. 62. 63. — The Court must determine here as to situation of the party & their intention — 4 M. & Selw. 192 Woolrich on Com Law. 408. 410. —

4 M. & Sel. 192

Woolrich 408. 10

Peake Ev. 150 – 1. Sel. N.P. p. 382. Peake Com. 224 –
Esp. Rep. 177 – 4 Taunt. 464 – 1. Selwyn 382.
Com. Dig. Pleader (2 G. No 7). 5. Esp. N.P. 119. –
1 Stark. N.P. 385. – Woolrich Com Law 396. –

Picket for Pluff – the Wick Eager is interested in this suit –

Friday 17th Febry.

Prest.

All the Judges. —

No. 2518.
Wher
v.
Gerrish —

On mo. to ex. the Wit. now present owing to his ill state of health —

Granted

No. 1206.
Jacobs
v.
Bender

Mo. for allowance of Alimony to Pltff —
The amount submitted to the Court —

Lambe
v.
Annesley
&
Bradley opt.

On Pltffs mo. that Opposs. give security for Costs as living out of Province —
Walker for Opposl. the rule of law does not apply to Opposts. —

No. 813.
Griffith
v.
McIntosh

On Pltffs. mo. to close inquiete —
Mr Stanley for Defendt. —

No. 168. 353. 1002.
Gillespie & al
&
Spragg & al —
&
McGill & T. S.
&
Hutchinson
&
Millar & al Pltff
&
Spragg & al —

On motion of Jas Hutchinson that the interlocutory Judgt. ordering audition be rescinded —

No 1128
Warwick
v
Hobbs —

action for goods sold —
Grant for Defendt Pltffs not entitled to recover, not mercantile — only one Witn — a tender for what was furnished. —

No 2011
Guichard
v
Bonchower

No 2038. 2396
Waterhouse et al
v
Desrivières et al

On law —
Sewell for Pltffs — Plea of ~~Blackwood~~ Desrivières, that Decln is insufficient, as Oliva & wife are sued in two different qualities, both as heirs purs & simples, & also as heritiers par benefice d' Inventaire — this is not correct, as they are sued as heritiers purs & simples — to the ~~other~~ plea of Blackwood the Pltffs have demurred because the allegation is that the obligation was granted by error and without Cause — the plea should have stated the grounds upon which this error and sans cause is founded —

Mr Cas. Bruneau for Defendts — The Defendts Oliva & wife in one of the Causes is sued as heritiers par benefice d' Inventaire & in the other nothing is said about it —

That the ~~value~~ plea that no value or consedn was given for the obligation, is correct —

No. 506.

Morris
v.
St Dozier } On demurrer to declaration —

Durocher
v.
Talon & Lespinasse } On the answers of the party under the serment Judiciaire —

Mondelet for Pliff prays for Judgt upon this further evidence in the cause

O Sullivan for Defendt the answers of the Pliff do not clear up the point in difficulty — The Pliff's exh. No. 1 is ground of misunderstanding a receipt for 300t — pd to Pliff — doubts as to his signature to this paper — but admits the signature to the note he gave the same day —

The evidence to be adduced on the part of the Defendt is to shew that there was no such agreemt as that stated by Pliff as to any other cause than the allowance to be made by the Govt — produces the agreement wt Pliff to show the contract he made in Pliff — The Court will therefore let in the party to complete this agreement — the Court is master over its Interlocutory & may direct any further proceeding

9 Vol. 492.

9. Vol. Pont. du Parc. Instit. du Dr Fr. p. 492. —

Inst. tit. 19. lin. 3
8. Tullier No 18. —

10 Tullier. No 426 new documents will apply to verbal evidence

Mondelet for Pliff contends his clients answers are sufficient — The parties must have changed the nature of the first agreement, as the Defendts acknowledged to have received more than the 25 pounds stipulated —

Poth. No. 927. —

No. 113.
Low
Wragg

Action en separation de corps & biens –

Mr Greece for Pleff, refers to the testimony adduced in the Cause – Eliza King – an inmate of the family, speaks to the ill-treatment of the Depr to his wife –

Mr Chs Mondelet for Deprdt admits that there may be a separation as demanded, but that the pleff from her bad conduct ought to be deprived of her matrimonial rights. – refers to the testimony of Try. Brunean, Wilson, McCulloch – Ls Martel & Decarreau – Day, Sheddan – The Pleff has been seen at an undue hour in company wt Robt Shedden at different times – Lacombe – vo Adultere. No 5. Lebrun. Suc. liv. 2 Ch. 5. Sec. 1. dist. 1. No 6 – Du Droit. vo Adultere – N Denizt vo Adultere. p. 290 292. – Renusson. Douaire As to endura – when the parties have been seen in company with each other at undue hours or improper places – The visits in the absence of the husband –

No. 151.
Cooke
Davis & al

Action on deed of sale –

Beaubien for Pleff, there is a deficiency on the land qt Pleff allows – Lacombe vo Vente. Sec. 5. No 10 – and the deficiency is to be allowed according to the value of the whole Bourg. tit. 4. de l'acqn des Im. Sec. 2. No 47. 8. 9 & 50. Poth Vente. No 139. – 1 Desp. part 1. tit. 1. Sec. 5. p. 46 – Achat Lacombe. vo Vente Sec. 5. No 10. 2d col.

Mr Day for Defendt — Defendt offers to complete the quantity of land wanting & to pay for any deficiency —

No 2093
Belair
Bray —

action for 16 Cords of wood not delivered
Stanley for Defdt — Pliff is entitled only to 15/ pr Cord for the wood —

No 1344
Bentzal
Ferguson

On law —
Driscoll for Defendt — names of minor Children not named —
Mr Stanley for Pliff — the pleading here should have been an exceptn à la forme —

No 893.
Sanguinet
L'Ecuyer —

Quest. as to Costs —
Lafontaine — Defdt owes only £2 — to Pliff — & claims that the Costs in this Court be paid to him

No 219.
Prevost & ux
Breux —

Defendt plea of exception dismissed —

Saturday 18th February.

Prest.

All the Judges.

Todd
Landell
Blumhart
Bell — Oppt.

On opposition of Mr Bell, claiming priviledge for a Stove rented to the Defendant, and which had been seized under the writ of execution sued out in this cause —

Mr Griffin for Mr Bell, contended that this priviledge had been recognised as a law & usage peculiar to this Country, as well by the Judgts of this Court, as by Judgts rendered in the Courts prior to the Conquest of the Country — cited case of Mailloux & Leger & wife & Frere Turc. Oppt. — in Perrault's collection of Extracts, dated 17 June 1731

Mr Casimir Bruneau for Blumhart, the proprietor of the house contended that according to the Common law of France and of this Country the proprietor of a house retained his priviledge over all the furniture in it for the security of his rent, and that the Stove constituted a part of that furniture

No 2192
Ritchie & al
Watson & al

Judgt for Pliffs. the only question here is in respect of the wits who signed the Contract being absent in U. Canada — other testimony was admitted on their being accounted for as not within the jurisdiction of the Court —

No 1085.
Pierce
Wilson —

Judgt for Pliff

Brock. — v. Smith. — & Abbot. opp.	Judg. for the Oppos.t
No. 1905. Beaudry v. Bricault & ux.	Judg. for Pluff
No. 1233. Smith v. Porteous —	Defend.ts plea of Exception dismissed. —
No. 1355. Miler v. Corbeil. —	Judg. for Pluff. 38½ Cords wood @ 11/3 — £21.13.1½ deduct ¼, being part not transferred to Pluff 5.8.3½ £16.4.10
Barrow. — v. Lacourse. — & Moreau op.	Opposition dismissed
Joyal. v. Kollmeyer	action dismissed
No. 1951. Dom.s Rex v. Tetu. —	Certiorari quashed —
No. 1201. Leslie & Co. v. Hagar & al	Judg. ag. Tracy. action as to Hagar dismissed Dy see J. Pyke's note —

Monday 20th Febr. 1832

Prest.

All the Judges.

No. 564.
Raymond v. Douglass } Judgt. for the Pliff

No. 494.
Fisher v. Proper. & Proper opr. } Judgt. dismissing Opposition —

No. 2049.
McGennis v. Woods — } action dismissed, saving recourse —

No. 2447.
Mills. — v. Smith — } Judgt. for balce. of rent but admitting the evaluation made by Manson, as binding on the parties, he being the person agreed on by the lease to make that estimation —

No. 2363.
Roi. — v. Merleau & Opposts. — } The Court allowed to the pliff his Costs on the suing out the execution agt. the moveable property of the Defendt. as well as those on the exton agt. the real Estate, although the Pliff derived no benefit from the sale of the real Estate, he being posterior in mortgage to the Opposts. —

No. 2038. Waterhouse v. Desrivieres et al	Judgt. on motions. —
No. 151. Cooke v. Davis. —	Interloc. — 1. Henrys. liv. 4. ch. 6. quest. 25. p. 592.
No. 2639. Roi. — v. Turgeon —	Plea of discussion - dismissed. —
No. 1250 Jessopp et al v. Smith. —	Conviction for penalty —
No. 1387. Charlebois v. Sarrault —	Defendts. exception dismissed
No. Handyside v. Donegani et al & Donegani opt.	Opposition dismissed. —
Todd v. Landell & Bell et al oppts.	Priviledge for the Stove rented by Opposr. Bell to the Defendr. — allowed —

Tuesday 21 Feby

April Term 1832.

Monday 2d April. –

Prest.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland

No 1594
Wait
Perrault
&
Bazg. T.S.

On Defendts mo. to set aside Pleffs motion of the 8th Febry last –
Grant for Pleff. The motion has been granted

No 1846. –
Squares
on
Stoddart

On motion for a new trial – the Court being divided on the former motion –

Mr Hart for Pleff. the rule in this Country ought to be different from that in England –
Mr Dorsoll objected as the ~~mo~~ mo. is too late, not having been made in the 4 days as required by rules of practice –
Mr Hart. decision given on the prem motion on the last day of last Term –

Brock & al
on
Smith
&
Abbot ofr

On Judgt. of Distribution – quest. whether the oppt have Lent for £35 –
Mr Millan for oppt is entitled to his costs agt Adams –

Tuesday 3d April.

Prest.

Ch. Justice Read
Mr Justice Pyke

Mr Justice Rolland

No 871
Smith
Mills
Smith S.S.

On rule to shew cause why attachment should not be set aside —

Fisher for Defdt — The affidavit is insufft — being for a certain sum & for other things — here the cause of action is not set out in such way, as to convict ~~of~~ the Pltff of perjury if he shall have appeared to ~~pro~~ swear falsely —

No 2385 —
Hodgson
Simpson

on Defdts mo. to prolong the return of Com. Rogn —

Driscoll for Defdt — objects, as rules became extinct on the 1st of this month —

Wednesday 4th April

Prest.

Ch. Justice Reed
Mr Justice Pyke
Mr Justice Rolland

No. 2038 & No. 2090.

Waterhouse & al. v. Desrivieres & al. — On Pleff. mo. to revise & rescind the Interlocutory Indt. rendered in this Cause

Mr Sewell for Pleff. — The plea here of Th. Blackwood is not sufficient & should be considered as no plea — This plea is a peremptory exception to the action, as it contains none of the essentials of such plea, as it does not set forth the grounds, the stating that it has been given without consideration, without shewing in what manner, is wholly insuffte. — this is a cause of fraud which should have been specially set out. — Ravant. 41. 42 — 2 Lajeunesse 135. & seq — Lacombe. vo. Restitution en entier — 1 Langr. 488. — Harris Inst. p. 68. — There is no conclusion in the plea for a restitution, as not being a nullity de droit. — ~~1 Langr. 4~~

2 Ev. Obl. 28. —

Mr Bruneau for Defendt. — This question cannot now be argued, it having been determined after full argumt. — The plea here is sufficient, error & want of consideration is a sufficient plea to an Obligation —
There can be no remedy but by appeal — besides the pleff has acceded to the Indt. by proceeding to evidence —

9 Poullain du Parc – Interlocutory Jugts – may be revised by the Court –
Repre – vo 478. vo Interlocutoire. –
1 Pigeau 391. –
There is nothing to shew Pleff – consent to the Interlocutory –

No 1285
Penn & al
~
Lindsay –

On Defendts mo. to dismiss cause for want of proceeding –

Walker for Pleff – service of notice of motion is irregular

No. 752.
Rolland
~
Ayer & al
&
Desrivieres & al
opts

On mo. of Opposts – for delay to fyle moyens d' opposition –
Mr Beaubien for oppost – the papers to be examined are so lengthy that the reasons cannot be produced in the usual delay –

Mr Mondelet for the Pleff the application is too late –

Thursday 5th April. —

Pres.t —

Ch. Justice Reid

Mr Justice Pyke

Mr Justice Rolland

—

No 2385

Hodgson
vs
Simpson

On Defts mo. for publication of a Com. Rogy

Walker for Pltff — the Com. Rogy has been returned by mail and not by a private hand —

Mr Driscoll for Defndt — The mail is a legal mode of Conveyance —

~~No 913~~

Jones. —
vs
Chadborn.

On Defndts mo. to reject the testimony of Parker a witness for Pltff, on acct. of relationship

Mr Borton for Pltff — the question has been determined by the Judge who presided at the enquete — but the objection will not hold — The Defndt is sued as Tutor, & not sued for rights due by him personally.

Mr Adams for the Defndt — This action is of the Defndt personally — but even as Tutor the objection is equally applicable, as the Minors he represents are relations of the Wife —

No 1090

Johnston
vs
Struthers

On Defndts mo. for Security for Costs —

Grant for Pltff — no sufficient notice of motion

No. 1622.
McDonald
v
Eager & al } action on promy notes —
Judgt to be entered deducts £500 —

No. 791
Hart
v
Hart — } on law —

Buchanan for Defdt — action en bornage — there is a defect in the demand — the pleff is bound to set out his title to the property, but here the Pleff does not state that he is even in possession —

Hart for Pleff, The declaration is suffte — the pleff. The title here cannot be enquired into Denizt v. bornage & borne, sec. 3 —
For. action en bornage —

No. 1230
Delorme
v
Perrin — } On law. — action on obligation —

Lafontaine for Defendt — It is necessary that there should be a ~~tut~~ Curator to the Substitution as all the interests ought to be represented, & are different — there is no person who represent the Children — who are the substitués. — N. Denizt v. Exec Tech — p. 227 — & p. 217. —

The Defendt here has more property than suffte Poth. Obl. No ~~317~~ 630 — to answer for his debt, so as to comply with the conditions of the Will of the Testatrix —

It is here contended that the Defend^t cannot maintain his demand in reddition de Compte but as this action is for the benefit of the Successive the Defend^t may set up any claim he may have ag^t the Succession —

273 The debt here is liquidated, altho' the sum is not ascertained — Rep^ce v^e Compensation — p. 273 —

Mr Bourret for ~~Defend^t~~ Pl^ff — the exceptions here are the same as already decided — this is a personal debt due by the Defend^t & Pl^ff is entitled to prosecute the same for the benefit of the Succession — The fonction of the Ex^tr does not determine here according to the will, in the year and day — The Pl^ff here cannot render an Acc^t — if the monies due to the Succession if he cannot recover what is due — The Defend^t cannot maintain his demand of account ag^t the Pl^ff, while he withholds what is due by him to the Succession. There is no necessity to appoint any Curator to the Substitution, as by the will the Execution is the person who is alone charged with the whole execution of the will until the Substitution be open —

The compensation here set up cannot be admitted it can be received only in debts clear & liquidated which is not the case here — the debt here is due by Defend^t personally — & not a debt due as heir — There are besides no conclusion in the plea to obtain such Compensation — besides the Def^t wife who is the legatee is not here in Suit^n whose right alone such compensation could be demanded

Obl. No 627. 8.9 & 630 — 632 — Repr. vo Delle 578 —
Repr. vo Exr p. ~~661~~ 161 1r Col & 168 —

No 1434
Masse. —
Larock & ux

Action on Obligation — Law —

Bourret for Pltff. obligation made by the first husband of Defdts wife, one Chapdonelle, the woman made no Inventory of the Community between her & her first husband, & therefore this debt followed the Community & came to hands of Defdts. The Defendts contend that the late Chapdonelle left no property at his decease — an Inventory has been made but after a former action had been ~~mad~~ instituted by the Pltff — but this can be of no avail —

From defect of an Inventory the Community is continued de plein droit, all that can demand is indemnity from the heirs of her first husband —
Repr. vo Comte p. 202. p. 206. 7 — 210. —
Poth. Comte No 233. — 241 — No 535. 536. 538 — 541 —
554 — 558 — 565. — 734 — 759 — 760. 761 — 900 — 901
924 — 938 —

Grant for Defendt The debt here was contracted by Chapdelaine alone — he died in March 1829 — on 14 May last an Inventory was made by the widow on the 17th May she renounced — The Children alone can demand the continuation of the Community but not the Creditors. art. 240 — p. 586 — Ferr. Gr. Comn The wife may at any time make an Inventory so as to exonerate herself from the debts —

Lebrun. p. 458 – 460. No. 10 – art 237. Cont. Fr. p. 443 No. 4. & 5 – p. 459. – Poth. Comte. No 554. – renonciation may be made at any time – which would exonerate her and consequently her husband –
Bacquet. Droit Just. p. 200. No 39. – –

No 2038. & No 2090
Waterhouse & al
vs
Desrivieres & al

The rule to shew cause was discharged

Friday 6th April. –

Prest
Ch. Just. Reid
Mr Justice Pyke
Mr. Justice Rolland

No. 900
Truteau
vs
Whinfield

On rule to shew cause why writ & process be quashed as no copy of writ has been served

Hart for Pliff. The copy of the writ contains Monday the 2. but not in what month – but declaration states the 2d of April. – The Defendt having appeared the Pliff ought to be allowed to amend –

No. 253.

Bostwick
v.
Donegani & al

On Defdts mo. for a prolongation of the return of the Com. Rogre till to morrow.—

Dris coll. for Pltff — the rule cannot be granted as rule has expired —

No. 1901.

Henshaw
v.
Henshaw
&
Tuckerman
& al. oppt.

On opposn of Tuckerman —

Mr Walker for Pltff moved to have the opposn dismissed —

Mr Sewell & Griffin for opposts ~~did not appear~~ — The opposts obtained a Judgt agt the Defendt — The Pltff also obtd Judgt on an Obligation agt Defdt — The opposts contend that this obligation was given by collusion & without consideration, & therefore no preference to Oppts — The answers of Pltff to the Interrogatories proposed to him — an insufficient 1 Louisn. tit. 20 — art. 8 — Lacombe vo Interrogatoire — The answers ~~are~~ not clear and precise — & the debt must have been contracted before the obligation executed, & the consideration paid — Fer. on 237 — art. p. 424. No. 16. 17 — a hypothequé is only an accessory of the Debt, & cannot exist until the debt be contracted — By the answers it appears that the monies lent, were not advanced in a great part until 3 or 4 years after the date of the obligation — The note of hand gt. was given here as constituting a part of the money said to have been lent on the oblign

cannot

1 Ht.

Fr. 237.
p. 424. No. 16. 17

cannot be considered as a payment of money or satisfaction of an account. The original debt is not innovated — nor is the note a payment — the party may still claim on his original contract, if the note be not paid —

Walker for Pliff — Insolvency has been alleged in the Defend^t — where he made the obligation to the Pliff, but no proof has been made of it — The answers of the Pliff to the facts & articles shew the consideration for which the obligation was made —

5 T.R. 516 Lewell for Appost^e The note given by Pliff is not to be considered as a payt. of the acct. for gt. it was given 2 Barn & Ald. 215. Bedford v Deacon — & 5 T. Rep. 516. —

No 1756
Forbes
Gilbert } action for Promy note —

Day for Defend^t. the note being prescribed a plea to that effect — Dep^t. was exam^d. on facts & articles — & his answers destroy the pliff^s right of action.

Nye for Pliff — The answers of Defend^t are not satisfactory — does not say, when to whom, nor in what manner the note was paid —

No 7.
Exparte
J. L. Smith } On rule to shew Cause on the medical board

Buchanan for applicant — The answers given by the medical board shew that they require

more

more from the applicant than the law requires on the proviso to the 4th Secn. requires the oath of the party, which he has given, —
Even in a doubtful case the mandamus ought to be granted — Impeys Mandamus — p. 115 — Wilcox's Corpn. p. 355. & 385 —

No. 791.
Hart.
vs
Hart —

The Court dismissed the plea of defenses en droit pleaded by the defendt — being of opinion that the ought to have availed himself of the defect complained of in the declaration by an exception à la forme, as in point of substance the declaration was sufficient. —

Saturday 7th April.

Prest.

Ch. Justice Reid
Mr Justice Pyke.
Mr Justice Rolland.

No. ~~369~~ 2435.
Molson
v.
Meyer
&
Hamilton
oppe

On Pliff's mo. to dismiss the Opposn for want of proceeding —
Mr Walker for the Oppost — the principal Witness is absent as appears by affidavit —

No. 529.
Hutchinson
v.
Hutchinson
Campbell
&al —

Rule absolute for security for Costs

No. 1190.
Johnston
&
Strothers
&al

On mo. that Pliff file power of Atts —

No. 2428
Jones
v.
Chadbourn

On Defendr mo. that the Enquete be declared closed —

Mr Boston for Pliff — The Judge at the Enquete last vacation, ordered cause to stand for the next vacation, which cannot now be altered —

No. 1704
Courcambec
Mc Intosh
Devins. Cur'

On rule on the Prothys to produce the record in this Cause, or pay the amount of monies adjudged to Pliff —

The Prothonotaries, admit the facts stated in the affidavits — that on the 20 Febry last the record was in the office, but afterwards disappeared offers to fyle an affidavit to shew that record was afterwards in hands of the attorney of Pliff —

No. 1427.
Holmes
Vandandaigue

Action hypothecaire — on law —

Mr Boston for Pliff — The Defendt — alledges there are mortgages on the land — & also that the Pliff ought to pay the improvements before he is obliged to give up the land —

No. 1042.
Bullis
Douglass
Boston.
Douglass oppt

On Law —

Taylor for Oppost — The bill of Costs for which the Exon was sued out is not the attornies bill — this appears by the bill itself filed in the Cause, and by the answers of the attorney himself — the allowances to the Wits and to the Experts, have not been paid, only in part — £21. 7. 7½ is overcharged —

Mr Boston the Oppost — The bill of Costs has been regulated by the attornies themselves & the balances settled, & the party must be bound by the acts of his attorney — There is no tender of what was really

Due

due, & yt. without objection amounts to £32. —
The fees due to the Experts & Witness & to the Proth^rs
ought to have been reserved by the Attorney & secured
to them — The Att^s here stands in the rights of the Pleff
and he can exercise his rights. —

Taylor in answer — the privilege is granted to the
Attorney only — no tender could be made, as no
sum has been ascertained to be due to the Attorney —

No. 2257.
Robert Grex
Marchissault

Action on deed of sale

Mondelet for Defend^ts — one of Defend^ts
has made a tender, yt has been accepted — That
the Pleff has sold what was not his own & ought
to be held to give security before Defend^ts be held to
the sum demanded — This appears from the
Pleffs own shewing — part of the property belonged
to Minor Children — the widow became the purchaser
by the intermise of another person. —
As to the claim for dower — 3000# were to remain in
hands of the purchaser — attho' the Dower be open
yet it is the property of the Children, & attho' it —
amounted only to 2000, the Defend^t — is willing to
pay the 1000# — on getting Security — & it was ~~stipulated~~ stated
at 3000# by the act & consent of the Pleff as being
the amount of the dower —
That the pay^ts — on the sale must be deducted
& the balance due with the 1000# — on getting Security —

Lafontaine for Pleff — The sale made by Pleff
cannot be considered as invalid, the widower

had

had a right to purchase, as she had an interest in the land — this may be assimilated to a partage of the Community, whereby the land might have fallen to the lot of the Widow — Poth. 654. Vente — 1 Desp. p. 8 — Poth. No 13. Vente — That there is a retrait for 2 small sums — Objects to the proof made by defendt — concludes for payt of the whole sum wt Costs —

No. 143
Tessier
&
Sabourin

action en dépn de corps & biens — ex parte. — Mr Mondelet for Pliff. — The proof shews the mauvais traitemens of the husband — & his having abandoned the Pliff — 2 Regean 204.5.6 —

No. 221.
Bourdeau
&
Lavoie
&
Giroux — T.S.

On demand of the T. Saisi — defaut

Monday 9th April.

Enquête-day.

Tuesday 10th April.

Enquête-day.

Wednesday 11th April.

Prest

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Pinsent
Mr Justice Rolland

No 529.
Hutchinson
v
Hutchinson and
Garnishee

On motion of Sarah Campbell to quash the attachment from insufficiency of the affidavit.—

Walker for S. Campbell — not stated at what time the partnership existed for which the debt is demanded — The saisie is made in the hands of Sarah Campbell as widow & as Tutrix, but there is nothing to shew that she or her Minor Children

was

were personally indebted, nor is it said that Sprags & Hutchinson were jointly & severally indebted to the Plff — Nor is said that said Sprags & Hutchinson are now insolvent — It is to be inferred only by ~~influence~~ circumstances that there is a debt — This does not answer the intention of the Ordinance — The absconding several years ago does not presume a present insolvency — Nor do the monies & property in the hands of S. Campbell & her children are liable to the debts of the Creditors —

Poth. 145. 179 Soc. —

No joint Comn. of bankrupt could be sued out agt a joint partnership which had ceased to exist but separate Comn agt each individual — If there is any fraud here it is the separate fraud of Hutchinson, not of the widow & children of John Sprags — There could have been no Attachment of the property of the widow & sons in her own hands — Had John Sprags been alive, he could not have been liable for the fraudulent act of his Copartner. Bell's Rp. 468 — a bankrupt is considered as an offender —

556 2 M. & S. All the partners must be united in a joint commission of Bankruptcy — Bells. 474 — 15 Vezey 115 — 4 45 Cowper — 11. Vezey 83 — 1 East. 363. 8 — 326. 4 Taunton — 601. Vezey Sen —

The party could not have a Cap. ad respondm agt both partners because one of them was about to depart from the Province —

Refers to case of Sterne & Kimball, & was a more favorable Case than present, when it was held in appeal that one partner could not be held for the default of his Copartner —

Grant for Pliff. The case of arrest & of attachment is diff^t — but when one ~~Creditor~~ debtor is fraudulently disposing of the partnership property, the whole property of the partnership may be arrested — The cases cited do not apply — The affidavit here is sufficient — and in the terms of the law —

200 Maulgen

No 2038
Waterhouse
Desrivieres

On Pliff. mo. that the Interrogs on Defd. Blackwood be taken as confessed — & also that the Enquête be declared closed —

Bruneau for Defend^t — the notice not regular — as this is not a regular mode of notice — This motion cannot be admitted, as the Defend^ts enquête has not yet been begun —

Sewell — The Court is bound here to stop the Enquête Danty. ch. 7. No 50. 51. —

No 1846.
Squares
Stoddard

On mo. for a new trial —

Hart for Pliff. Two Counts — 1 for defam^n — not proved the 2^d. for assault which was maintained — & Verdict for 257. — damages — The Court not bound by decisions in England, as the power as to Costs is here taken out of the hands of the Court, whereas in England the power is with the Court — In cases of delapidations New trials are granted in England — Crafts Inst^y E Law 562 — 2 Tidds Prac. 905 — 5 Prec. 334 — where no evidence given by Defd^t — 8 Taunt. 712 — 3 Bl. Com. 391. —
1. Law of Costs. 39. — Hullock. —

No. 2373.
Mellis & al
Armour

Action for account & to pay monies to Pltffs
on ments

Mr Sewell for Pltff — on bankruptcy of Armour & Shedden, it was agreed they should pay 10/. in £ & certain delay granted to Creditors to give their assent — Mr Robt Armour became bound to pay 5/ — & recd — an assignment of all the property of Armour & Shedden — The Pltffs acceded to this Contract, but reserved all their ulterior rights — On 29 Decr. 1823 the Defendr here entered into another agreement, by qt they alledge to have powers to accede to the terms of that agreement

Mr Driscoll for Jas. Scott. The Defendr became Trustees only for such Creditors as should accede to the deed of Composition — the Pltffs have not acceded thereto, but under a reservation which rendered their acceptance of no value —

The Defendr denies ever having obtd possession of the Insolvent Estate —

The original debtors ought to have been in the Cause — This proceeding should have been under Saisie-Arnt. —

Mr Day for Robt Armour — The Pltffs grounds their claim on their having acceded to the deed of Composition which they never did — they never agreed to give the stipulated discharge — The title of Pltffs is founded on Indr of 1829. & not proved that it is the same debt with that stated in the Deed of 1823 — But allowing the deed of accession is to be admitted as having any validity it must be valid as well agt Pltffs as agt the

the Defendt and Robt Armour has fulfilled all he undertook to do towards all the Creditors of Armour & Sheddan — Armour became Security for 5/ only — by the act he vested in the Defendts he appears to have paid over to them an amount equal to the 5/ in the £ he stipulated to pay as Security — on 4 Dec 1823 a new deed of assignment was made by Armour & Sheddan to the Defendts — Armour still stipulating for his discharge on ~~obt~~ payment of the 5/ —

There has since been a supplemental pleading filed by the Defendts that R. Sheddan having in Scotland entered into an agreement with certain persons representing the Pltffs & on payt by him of £240 a — he obtd a full & entire discharge — was something more than the 5/ in the £ which R. Armour had agreed to pay —

Path. obt. No 520 — by this the Pltffs. put themselves out of the power of transferring any right to the Creditors by giving this discharge —

Mr Walker for Mr McGill — The Pltffs shew nothing of Contract or claim — Contract by wt the Defendts are liable to them — on 24 Dec 1823 the Defendts unite as Trustees, McGill & Watt were Attorneys of all the Creditors except Pltffs — but they still undertook to represent all the Creditors & even the Pltffs themselves — but Armour & Sheddan expressly stipulate in this deed that the Pltffs shall derive no benefit from their Estates in hands of Defdts unless

an

on their giving a full discharge — The Pliffs now disavow the act of M'Gill & Scott — they wish to take the 10/- but to retain their collateral Security — to this the Insolvents object — in the mean time M'Gill & Scott receive monies from Armour & paid 10/ in the £ to the Deffts creditors & paid over what remained in their hands to the debtors Armour & Sheddan — as the Pliffs did not accede to the giving a discharge —

The Pliffs considering themselves not bound by any of these agreements, bring an action agt the Defendts for their whole debt & obtd Judgt for it — The Pliffs cannot even claim the benefit of any act of negotiorum gestorum, agt the Defendts as they have ~~disapproved~~ waived all the agreements entered into as to the 10/ in the £ —

Potts Negs gestm No 171. 181 — the Pliffs can have no claim on a contract which they disclaim — there can be no contract negm gestm & No 199 — as the Defendts could have no claim for their expences — & No 206. 215 — The obligation therefore of Defendts could only be that of Garnishees — The Defendts have rcd no monies on acct of the Pliffs here — The Defendts could not pay the Pliffs 10/- without the concurrence of Armour & Sheddan from whom they received their trust —

The other creditors are also interested in this question — The Pliffs have not proved this debt as due in 1823 — & the original debtors ought therefore to have been parties to this action —

The

The Receipt given by the Pltffs to R. Shedden the original debtor of 5/- in £ & discharging him & all others, except John Armour & the other partners, but nothing said of the Defendts here — who are entitled to the benefit of this discharge, even if they had ever been liable — ~~This~~ In the face of this receipt the Defendts could not pay any monies to the Pltffs as it would be giving them an advantage contrary to the discharge to R. Shedden who would in this case have his remedy agt Defendts — The Pltffs could not have prosecuted R. Shedden for this money after this discharge, nor can they prosecute the agents of R. Shedden, the Defdts — The Pltffs could not subrogate the Defendts in their rights to recover back from R. Shedden what the Defendts might now pay to Pltffs, as Pltffs have given a discharge to Shedden, and could give no such subrogation —

The conclusions in the Pltffs declaration are wholly inconsistent, and it would thereby appear that the Pltffs have received a sum of money on acct — they conclude that Defendts do account because they have acted as Trustees — acts gt Pltffs never acceded to —

Sewell for Pltffs — This is the case of a bankrupt Estate whose Estate was worth 10/- in £ — & Pltffs are their Creditors The Debtors have put their property into the hands of Trustees to pay this sum — the Defendts as Trustees made themselves liable to account to all Creditors by getting the property of the debtors into their hands — The acceptance

of

of the Pliff was conditional — still they retained a claim on the Estate of the bankrupts, this the Defendts were aware of, & could not distribute the property of the bankrupts without retaining the share of the Pliff — the Defendts cannot distribute the bankrupt Estate partially — no deed can be made to deprive any creditor of his rights on his debtor —

The contract with the Pliffs is as binding as if they had made no reserve whatever, it was nowise material as to the Debtors, as Pliff might have given the discharge —

N. Denizt. vo Directeur. p. 520 — Syndic & Director same sec. 4. No. 3 — 1 Jurisp.ce Consult.ce p. 343 — & jointly & severally bound —

The payt. made by R. Shedden in Scotland gave no discharge to the Defendts —

No 1091.
Pothier
v
Bingham
& al

action hypothecaire — on law

Mr Buchanan for Mr Harwood, the conseil of Defendt, says he is not liable to answer in this action we Bingham as his Curator on a voluntary interdiction — 1 Pigeau. 71 — N. Denizt vo Conseil nommé par Justice p. 257. — the power of the conseil does not extend beyond the specific authority given. also p. 262. — Repn vo Conseil 488. — 2 Tuttle No 1382 —

Mr Mondelet for Pliff considers that in the terms of the interdiction enough to entitle him to sue Harwood

as

as Conseil, as the object of this suit tends to an alienation. Considers that the authorities cited do not apply — The Conseil is bound to assert the interdict in all his affairs & this exception now taken should be taken by the interdict himself — The authority from Tullier — says the Conseil should not be sued as approving the act for which the suit is brought — this is not claimed here, but merely that the Conseil shall assert Defdt

2. Vol. 430. — 435. — N. Pigeau p. 80. art. 8e — The authy from 1. Pigeau is not express. — The principle that the interdict may defend a suit by himself, does not forbid the putting the Conseil in suit — Repr. p. 445. vo Interdiction — N. Denizt. vo Conseil nommé &c p. 259. — D'agressean d'être en Jugement est a contracter — Id. p. 262. — 263 — 1 Lapeyre. vo Curateur —

No. 369.
Miller vs Devens. Cur & Caldwell oppt

On Opposn motion for leave to amend —

Buchanan for Oppt the amendment is as to the title of the opposition — The fault lay with the Sheriff of Quebec from the mode in which the sale of the property was announced —

Mr Fisher for Pleff, the cause is wrong entitled ~~1 Proc. Civ.~~ 1 Pigeau 736 — O. Denizt. p. 334. vo Opposn — The election of domicile is also made at Quebec — To permit an amendment would be permitting the party to ~~make~~ file a new opposition contrary to the rules of practice —

Ph. Wright vs Sparkes & rex

Judgt dismissing pleffs claim to whole of his father's real property, as held in free & Com. Soccage & ordering proof on Exceptions pleaded by Deft —

Thursday 12th April

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke
Mr Justice Rolland

No 168. 353. & 1002
Gillespie & al
Spragg & al
& McGill & al. T. S
& Js. Hutchinson
Intervs

On motion of Pltffs for homologation of the award of the Auditors —
Mr Sewell for Pltffs —
Mr Grant for Intervs party objects to the homologation of the award, because the auditors proceeded ex parte — did not hear the Intervening party, and without sufficient evidence — having heard Spragg, an interested work and without being on oath — The auditors have not in any respect complied with the Interlocutory —
Sewell for Pltffs The Court has refused to set aside the report from want of notice to Intervs party — That the ~~experts~~ auditors appear to have made all the necessary enquiry as to the facts they report —

No 2706
Stephenson
Lebœuf
& Munro oppts

on opposts mo. to reject defendts plea
Mondelet for opposts The plea is no answer to the opposn —
Mr Lafontaine, states that plea has been filed by Defdt in person & his object is sufficiently clear —

No 1305 & 242
Fraser. —
v
Stephenson
&
Smith. Oppt
&
Maitland & Co. Oppts

Mr Smith for Oppor. a composition was entered into between Brown & his Creditors, & a deed of Composition made to that effect in which act Rosina An. Smith came forward as Security — Of this act the Oppor. claims to be restituée, as Brown was her tutor at the time. — the deed is in ~~May~~ Augt, the Oppor. came of May before — the 276e act. of Custom, & observations on it which prohibits any alienation of the Minors — property by the Tutor, as the Minor is always so considered until the Tutor has rendered his acct. 1 Bourg. 55 — Dec. des Arrets. vo Tuteur — 2 Henrys Quest. 31 — This being a cautionnement in favor of the Tutor, for the payt. of his debts, must be considered as coming under the principle of obligation to the Tutor, & for his benefit. Poth. Obl. No 365 — & No 383. — No 387 — Repn vo Caution. 770 — 2 Bourg. 86. — refers to donations. any act of benefit to the Tutor is void — Duplessis on 276e act. of the Custom, who speaks of every description of advantage in favor of the Tutor —

As to the allegation of fraud — moves to set aside the answers of Creditors on facts & articles —

The ext. No 4. is a general statement of the affairs of Brown to his Creditors, in which it appears that Brown states himself largely indebted to the Minors Smith — John Reeves & Mr Fleming speaks to the production of this paper to the Creditors — & Reeves says that he stated to the Creditors that the claims of the Minors had not been adjusted or settled — There was a

request

request from the Creditors to Brown to get Miss Smith to become Security — Shaws testimony — The answers of Handyside on faits & articles — From all the facts proved, a fraud must be presumed Mesle Min. p. 292–3. — Poth. Ob. No. 31.2 — here all the facts were known to the Creditors & even urged the Tutor to obtain the consent of the Oppos.r —

Mr. Buchanan of counsel for Miss Smith — This is to be considered as a donation by the Oppt. to her Tutor — The 498th art. of Cout. Brittany is more express — Decision de Fromental. p. 42. — when vo. Caution — when under circumstances relief was given — Raviot sur Pr. p. 209. 211. — It was a dol in the Tutor — & if the the Crers had a knowledge and excited the Tutor to it —

Bourret for the Creditors — All the authors ~~agree~~ cited do not shew any authority applicable, but only between the Tutor & his pupil — The allegations in the opposition that the creditors sollicited Miss Smith to sign the act, is not of itself sufficient to sign the act — the rescision here is demanded by a plea — qt. is inadmissible, and the rescision ought to be granted only on a special action instituted for that purpose — Lacombe. vo. Restitution — deference to a parent is not sufficient to set aside an act made in favor of the parent by the child — Here there is no proof any fraud or influence exercised on Miss Smith — on the contrary Miss S. might have had many good reasons to induce her to sign the act in question —

No. ~~413~~ 2197

Dubreul
Fifi de St Denis } action on obligation —
Lacroix for Pfff. The obligation for money lent —

qt.

which belonged to the Fabrique de Vaudreuil & payable to Pluff as the proor. The Pluff was prosecuted for the monies due to the Fabrique in which this sum was included — and which Pluff was adjudged to pay —

Mr. Mondelet for Defendt. The action is vicious in point of form — as it cannot be maintained by Pluff ~~as procureur of the Fabrique~~ for a debt due to the Fabrique — and there is no proof of the payt. of any money for Defendt to the Fabrique — The account rendered by the Pluff to the action of the Fabrique contains a fraud, as it does not contain in the recette the obligation in question, but he sets off this obligation, the property of the church of this ch. de recette — so that he pays the recette with the monies of the Church — so that in fact the Pluff has paid nothing to the Church for the Defendt —

Mr Lacroix for Pluff — denies the fact stated in the defense that the Defendt stated all the monies he owed to the fabrique in the Ch. de recette —

No. 77.
Laberge
vs
Monpetit

action for damages on breach of Contract —
on Report of Experts —

Friday 13th April.

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

No. 551.
Main — vs Shaw & al } On Defendts mo. to reject the proceedings had in the Cause subsequent to the discharge of the liberty —

No. 824
Pothier vs Lovis — } On Pleffs motion to reject a pleading filed by the Defendt as not being of the description it alledges —

Mr Henshaw for Defendt the pleading is regular —

No. 780.
Henry McKenzie vs McGill & al } on mo. to name a tiers ~~Expert~~ arbitrator — Gale for Defendts the Defendts have not consented to the rule of reference, and cannot now consent to any change — considers that the introduction of a third arbitrator would be prolonging the contest uselessly. —

Roi vs Lusignan and Roi — Tait, Cur' — } On Pleffs motion to unite these Causes —

No. 2475.
Scriver
Devins, Cur
&
Scott & al

On opposition a fin ~~de distr~~ annuller
Mr Buchanan for ~~Pliff~~ Oppt - claims the lands
seized as his property -

order for proof

No. 1135.
Barron
Ker -

On Law -

Buchanan for Defendt - action on contract
to build a mill - objected that declr does
not allege the place in qt the mill was to
be erected -

Rossiter for the pliff, - there is sufficient in
the declaration to shew that place was pointed
out & all done the pliffs were bound to do -

No. 413
Douglass
Bullis -

action hypothecaire -
on law -

Taylor for Pliff - one Boyle in 1807 was
indebted to pliff in £200 on Mrt. Obligation - for
payt of which the lot in question was mortgaged
on death of Boyle, one Kennedy took possn of the
property as his residuary legatee - an action was
brot by Pliff agt Kennedy & obtd Jugt & on Exon the
property in question was sold - Pliff became purchaser
but did not consign the money in the hands of Sheriff
The Sheriff returned a folle enchere - Pliff took possn
& held it from 1812 to 1827 when the Defendt under a

sale

Sale from Kennedy brot. an action agt the Pltff and eventually succeeded in obtaining Judgt — agt Pltff. & action is now brot agt Defendt — as legal possessor —

Boston for Defendt — The first plea here is prescription, founded on 113 — art. of the Coutume — That to prevent the effect of this prescription, interruption should have been set up; but the only answer is that there is no such prescription — The prescription is excluded here from the pltff own shewing —
2 Bourg. ~~161~~ 163 — Then should have been interruption — The possession to gt the Pltff may pretend, is the possession of the real proprietor the Defendt —
Repn. 327. vo Prescription — & p. 307 — 308. — 310. — & p. 313. 318. — 325 — 326. — Poth. possn. No 64 — 55 —

In the former action the Pltff set up a claim for this very debt, before being held to give up the land —

Taylor in answer. There has been no possession in the Defendt — then can be no prescription ~~without~~ possession — the pltff had no knowledge of any title in the Defendr — as he always concealed it. 2 Inst. Just. — 1 Desp. 4th p. 389. — 310 —
Repn vo Prescription. p. 510 — Perodeau on 113. p. 165. 166. art. 118. by Tronçon. p. 281. 2. — Dec. Arrets p 301. Dec. des arrets — The Pltff has alleged that he was in possession until 1827. —

No. 2041
Truax
v.
Simpson

action for money had & recd.

Walker for Pltff — action to recover money gt Defendt — as collecte exacted from Pltff. under Stat. 6 Geo. 4. ch 114. The Pltff imported 189. barrels of flour from Kingston to L. Canada, on 7 Nov. 1828. on gt. occasion the Defdt exacted 5/ Sh ₰ barrel of duty on the importation — this formed part of 204 barrels of flour Pltff had imported from the United States in Octr preceding, & gave security by bond at Kingston for payt. of £50. 13. 4 — for the duty accrued on the importation of that flour into U. Canada — But there being no warehouse appointed at Kingston for ~~collecte~~ storing goods, liable to payt of duties on bond under the Stat — the Collector at Kingston took the security under the laws of U. Canada — 4. Geo 4. ch. 11 & 5. clause — See reasons of Defendt — for demanding this duty stated in the evidence —

The object of Imperl. Partt was to create means in this Colony — & the duty is to be applied for the benefit of the Colony where levied — also that the property may be warehoused — & when taken away, the duty be then paid — see 9th Sec. of Stat — see also 18 & 19th clause — The bond here given by Pltff at Kingston was equal to a payment — The Collector there had a right

The 22. clause directs the officer to secure the property if the importer refuse to pay the duty — & by the property being left in the possn of the importer the duty must be presumed to be paid. —

Mr Buchanan for Defendt-

It is questionable how far the Plff can recover under this form of action -

The 9th Sec. of the Stat. mentions the duty to be levied collected & paid - & on p. 5 of Stat. when imported into the Province - The 19th Sec. describes the manner in which the entry shall be made - The 31 Sec. shews also the duties must be paid down on importation - The 34th Sec. permits warehousing without payt. of duty, qt. is the only exception to the payt. down of the duties - It is apparent that the Collector at Kingston has not complied with the Stat - The provincial Legislature could not interfere with the execution of this Stat. see Sec. 49. - The Collector of U.C. has taken a Security contrary to the Stat. in taking it in ~~his own~~ the Kings name rather than in ~~the Name of the King~~ his own name - Hargrave's Law Tracts -

Walker in reply. Pand. de Poth. vol. 18. lv. 44. 2. 8. p. 274. 5. This form of action may be maintained as for money lent. -

5. Dig. Sec. 3. De obl. & act. Analysis des Pandects v° Condictio indeb. N° 180. 2. 3 - 5 Poth. Pand. 397. 2 Poth. Tr. de Quasi. Cont. N° 132. 3. 4 - p. 763 & -

The extension of the term of payment made by the Collector ~~has~~ at Kingston, is what is often done by the Custom House at Quebec -

Poth. Ob. N° 462 - 495. - Poth. Pand. v° Paiement -

№1446.

Hart
vs
Spraggods
&
Millar T. S.

On opposition of Jas Hutchinson —
Grant for Oppt — There was a partnership in
Montreal between Wm & Js Hutchinson —
In 1817 the Defend — Wm Hutchinson purchased
a house & lot at the Sheriff's sale & obt. a deed in
his own name, altho' it is evident this purchase
was made for the benefit of the Joint concern —
Wm acquired a second lot from Normandeau
in his own name, but under similar circumstances
The partnership was dissolved 1 Jany 1825, and Arbitrators
were named to settle all differences — They awarded
a balance due to Oppost — & that the two lots of
land & goods in hand were transferred to Oppt —
The Opposts in consequence became possessed of these
lots which were subsequently sized —
Pot. Doc. 126. 167. 168. 9 — Depn. Jr. Soc. —
The property was purchased for the benefit of the
partnership, as appears by the evidence adduced
and by the Inventory made by ~~the~~ Wm Hutchinson
& the correspondence between him & his brs & the books
marked F — Stock book taken in 1819 & 1820 —
p. 13. in that book, refers to this lot — & on page 55 — in
same book — also a letter in Expl. №5. marked C. & D — &
page G. in Stock book — p. F. K — last purchases mentd —
Woods testimony — & Warrick's —

Mr Buchanan for Plff — no title vests here in the Oppt —
the property was purchased by Wm to him, his heirs & assigns
the purchase not another, means money given no title
to that man — there is no consent here to the purchase by
Js Hutchinson — Dupuis — He made no declaration

that

Merlin vente

that he purchased as well for his brother as for himself — Merlin. vente —

No confirmation of the purchase by the Oppt — On the Contrary it appears that the Oppt — objected to the purchase, see testimy of Mr Lambe, & Mr Brown — and further the sd Wm declared after the purchase that it was for himself —

Gos Merlin Revendication Sec 2.

But even if Wm had had the mandate, to purchase for Oppt — if not made accordingly, the mandant could not claim the property —

Poth. Soc. No 58. —

Question — how far the Stock book produced can be entitled to credit — it being an irregularly kept book — and not according to the usage of Merchants — & even if regular, it can never be entitled to destroy a regular title —

Merkle says, that Oppt — complained of Defendt having inverted money in the purchase of property —

Objects to the testimony of the two Agents as competent Witnesses in the Cause — as they are the persons conducts the course of the proceedings —

Mornac 1 Vol. 1318. liv. 22. 5e. tit. Sec. 9. — Argentré 504 3 Glon. No. 2. —

Poth. Pand. & Mornac — says, that conductores negotiorum — & Duret. p. 112 — alliance des Coutumes that such cannot be Witnesses in the Suit

By the deed of assignment to Oppt there is no proof of the acceptance of the property — the acceptance by his Attys Jno Wood — this letter of Attys — is not proved — it is under the seal of Ld Mayor — but this applies only to cases of taking evidence for goods sold — one of the powers not signed by Ld Mayor — no authority in these powers to buy

real

real Estate —

Mr O'Sullivan for the Appos.t —

The property here seized must be considered ~~as~~ having been the property of the partnership — difference between transactions between strangers and partners — the declaration of the purchaser is a solemn declaration q.t is as strong as any deed — the decl.n of the partner that he has purchased for the partnership is quite sufficient. Poth. Soc. No. 59. — the purchaser might renounce to his own right & it was an easy transition here — Felicius - 5.e Case — Where the partner purchases in his own name, must be presumed to be for the partnership, unless he declares the Contrary but the presumption as well as the express declaration of the Partner — particularly where the thing bought is useful for ~~the~~ carrying on the trade —

The grumbling of the oppos.t here ag.t the purchase is a species of Consent, he intimates nothing of disapprobation to have nothing to do w.t the purchase, but seems to regret that he must take this purchase instead of his money —

The purchase from Normandeau was to improve the former purchase —

778. pag.
Jour. Palais —

Saturday 14th April.

Prest.

Ch. Justice Reed
Mr Justice Pyke
Mr Justice Uniacke
Mr Justice Rolland —

~~Guichaud~~
~~v~~
No 813
Griffith
McIntosh

action for work & labor —

Bleury for Pliff — moves to reject three papers filed by Defendt too late —

Mr Stanley for Defendt the papers filed are drafts or orders made by Pliff for goods — they were not necessary to have been filed, & were not objected to when produced — The balce due to Pliff does not exceed £15 — as no credit is given to Defendt for his acct. qt was delivered to Pliff before the action brought — has made a statement of the balance, from the testimony adduced. — has made a tender, which is before the Court —

Mr Hart for Pliff, admits deductions to the extent of about £10 — The items in Defdts account are overcharged — but the demand set up by Defendt should have been brd forward by Incidental demand as it cannot come regularly before the Court in the shape of compensation —

No. 2029.
Goselin v. Pearson

On action to recover 2 bales of goods, —

Driscoll for Pleff — goods were sold to Pleff by one Burroughs, they came into possn of Defdt in consequence of his having joined wt Pleff in a note for the payment of them — but it was afterwards agreed that upon Pleff giving such security as would secure Defendt from the payt of his note the goods were to be delivered up to Pleff, that after this security was given, the Defendt still refuses to deliver up the goods. —

Boston for Defendt — The goods in question were the pledge of the Defendt — they were delivered to him: they were conveyed by him to Laprairie, where they were in a private & concealed manner from the Defendt — cart by the Pleff and conveyed on the way to St Johns as far as halfway house — here Pleff was pursued & overtaken by Defendt — where he again obtd possession of his goods — Again at Isle aux Noix the Defdt — again lost the goods & on pursuit after Pleff found them at one Fishers — where he again obtained possessn of the goods — Defendt — is entitled to hold the goods — refers to testimony of Burroughs —

There is no evidence to shew that the brother of the Pleff ever offered to become security to Defendt for his obligation to Burroughs —

Pothier v. Bingham et al

The Court maintained the plea of Mr Harwood & dismissed the action as to him, but without Costs —

No. 1732.

Burton
+
Grace
&
Burton opt

On oppos^n of Burton. —

Mondelet for oppos^n claims a privilege over Brown another oppost — the bailleur de fond, for certain Seigniorial rights due to him. —

Mr Adams for oppost Brown. In the deed of sale from Brown to Grace it is acknowledged that all arrears of rents up to the day of sale were p^d and the oppost producing this deed, this fact must be taken ag^t him — Rep^n 565. v^o preuve — Id p 141. v^o Acte —

Mondelet for oppos^t the clause in the acte does not prove the fact, but merely gives a right of recourse to the purchaser —

No. 529.

Hutchinson
vs
Hutchinson
& al —
& Garnishees
~~Campbell~~ &c
G

The Court granted the motion made by Sarah Campbell, considering that under the affidavit made in the Cause, her goods & effects and those of her children were not liable to an attachment — That although Sarah Campbell as widow of the late John Spragg and tutrix to her minor children might be liable for the debts of her husband, as one of the partnership of Spragg and Hutchinson, yet as the right of attachment here claimed x ~~from~~ an act of bankruptcy committed by the partnership this right could not extend beyond the effects of that partnership, and the private & separate property of S. Campbell, could not be attached on that act as there was no charge ag^t her in the terms of the Ord^n to warrant such attachment. —

x was grounded on the principle of the fraudulent conduct of one of the partners and ~~the involving of the partnership~~

Monday 16th April.

Prest.

Ch. Justice Reid.
Mr Justice Pyke.
Mr Justice Uniacke.
Mr Justice Rolland.

Dunn & Snedden & McLennegan & Ursule Ledue

On motion to discharge the Enquete & subsequent proceedings from want of notice —

Mr Driscoll for Pltff. there was no issue with the Interv's party & therefore he was entitled to no notice —

Mr Brennan for Ledue contends he had an interest in the Cause & should have had notice

No. 1242
Cuvillier & Boucher & Opposts

On rule of Mr Beaubien for distraction de frais —

Mr Peltier consents to distraction as to the subsequent Costs —

Mr Beaubien accedes to this. —

No 1389
Terrien & Dupras et al

On Defendrs mo. for delay to fyle moyens de faux. —

Mr Bleury objects to any delay being given, to produce the Copy filed, as no Inscrpn can be granted

agt

ag^t the Copy —

No 2660.
Desforges
&
Beauzette
&
Donezani Gar^t

On mo. for a partage —
Mr Walker for Gar^t. the demand is premature, Jug^t given only on the 8^e inst^t — & besides a delay should be given to vacation to name an Expert —

No 2717
De St. Ours
&
Henault

on Law
action for Lods & Ventes on a clause contained in a marriage Contract — between Defend^t. & his wife —

Mr Beaubien for Pleff — The father by the mar. Cont. makes a donation of a lot of land & the Defend^t. agrees to reimburse to his father a sum of 5000^# — on q^t. sum lods & Ventes are demanded —

Mr Cherrier for Defend^t — Two exceptions to action — the first that the 5000^# is the value of moveables given — & besides no lods & Ventes are due in a case of Martigny. v. Beauchamps a similar case was judged — 1820 —

A sale between father & son will produce Lods & Ventes but not an accommodement de famille —

Prud'hom. 257 — father may by marriage dispose in favor of his children, a telles conditions qu'il voudra —

3. Guyot. 383. §. 31 & p. 394 — Poth. Fiefs. 152 in 4to —

2. Fonmaire p. 33. No 502. — The transaction is marked here with a liberality in favor of the son —

Lovonian 186.7.

Head

Had the father given the son a lot of land in discharge of an account of tutelle due to the son no Lods are due, as the Succn of the father is in so far discharged — the case is similar, the Succn of the father is in so much enriched, to the extent of 500# — so also in case the father the whole of his land to one of his children, qt could not well be divided on condition of a Soulte & retour — so as to enable him to equalize the rights of the other children, this would carry no Lods & Ventes — as being an accommodement de famille. —

64b Repre Vo Lods & Ventes — p. 618 — a case strongly in point, as the surplus was payable to the Donor himself — The decision here was right, but the motives of the arret are wrong —

Repre p. 609 — co. Vo —

Fonmaur — Mr Beaubien for Pfff. Lods & Ventes are due on every sale — & it is not the title given to the act, but the nature of the act qt determines this right — if a father gives a lot of land worth 10,000# it is a sale of that lot for so much money — an act may be partly sale & partly donation as in this case — suppose the value of the property here to be 10,000 — the donation is for 5000# & the balce to be pd to the father, & for that balce it is to be considered as a sale & raises Lods & Ventes — had the balce been applicable to pay the debts of the father, it would have been different —

2. Fonmaur. p. 33. p. 16 — the principles are stated — This sum of 5000# is a debt due by the Defendr — to his father's Succession — The arret cited from the Repre is in favor of the Pfff. as the sum of 15,000 was given to pay the debts of the father —

Cherrier in reply — It appears admitted that the transaction consisted of a donation — Poth. propres p. 253 cited in the case of Martigny, it does admit the propriety of the maxim

here

here cited by Pothier — refers to the citation from Levonier — 3. Guyot. 393 —

No 1158
Chapman
Baggaux

action for a debt due by late John Clarke

Mr Cord for Pleff, action for goods sold — being for beer — 150 poplars — & £30 for agency — in transacting his affairs — several pleas — admits the first charge — denies the others — The Pleff contends that he has proved his demand — as to the poplars. on a medium there would be 144 proved — to the last item, several Wks. speak, but not very precisely — and one Wks proves Clarke's acknowledge of a sum stated in an acct — delivered to him —

Mr Beaubien for Defdt — This action cannot be maintained — the counts in the declaration have no reference to the transactions between the parties — This is not a mercantile transaction — the sale of poplar trees is not mercantile — The agency of Pleff, is not a mercantile transaction — it is a special contract of Mandat, & cannot come under the general Counts of assumpsit — There is but one Wk. who proves the delivery of poplar trees — not a mercantile case —

The testimony of Pleff witnesses is destroyed by that of Defendt —

No 2239
Drolet & Gaudet } action for breach of contract — & damages — by default —
Mr C. Bruneau for Pltff refus to evidence adduced.
Mr. Greece for Defendt — the road was to be made à dire d'experts — The only damages that ought to be allowed is 5 pounds —

No 715
Grant & Grant & E contra } action on a bon —
Bruneau for Pltff, action for bon for wood sold — payable when the wood should be sold by Defendt — alledges that Defdt might have sold the wood. —
Mr Grant for Defendt — there is no debt proved by Pltff —

No 811.
Smith & al v Ferguson } action of acct —
Buchanan for Pltff — The plea here first is that an account has been rendered — & that no debats de compte was ever raised to the acct — so rendered. The 2d plea admits the accountability of the Defendt — and 3d — a general denegation of the facts in the declaration.
Mr Driscoll for Defendt — The late John Brown owed the account demanded & Pltffs obtd Judgt agt him for the reliquat de compte due to them —

No 2674 —
Mc Donald & Dicarry } action on deed of Sale
Bleury for Defdt — There are mortgages on the

the land sold, which was sold quitte de toutes charges - The Defendt has been sued for several of these mortgages - & claims security agt them

Mr Fisher for Pliff, the only question is as to the sufficiency of the evidence adduced by Defendt - the papers filed are not authentic. - Has objected to filing of 3 copies of Judgts filed at the enquete as made too late. - if allowed now to be filed they tend to destroy the Pliffs answer -

Mr Bleury for Defendt - The Judgts were not rendered when the plea was filed -

No. 864 -

Bruneau & Bruneau & Charbonneau & al' Intervs -

On merits of opposition -

Mr Lewell for Jos. Charbonneau oppts In 1785 Jac. Aubertin married Arcange Dubuc - on 28 June 1787 she died, but a mutual will was made between them - there was a child of this mar. who died in few days after her mother on 11 July 1787 - Aubertin remained in possn of the property of his wife - The opposn is made by the representatives of Arcange Aubertin to the sale of the property seized - There was no law authorizing this will between the husband and wife, and the husband could not prescribe under a vicious title to the property under any length of time - cites cases of Perrault & Davaine. & of Lilly & Boston v Racine, where the will in favor of the husband was

was set aside. —

Mr C. Bruneau — the only plea before the Court is that of prescription of 30 years —

Mr Sewell in reply, the facts stated in the declaration shew the nature of the possession had by the Defendt — could not avail him to acquire any prescription —
Cur 118 Cont. Cont. 2 Gr Com. pr 426. No 4 prescripn cannot be acquired under a vicious title, and one contrary to possession. Poth. prescription No 172 sec. 3. & No. 192 — The 282d art. Cont. prohibits making wills by husband & wife in favor of each other — since held to be the law — Degaudet. p. 384 —
4 Conchot. 634 in 12° — ch. 9. des Prescriptions — 1. Ferr 266. small comments — 2 Gr Com 425. No 1. — & p. 226. No 5. Poquet Reg: Droits. No. 46. p. 429 — Duod prescrip. p. 16. — & p. 34. ch. 8 — id. p. 80. ch. 12. — p. 342. gloss 3. No 29. Gr Comre on 118 art. Cont. — & art. 282 — advantages between husband and wife can be allowed only by Don. Mutuel p. 350. 1. on art. 113 — The title is an absolute nullity —

Mr Bruneau — The defendt ~~pretends~~ possesses under no vicious title — the Defendt has possessed ~~under the right of~~ since the death of his child upwards of 30 years, — Defendt alledges no title —
12 Repn vo nullité. p. 266. —

No 999.
Lannergan
&
Cook —

action en Revendication — on law

Boston for Defendt, action for saw logs & plank
The Defendt says he is a mere manufacturer, & that the wood was bot. to him by other persons whom

he

he names, that having increased the value of the article by manufacturing it & improving it, he cannot be divested of it until he be paid for his improvements — Rep. v° Revendication — p. 619/690 — and p. 623 — Id. p 690. v° Privilege — Poth Prop. N° 181 — N Denizt. v° accession. —

Mr Mandelet for Pleff. the Defendt — could have acquired no right or title to the property in question, from having received it from the hands of third persons — cites the Indt. of the Case of Burton. v Phelps — The Pleff is not bound to follow up any recourse agt the persons he may point out as having recd the possession of the timber —

Tuesday 17th April.

Presᵗ.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke
Mr Justice Rolland

No. 1425.
Kuper
Cartier } action to obtain increased value in a steam boat –

Boston for Pltff – Pltff found he could hold no more than shares & that a greater interest in the boat from 2/70 to 2/64 – & for this extra interest the action is now brot – there is also a small note –

Mr Mondelet for Defendᵗ – contends that no greater interest has accrued to Defendᵗ – That the Court ought to presume that Defendᵗ – has no longer any interest in the boat as ⅌ Exh. No 2 of Pltff – That the interest here is below the competency of the Court. –

Boston in reply the interest is clear – & interest ought to be allowed –

No 2575
Racette
Chebrone
&
Chebrone fils

on law
Bruneau for Pltff. action for rents & pension
The Incevs party has pleaded that the Curator cannot

could not ~~plead the exception~~ institute the action — This he has no interest nor right to alledge —

Mondelet for André Brien & Le Brien, says he has interest to see that proper parties are before the Court, that he may have a legal discharge — that if a Curator was — appointed to a Succession that was not vacant —

No. 608.
Quintin
v.
Raymond

Action on deed of sale — on law

Sewell for Pleff — The Defendt has not paid the monies in his hands to the Creditors as he stipulated, in consequence the Pleff has been bound to pay them — the conclusion is, that Defendt produce receipts for the payt of those monies, failing which that he be condemned to pay the money to the Pleff — The Defendt here sets up the existence of Mortgages, but this is not enough, he should shew a stipulation of warranty on the part of the Pleff agt the existence of mortgages —

Defendt also claims that he ought to have security that the son will ~~warra~~ confirm the sale when he comes of age, but Defendt having agreed to the security then stipulated with a knowledge of the fact, he can require no new security —

As to the deficiency — the land was sold with certain metes & bounds. There is no warranty as to specific feet — refers to 1 Bourg. 482 —

Mondelet for Defendt When the contract was made the Pltff was solvent, he is not so now, so that and the Defendt is entitled to Caution —
The second exception is founded on a special undertaking on the part of the Pltff, that the property was sold quitte de toutes dettes —

No 38
May
vs
Sarles

Action for penalty for practising Physic without license —

Mr Adams for Pltff refers to the evidence in the cause —

Grant for Defendt There is no law to maintain this action —

No 1443
Salberstrop
vs
Paquet

action for rents & arrears on lease —

Rollin for Defendt The Pltffs are in the right of Jos. Quillet by a transport — to receive the rents to commence at St Michel last — but not the arrears that became due at St Michel 1830 —

Mr Bruneau, recourse must be had to the acte de donation to ascertain the periods of payt of the rents — &

Dismd

No. 524
Peck
vs
Hobart

action for bill of Costs —

Bowen for Defendt There is no proof of the demand —

No 50
Brown
~
Buchan
&
Buchan oppd

on rule for a folle enchere —
Sweeny for Pltff — oppd alledges demonstration but this not sufficient — the oppt. should have pd. his purchase & claimed a demonstration of price —

To stand over to Vacations

No 29
Alger
~
Berthelet

on law
Buchanan for Pltff — The exception

No. 1857.
Ex parte —
A. Archambault
& al. —

On mo. to obtain rule agt the Marguilliers to elect a new Church wardn Sr Hyacinthe —

Mr Mondelet for the Curé, says the notice served on him alone — he does not represent the Fabrique — The notice should have been ~~sign~~ certified by affidavit — cites Hands Crown Prac. 56 —

The notice & writ ought to correspond — here the Curé is no part of the Fabrique Repr. 327 L. Col. Vo Marguillier — Hands Cr. P. 54 — The Marguilliers are called Marguilliers de l'Eglise — there is no such thing — Bull. N. P. p. 199 — a demand is also to name a Marguillier for 4 years, without

shewing

shewing the usage to exist in that parish — Hands Prac. 54 — no such writ granted when there is a doubt as to the power of the parties —

No mandamus is granted where another remedy can be had — the party may have his action —

575. 3 T. Rep. King v. Jopp. — No affidavit to shew the nature of the office to be filled — nor any proof that the parties obliged have been put in default — no affidavit to shew the right of the party to obtain this remedy Bull. N. P. — The time to proceed is demanded immediately — which is contrary to usage —

There has been an election, and the invalidity of it ought to be shewn —

Cites a precedent from Three Rivers — coram J. Pyke — There is no authority vested in this Court under the Judicature act to grant this writ — This Court not the superior Court in the Country to which this application is made — This opinion is strengthened by the constitution of the Court of K. B. in U. C. See Stat. 34 Geo. 3. ch. 2. by which all the powers of the Court of K. B. in Westminster Hall are vested in K. B. there —

Mr Greece for application — the service of rule is sufficient — as the Curé has appeared — any defect here must be taken advantage of at day of appce. Tomlins Index. Wt. Practice. No. 24 — The Curé & Marguilliers are the persons to whom the writ is to be addressed refers to case at Quebec. King v. Church Wardens of De Lotbinière — 3. Bl. Com. 110 — Burns Just. tit. Mandamus —

Oct 1820

The notables have a right to be called –
Hericourt Droit Ecc. p. 244 –
Durant de la Maillanne 348. v° Fabrique
Repr v° Marguillier –
Jousse. Gouvt des Paroisses – Reglement de St Jean de Grives –

No 41.
Magnan & Leroux – oppt

Quest. as to Costs on the oppos^n
Mr Bruneau says that the oppt ought to pay the Costs of his oppn as by the deed of applicant he is bound to pay to the oppt the money for which the oppn was made –

Wednesday 18th April.

Pres.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke
Mr Justice Rolland

No 2154
Bell v Cartier & Cartier opp.
W
Opposition dismissed —

No 296
Harwood & al v Whittock
Action dismissed —

No 2683.
Hunt v McKay, Cur
Action dismissed

No 1577.
Pozer v Donegani & al
W
Judgt for Pltff —

No 739.
Mercier v McMaster
Judgt for Pltff —

No 1234
Jessup & al v Field —
Action dismissed —

No. 1230. Delorme. v. Perrin.	Exceptions dismissed –
No. 1904. Henshaw v. Henshaw & Tuckerman & al. Opts	Opposition dismissed –
No. 7. Ex parte John Smith v. Medical Board	Rule for Mandamus absolute. –
No. 2197. Dubrul. v. St Denis –	Judgt. for Pltff. –
No. 999. Lanergan v. Cook. –	Defendts. plea maintained & order for proof –
No. 1425. Kuper. v. Cartier –	Judgt. for Pltff – costs as in Inferior Court –
No. 2575. Racette. & Chebreux. v. King v. Brien. Gart.	Plea of Exception of Ls. Brien dismissed

Thursday 19th April.

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

No. 811.
Smith & al' vs Ferguson } Action dismissed

No. 2029.
Gosselin vs Pearson } Action dismissed

No 1801
Lemieux. & Bellanger } Judgt for Pleff, with right of retention by Defendt Disst. Mr Justice Rolland

No 906
Guichaud & al & Cleland } Judgt for Pleffs disst. Mr Justice Rolland

No 1569
Guichaud & Day. } Judgt for Pleffs Disst. Mr Rolland

Bullis. –
Douglass
Douglass opp^t

Judg^t maint^g Opposition –

June Term 1832.

Friday 1st June.

Prest.

Ch. Justice Reed
Mr Justice Pyke
Mr Justice Rolland

Mr Justice Umacke had gone to Halifax & did not attend during the Term. —

No 1272
Taylor
v
Mitchell
&
E contra

On defendt motion for the adduction of further testimony discovered by him since last proceedings. —

over till to morrow

Saturday 2d June 1832 –
Prest.
Ch. Justice Reid. –
Mr Justice Pyke
Mr Justice Rolland –

No 824
Pothier
v
Lovis –

On law –

Mr Henshaw for Defendt – nothing in the decln to shew a liability in Defdt – Pltff says that the lots of land were sold to one Jos. Lovis, without shewd that Defdt. in anyone represents him, ~~or~~ is bound for him –

Mr Mondelet for Pltff, the declaration is suffct. –

~~No 363~~
~~Dion~~
No 1272.
Taylor
v
Mitchel

on mo. to ex. thets on part of Defdt –

Walker for Pltff – The Enquete has been declared closed long since – the affidavit insufft the facts not set forth to gt. Wn are to depose – refers to deposition of one of the Witns referred to as conclusive agt Defdt – also 2 affidavits of Peter & John Vandyke, to shew a conspiracy agt Pltff –

Boston. Enquete. Repn p. 747 — new facts may be proved at any time by new Enquete. — on a new trial new witnesses are admitted. —

Monday 4th June.

Prest.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland

No. 871 —
Smith
Mills & al } On Pleff mo. to reject ~~repn~~ demurrer filed by Defendt to Pleff repn —

Fisher for Defendt — no notice in the motion of the grounds on wt the motion is ~~grounded~~ The pleads is besides sufficient —

Adams for Pleff. a general answer was the only pleading to be admitted —

No. 2385.
Hodgson
Simpson } on Defds mo. to publish Com. Rogn —

Driscoll for Pleff. objects — as not conveyed to Court according to the rules of Practice —

No.
Classon
v.
Curran
&
Curran opp.

On opposr. mo. to discharge inscription & that a day be given for further evidence —

Mr Boston for Pltff objects to motion as too late after enquete closed & cause inscribed

—

Tuesday 5th June
Prest.
Ch. Justice Reed
Mr Justice Pyke
Mr Justice Rolland —

No 363
Dion
v.
Langevin

Mondelet for Pltff — The acct. filed is insufficient & without anything to support it — demands that Defr be held to account —

Rollin for Defde. The acct. was rendered before the action, & that now filed is suffte —

—

Badger sal
v.
Dewitt sal

on mo. for pub. of Com. Rogr. Submitted by the parties —

No 1905
Bruneau
v.
Bruneau
&
Charbonneau
&
Aubertin & al
Intervs.

Sewell for appt. The subrogation is founded on reasonable grounds
Lebrun Sec. liv. 2. ch 1. Sec. 1 — ~~p.~~ No 64 —
No. 65 — Renusson. p. 2 — ch. 1 —

Wednesday 6th June. 1832. —

Prest.
Ch. Justice Reid.
Justices Pyke & Rolland. —

No 1435
Courcelles
v.
Glyhorn

~~On Pryss mo. to reject a plea of except a la forme as filed too late —~~
Withdrawn

No 2607.

Thursday 7th June.—

Prest.—

Ch. Justice Reid.—
Justices Pyke & Rolland

No. 871.
Smith.—
Mills.—
Smith. T. S.

Pith. Obl.
Dunod.—58. & 185 171—
Cart. 21. p. 115.
tit. 5. art. 21. ad. 1673
Louisse—
1 Despeisses 793—fo.
part. 4. tit. 4. No 29
Des prescriptions—
Gr. Comr.
Bourjon

Wan
Hill

On law

Mr Fisher for Defendt. action on an old note — plea of prescription to this there is an ~~plea~~ answer of interruption to gt Defendt. has demurred — refers to Provt. Stat. 34. Geo. 3. ch. 2. Sec. 8 — wh. is the only mode by which the case must be determined, namely by the oath of the party — the plea is properly a plea of payt. — & there can be no interruption in such case — if the note be extent & the action gone there can be no revival of it.—

Mr Adams for Pltff. our Stat. may be considered in same light as the Stat of limitations in England, & the same kind of evidence ought to be admitted —

Here the plea of prescrpn. is insuffct. as it does not allege that the 5 years had elapsed since the note became due — the word presented

in

in law is not used by the Statute — nor does the plea state any reason why it is prescribed The plea is double, as it alledges that Dep^t. owes nothing — yt is inconsistent wt the other plea — it also alledges payt — & of the whole offers to make oath, without stating of which of these facts —

Fisher in reply — has followed the form of plea in case of Hays &al v^s. Lacroix — if there be any thing objectionable, it has been waived by plea of interruption —

—

No 1905.

Bruneau
v
Bruneau
&
Charbonneau opp^t
&
Aubertin &al Inter 3

Mr Sewell for Oppos^t — on question of subrog^n — Contends that a right had accrued to Oppos^t to have an action petitoire ag^t Aubertin for the land in question — the deed of exchange was only a nullité relative — and title may be acquired by prescription under it — as was the case here — & therefore the Exchange being confirmed, the alienation becomes valid, and the land acquired by Aubertin became his property —

~~N. Denvz~~ — Rep^y v^o Nullité. 247. 249. 250 — 256 —

N. Denvz. p. 413. §. 1. v^o Alienation — Poth. vol. 4. p. 347. No 11.

Mr Bruneau for Pleff — There is no subrogation in this Case — but even if it applied — yet since the deed of exchange there is prescription

Repn. vs. Subrogation — 427. —
Poth. propres —
Le Brun. Succ.

Friday 8th June.

Prest.
Ch. Justice Reid
Justices Pyke & Rolland. —

No. 549.
Dunn
v.
Snedden
Pedeu & al Intevs.

On Intevs party's motion that Pleff be held to intimate her place of residence so as to enable Intevs party to ex. her on facts & articles —

No. 1055
Handyside
v.
Donegani & al

On mo. of John & Jos. Donegani to intervene
1 Desp. 607 — Des Cautions —

No. 1272.
Taylor
v.
Mitchell
&
E contra

On motion to reject certain depositions & on merits — action en separation de corps & de biens —

Walker for Pleff, states, that evidence adduced is sufficient to maintain the action. —

Boston for Defendt — alledges that conduct

of

of the pleff has been culpable, she being guilty of the crime of adultery —

Saturday 9th June

Presᵗ.
Ch. Justice Reïd
Justices Pyke & Rolland

No. 2286.
Mᶜ Dougall
Tiffin —
Davis Tutr
opᵗ

On oppⁿ a fin d'annuller —
Bender for Opposᵗ — the property seized is not that of Defendᵉ but of the Minor for whom the Oppᵗ claims —

Mᶜ Grant for Pleff, The claim is founded on a pandulent act of Donation by one Leith to the son of the Defdᵉ after havᵍ purchased it from Defdᵉ under a pretended sale — when the sale was so made the Defendᵉ was in an insolvent state — Leith was not in a situation to purchase this property — The Pleff rights are secured by Mortgage in 1829 — The deed of donation was not insinuated until after the seizure so that donation can have no effect until insinuation not being made within the four months —

Mr Bender — it was only last year Pleff obtᵈ a Judgᵗ agᵗ the Defendᵉ & 3 years after the sale by Defdᵉ to Leith

No 1015.
The King
v.
McDonell

action on forfeited Recognizance
Amt for Defendt objects to the regularity of Enquete & that it has not been closed — objects to the sufficiency of the proof, there being only a slip of paper signed by Mr Delisle — which is informal & insufficient & no proof of the Recognizance or of the estreating of it —
Harrison's Prac. — v. Evidence. sec. 15 —

No 1017
The King
v.
Henry —

similar case
Hart for Defdt no exhibits filed in this case —

No 2560.
Beaubien
v.
Massue
&
others Govt

action hypothecaire —
Beaubien for Pltff — The Defendt has called in several garants — no pleas filed — & Pltff allowed to proceed ex parte — as to Massue & Desrivières Govt —
Mr Mondelet says he has for Defendt been prevented from proceeding by default agt his garants, his motion to proceed ex parte agt them having been dismissed

Monday 11th June

Prest.

Ch. Justice Reid

Mr Justice Pyke

Enquete day. —

No
Smith
Mills
&
Smith. T. S

Defendants demurrer to the interruption of prescription & new undertaking of Defend dismissed & proof admitted of such new undertaking — su J. Pyke's Note. -

—

Tuesday. 12th June.

Enquete day.

—

Wednesday 13th June. —

Prest.

Ch. Justice Reed
Justices Pyke & Rolland

No. 2549.
Peltier & ux
v.
Dechantal

On objection to testimony of Gr. Rolland Notary — on an Inscription en faux. —

O. Denez. vo acte No. 17.
Serpillon Code de Faux p. 435 —
Langlois. Dr. & priv. des Notn. ch. 47. —
Fer. Parf. Nre liv. 1. Ch. 18 —
Fer. Dic. vo Notaire —

Mr. Cherrier for Pleff. the objection is to the testimony of the Notary — who passed the act of reçu agt which the inscription en faux is made — but the Notary here was himself imposed on by the parties — There is no principle of law agt. his testimony in such a case, — The old jurisprudence now yields to more enlightened principles, & both in England & in France the law on the subject of the testimony of witnesses is much extended from what it was formerly — G. Toullier. 398. 399. 405. Serpillon Code du faux. cited by Toullier — Quest. Merlin. vo Temoins. p. 223 — Lefevre & Desgrosellier cited as decided in this Court — The Notary in this Province cannot know all the persons who come before him from the great extent of their jurisdiction —

Mr. Mondelet for Defendr. — there is no authority to be found in old laws of the Country to support this application — here the Notary is implicated in the question, namely that he passed an act for

persons

persons whom he did not know, which is contrary to their duty — O. Denoz. v. Notaire — The witnesses to an act cannot be exam^d — Rep^re v. Timonis. p. 60 — The Notary is interested to maintain his act, & he ought not to be admitted to come ag^t it — A notary may be corrupted to come ag^t his act by undue influence —

No 2003
Mogé
Marchand
& Interessés

On re-hearing — on cause evoqued —

Mr Bruneau for Puff — Case of a Cours d'eau the Defend^t pleaded specially, and a special rule of reference was made to Experts to visit the premises in question — The Experts made their P. Verbal — on which the Interessés were put into the Cause to shew Cause why P. V. should not be homologated the Interessés evoqued the Cause — On this a new declaration was made & pleadings had thereon —

Mr Mondelet for Interessés — this cause same as that of Evans v Gregory & Mr Naughton & Gregory adjudged in April 1827 — by which it was adjudged that there could be no such action, as that of calling on a party to shew Cause why a P. V. made between 3 parties should not be homologated —

Mr Bruneau for Puff, contends that the proceedings are regular —

Thursday 14th June. —

— Presᵗ. —

Ch. Justice Reid. —
Justices Pyke & Rolland

No 473
Rolland & ux
v
Pothier
&
Pothier & al opᵗ

On opposᵗ mo. to set aside the plea filed by Pliff to opposⁿ — as blending matters of law and fact — & that the inscription for hearing on law be rejected. there being no law issue regularly raised —

Mr Gale for Pliff. The Jndᵗ of this Court has been confirmed in appeal, & a right of Exon thereon accrued — any intention of oppᵗ to appeal further is of no moment & cannot arrest the Execution — Had opposᵗ meant to carry his appeal into effect he should have given security — proceeding here is summary — 1 Pigeau 207. 8 —

The opposᵗ ought to have filed an answer in the time allowed by rules & before Pliff inscribed the cause

No 221.
Bourdeau
v
Lavoie
&
Groux. T. S

On Defendᵗ mo. to allow ~~Defdᵗ~~ T. Saisi to appear & that Jndᵗ in this cause be set aside — as the advocate he had employed did not appear & make any defense to the demand — altho. he had a good defence to make —

Mondelet for Pliff — the application is

is irregular — & without foundation — as the receipt is subsequent to the notice to contest his declaration — the negligence of the advocate is the negligence of the party —

No 2356
Gauthier & Knapp } Action for a legacy, & on an act of partage of property of late Ls Gauthier —

Mr Walker for Defendr — submits case

No 369.
Fraser Leslie & Bank T. S. & Bleakley Intervs } On declaration made by the T. S. who claim a right to stop the monies in their hands on acct. of Defds debt due to them —

Bleakley for Pliff — the T. S. claim under Bank act. ~~25 Geo 4 sec 11~~ ch 1 Geo. 4. Ch. 25. sec. 11 — The claim of Bank is contested, that they cannot retain stock of their debtor to the prejudice of rights of other Creditors — & 2° this being stock of the individual, cannot be stopped for the debt of the partnership of Leslie & Co. Repr. vo Gage. p. 695 — 1 Domat. 337 — Repr. Distribution. p. 732 — 3 Chitty 256. Comr. Law. Several property not bound for Partnership debts to exclusion of Individual Creditors — Goco on Partp. 313 — Kell on partp. 219.

Mr Cherrier for the Bank — The rights of the Bank

Bank are ascertained by the Charter of the Bank — which establishes a pledge in favor of the Bank for all debts due to it by Stock holders — 660. 1 Pigeau — as to value of things seized when less than the debt due to the Bank —

By laws of this Country, the individual is liable for the debts of the partnership — there is a Solidarité between partners in this respect — cites Pardessus —

Mr Sewell of Counsel for the Bank —

Mr Buchanan for the Interveners party — there is a distinction between the moral being of a Copartnership
937 & the physical being of the individuals which compose it — Pardessus. No 937. &c 2. Bell. 619 — The debt was to the Bank was in the partnership name — the Stock is the property of the physical person, the debt that of the moral being — the lien cannot be extended from one case to another — there can be no lien without special contract here — unless granted by Charter — The Charter here refers to voluntary transfers of the Stock — here the debt was not due to the Bank by Jas Leslie but by the Co — The Charter does not apply to case of a forced sale by Creditors — but Stock is liable to be sold for benefit of all Creditors —

Mr Sewell for Bank — as there is solidarité for payt. of debts of a partnership, so every individual partner is bound for payt. of them — Bac. ch 21. No 251. 252. Poth. Soc. No 96 — 2 Sures. Cons. p. 225 — Poth. p. 568 —

Davis & Bowke. T Rep — 15 East. 428 —

No 1233.
Smith & al
Porteous

action agt Caution —
Griffin for Defdt — Question as to imputation of payt —
that ~~entered~~ payt made by in extinguishment
of the the principal —

No 1500
Marion
&
De Rochblave
&
Homerick
T. S

Action by Pliff to obtain monies in hands of
Defendt for maintainance of the minor Children
of Isheroff —

Buchanan for Pliff contends that Defdt is personally
liable for the monies demanded in consequence of the
assignment made by Isenhoff to Defdt on condition
of his maintaining the minors in question — assignment
dated 5 March 1822 —

Mondelet for Defdt — The action is in Attt and the
transport is not forward only by Replin — so that the action
as stated by the declaration is not proved nor founded
That Isenhoff considered Defendt more as his agent than
as bound for the payt of the monies in the hands of
McG & Co — in June 1823 — a similar case decided in
regard of pleading when founded only on Replication

No 1082
Robert
Stuart

action ~~for~~ of assumpsit —
O Sullivan for Defdt — has pleaded payment
Sec plea filed 42 receipts for monies pd to pliff — all which
have since been lost — The pliff counsel has taken these
exhibits — Under circumstances the supplitory oath of the
Defendt —

Friday 15th June.

Presᵗ
Ch. Justice Reid
Justice Pyke & Rolland.

No. 1220.
Doré & ux
v.
Dumont

On Pass mo. to reject Defendᵗ appᵉ he being in default.

Mr Rodier for the Defendᵗ appᵉ was regularly entered.

Motion rejected.

No. 549.
Ann Dunn
v.
Snedden
&
Lenaghan.

Mo. for security for Costs.

No. 139
Petition of
Simon Lacombe
&
Divers Oppᵗ.

On motion of Petitioner for Distribution of the monies on the sale.

Mr Cherrier for Oppᵗ. The Petr has made no deposit of the money so as to entitle him to have the amount of the sale finally fixed. There can be no partial deposits nor partial payments. Cit. 7.

Mr Beaubien in answer, no deposit of money required by the State. The sale here is like a decret forcé & the Oppᵗ are presumed to have acceded to the terms of the sale, from their silence.

No 1787
Mr. Intosh
v
Fraser —

On law —

Walker for Pleff — the plea is in nature of a plea of prescription — says that he pd the note in 1823 suffers his oath — To this a new undertaking has been set up —

Buchanan for Defendt — the new undertaking not suffe. not said whether it was in writing or Verbal —

No 2186
Bagg
v
Seeley
&
Robinson ept

On ments of Opposition —

Turgeon for Oppt. it has been objected that the transport was not regularly notified — but he files the return of service of bailiff qt is authentic — alledges payt — but not proved —

Mr Greene for Defendt — the service of transport not duly made — return of bailiff not sufficient — nor legal — he should have been accompanied by 2 records who also ought to have signed — it is not apparent that he is a bailiff — is a mere certificate — without legal form —

Turgeon for Pleff — the service is regular —

No 1281.
Smith
v
Sutherland
&
Cuvillier T.S.

Stanley for Ingt agt T.S. +

Saturday 16th June. —

Prest.
Ch. Justice Reid
Justices Pyke & Rolland. —

No 473.
Rolland & ux
v
Pothier. —
& Lacoste & al opts

On mo. to foreclose the oppt. from filing replication
granted —

No 981
Turgeon
v
Robitaille

On Pltffs mo. to annex return of service of rule for faits & articles —
Objected by Defendt. the rule cannot be amended. & the defect of service where Defdt makes default cannot be granted. —

No. 2560.
Beaubien.
v
Massue. —
& Divers Garans.
& Henry Desrivieres

Mo granted to proceed ex parte

Julius Pratt
Fredk. v Pearl

On Defendts mo. to shew Cause why Defendt. shd. not be discharged from prison in as much as the Writs under which he stands committed have not been renewed within 6 months after the death of the late King —

Mr

Mr Henshaw for Defendt submits the Case — In the Middleton Bank & Pearl — the writ was not lodged in time —

over to 18th.

No. 2571. — Bouchard & Courteau. } On Pltff motion for a provisional allowance

No 1540 Shaw & Cameron & Simpson. T.S. } On contestation on declaration of the T. Sense

Mr Day for Pltff — at time of the transfer made by the Defendt to the H.B. Co he was in a state of insolvency — this appears by the proceedings had by Pltff agt Defendt on his Judgt — The transfer also is made for an under consideration of 4/. in the £ and Defendt guarantees this amount to T.S. — while the T.S. might have recovered the whole amount transferred without accountg to the Defendt for the same — cites 2 Vol. Cont. p. 130. No 22.

Mr Gale for T.S. — the only question whether all the parties are before the Court — the assignees of the N.W. Co ought to be parties in this Contest —

The Pltff has made no proof of the facts alledged in the grounds of Contestation — the T.S. never received any monies from the Defendt & cannot be condemned to pay any —

Mr Grant for Pltff — Sufficient parties are before the Court, the assignees of N.W. Co are not parties to the instrument — The transaction is fraudulent on the face of it

from

from the consideration given by the T. S. – to the Defend^t – this is suff^t to set aside the assignment at the instance of Creditors Poth. Obl. No 33. & No 42.

No. 168.
~~Gillespie sal~~
~~Spragg sal~~
~~M'Gill sal T. S.~~

No 436
Drolet
Allison } action for Attorneys fees –

Taylor for Defend^t – objects to the evidence of the taxed bill of Costs – has proved several pay^ts has burdened a balance of £11. 0. 4 –

No
Smith sal
Reeves sal } action for Attornies fees –

Mondelet for Defend^t – The pliffs have not made out their case – proof not suff^t the bills are not taxed – the detailed bills now allowed on Oppositions –

No 168
Gillespie & al
Sprags & al
McGill & al

In different Causes united — on Report of Arbitrators —

Mr Grant for Intervens party — The report of the Arbitrators shews that no monies or Notes have been received by the Intervs party except what arose from the sale of the goods of the Intervs party — The protest of a note at the Bank is no proof of Bankruptcy — Repr. vs Bankrupt —

The motion to set aside the report cannot be received not being made according to the rule —

Mr ~~Walker~~ Sewell for Pleff — the papers ought always to be before the Court —

The Case is not more advanced than it was 3 years ago, the report is vague and uncertain & does not answer the object of the Interlocutory — it is even contrary to the evidence in the Cause — The Intervs party has not made out the claim he has made to the monies & goods — The date of the bankruptcy is not ascertained — this is material — the Saisie-arret was sued out in July —

Walker for Trustees of Sprags & Hutchinson — subsequent to Bankruptcy I. H. recd. upwards of £5000 out of funds of Sp. & H. — & therefore had a lien on the property seized in hands of Lamb for that amount. — 2 Bell. 157 — 158. — 171 — all interested may set up the claim.

The report is unfavourable to Intervs party —
Motion for Auditors to lay evidence before them before Court
Motion for further evidence before the Court —

Mr Grant in reply — all prior facts have been determined to the objects to be ascertained by the Interlocutory. —

Monday 18th June

Prest.
Ch. Justice Reid
Justices Pyke & Rolland. —

No. 2438.
Bastien
Taitn —
& Grant oppt

On opposn. af in dl. Annuller

Mr Turgeon for Pltff, the Defendt. is the proprietor of the lot of land in question — & that he did not purchase for the Trustees of N.W. Co.

Mr Grant for Oppt. The land seized never belonged to the Defendt. the title obtd by Defendt. is stated to have been obtained by fraud — The oppost. has always remained in the possession of the lot of land — The consideration of the sale to Defendt. was that he should satisfy a Judt. the Trustees had obtd. agt. him whereas no such Judt. had ever been obtained —

There never was any seizure made by the Sheriff nor any notice thereof given to the Oppt. — cites Repn. vo Saisie —

No. 2560
Beaubien
Massue
& Garants —

Case submitted —

No 473.

Rolland & ux
Pothier
&
Pothier Opt

On law

Mr Buchanan for Oppn — contends that there are matters of fact must be ascertained before further proceeding —

Mr Gale for Pltff — the hearing on the law here is a hearing on the merits — The Oppt should have given security had he intended to appeal — This is a summary proceeding — Pigeon —

Lindsay
Cuvillier
Peddie T. S.

on law — on 2 Cases united —

Walker for Pltff — The Defendr had an opportunity of alledg the fact he now brings up when he was sued on the two last promy notes — & cannot now be allowed to suspend the exam of those Lndgs —

Mr Beaubien for Opport — The Pltff has alledged certain facts in answer to Oppn — yt he must prove and the parties must go to proof thereon —

Tuesday 19th June.

Prest.
Ch. Justice Reid
Justices Pyke & Rollard.

No 1857.
On Petition of Archambault & al for writ of Mandamus } IX

On rule to shew Cause —
The Court after expressing its opinion on some of the irregularities in the rule — permitted the Counsel to withdraw the Rule

No 2041.
Truax v Simpson } IX

Judge for Defft —

No 1905
Bruneau v Bruneau & Charbonneau & al — Opp^s } IX

Opposition dismissed —

No 1446.
Hart v Spragg & al & Millar & al & J. Hutchinson Opp^t

Opposition admitted & main Rule granted. —

No. Mellis & al. vs. Armour & al.	Judge ordering Defendts. to account
No. 2549 Peltier & ux. vs. De Chantal	Testimony of the Notary rejected
No. 369. Fraser vs. Leslie & al. & Montreal Bank T.S.	Priviledge of the Bank maintained

Wednesday 20th June

Present
Ch. Justice Reid
Justices Pyke & Rolland

Low. — Wragg } Judgt of separation. —

McPherson Jos: Durocher } Defendrs petition to be liberated rejected

Rolland + Pothier + Pothier Opr } Opposition dismissed

Ross + Lacroix } Judgt

There was very little business done this Term, owing in a great measure to the general alarm & excitement occasioned by the rapid progress & fatal effects of the Cholera Morbus in this place, & in some measure also by the effects of the riot that took place on the 21st May last

21 June 1832 —
right

October Term 1832.—

Monday 1st October.—

Prest.
Ch. Justice Reid
Justices Pyke & Uniake.—

Mr Justice Rolland had not returned from Three Rivers, where he had gone during the last Term there, to supply Judge Uniacke's place who had not returned from Halifax.—

There were only some ordinary motions made in Court to day.

Tuesday 2d October.—

Prest
Ch. Justice Reid
Justices Pyke, Uniacke & Rolland

No. 1619
Reid & al
Meikle } on Defdt mo. to quash attachment, Driscoll for Defdt affidavit not positive all the allegations are in the alternative & not positive

Day for the Pleff, the affidavit is in the terms of the law, & sufficient. 9 Geo. 4. ch. 8 —

No. 742
Prendergast
n
Despres } mo granted —

No. 2515.
Fiscian & Laramée
&
Meunier fils } On Mr Benders mo. for pleff to close Enquete —
Defendr. began his enquete & then stopped, saying that he had other witnesses not present — this not allowable by rules. —
Mr Cherrier for Defendr. the rules of practice in this respect are not now followed — Wits. were subpoenaed —

No. 1792.
Boileau, Tutr
&
Boileau fils } Hearing on law — parties to submit a rule of reference —
Cherrier for Pleff — the reserve made by Defendr. of his right for damages is inadmissible, as it is not an object of defence —
C. Bruneau — the Defendr. prays to be put in the same situation as he was before action —

No. 1306.
Thos. Dawes
n
Mr Eachren } action for house rent & to expell Defdr. —

Mr

Mr Beaubien for Defdt — The Pliff has not made out his case — submits it to Court —

Smith et al
v
Glagou et al

On Pliff — mo. to refer the matters in contest on the account rendered by the Defendants to Practicians to report thereon —

Mr. C. Bruneau for the Defendts objects thereto as leading to unnecessary delay, & as there are questions of Law upon the Court must adjudge —

Wednesday 3d October.

Prest

Chief Justice & Puisne Judges

Reid et al
v
Meikle

The Court was of opinion that the affidavit of the pliff was in this Case insufficient as not containing any positive allegation upon which a writ of attachment could be granted That the cases stated in the Provincial Ordre & in the Provl Stat. 9. Geo. 4. ch. 8, being in the disjunctive, authorised the granting of the Attachment in any one of those Cases — but that it was necessary for a Pliff to bring his plaint within some one of them directly and positively, and not by a general reference to all the cases by stating that Defendt came within one or other of them —

Thursday 4th October.—

Presd.

Chief Justice & Justices.—

No. 1067
Desjardins
&
St James et al

action for goods sold.—

Bleury for Defendt— moves to reject the evidence of Pltff Wt— as insufficient— as by it appears that Perrin one of Defdts— was only the agent of St James & not personally bound, and there is no suffct evidence agt St James, the letter of St James not having been proved—

Mr Lafontaine for Pltff— The evidence here is sufficient— the sale & delivery of the articles to Perrin who promised to pay— & also the evidence is suffct agt St James— Defendts are sendd as jointly liable—

Friday 5th October.

Prest

Ch. Justice & Puisne Justices. —

No. 1647.
Downer & al
v
Proctor
&
Hantson T S

On Defendt mo. for security for costs
Day for Pleff. this an attackn. on Jugt
& Pleff not bound to give security —
Notice given too late —

Nye for Defendt — there will be a contest
on the case & security for costs ought to be given

No. 1381
Gagnon
v
Pulling

On Defendts mo. to discharge inscription
for hearing & Defendt be allowed to fyle
a plea — files affidavit of circumstances —

Mr Bender for Pleff — action of a particular
nature, owing to bad conduct of Defendt — his former
Pleff gave regular notice to Defendt to fyle his plea
which he neglected to fyle —

No. 452
English
v
Larvey —

On Pleff's mo. for a Comn. Rogr to ex. Witnesses
as parties reside beyond 30 miles from
Court house —

Mr Walker objects from want suffc Commissioners

No. 883.
McPherson
Durocher

On Defendt. mo. to foreclose Pltff from filing a plea to petition — & on Pltffs mo. for delay to plead to said petition. —

Walker for Pltff — The Petition of Defdt. filed in April last — the documents in support thereof filed only on 21 Sept. last, and on this acct. a delay is demanded to plead to said petition, and also under the circumstances stated in Mr Leslie's affidavit, that there was fraud & concealment were used by Defdt. in obts his discharge in U. States — The discharge cannot avail Defdt beyond the State of New York where it was given —

Taylor for the Defendt. — The Pltff was aware of the Defendts claim from the time the petition was filed. — The proceedings for discharge of Defendt. are regular & made according to law of State of New York & as Pltff did not come forward he is by the law foreclosed. —

No 2

Saturday 6th October.

Prest. —

Ch. Justice & Judges

No 1304
Jones
v
Sheppard } On mo. of Defendt. to be allowed to appear by Bleury & McDonell, in place of Mr Adams. —

Mr Bleury for Defendt. moves to be permitted to enter appee for him. —

No. 1688.
Bernard
v
McKay del }

~~No. 2296.~~
No 2674
McDonald
v
Decarry
& al — } On mo. of Defendt. to discharge the inscription of the Cause —
Bleury, pleadings not complete —

Mr Fisher, for Pltff. the plea of Defendt. filed only yesterday, & after the inscription — Plea left at office but not filed. —

No 1518
Monjeon dax
v
Guertin — } Excess dismissed by consent —

No. 2356.
Kerr & Biggar
Handyside & al

On ments —

Mr Sullivan for Defendt — submits whether the parties Pltffs. could take up the reprise d'instance in vacation — as was done in this case — The Judges here not same as the Judges in France —

The rule of practice however seemed to settle this & Mr. O. gave up the point —

No. 1435.
Courcelle de Chevallier
Cleghorn —

On motion for Pltff to take up the instance — & on part of Defendt that as Pltff was dead the proceedings should be set aside —

Mr. Lafontaine for Pltff — the inscription of the Cause was made before any notice given to him of the death of his client —

Lit. 26. art. 3. order 1667.

Mr Saxton for Defendt — admits the facts as stated —

Monday 8th October ..

Tuesday 9th " } Enquete days
& Wednesday 10th " }

Thursday 11th October

Prest.
Ch. Justice Reid
Justices Umacke & Rolland

No 1322
Mc donald
v
Groux — } on Defendts mo. to be permitted to fyle a plea —

Fisher for Pleff — the mo. cannot be granted, the plea ought to have been filed 24th ~~Augt~~ June — on 7th Augt. notice given of proceeding ex parte no plea offered till 18th Augt — & not put on the record till 5th of the present month —

Mr. Bleury for Defendt —

Plea allowed to be filed

No 2318.
Hart
v
Grant } on Pleffs. mo. to discharge inscription on Vole d'Enquete —

Boston for Pleff. Defendt — inscribed cause on Enquete book, after enquete closed on 7 Decr 1831 —

Buchanan for Defdt. the enquete was closed conditionally

conditionally — the debt demanded is not due —

No. 221.
Bourdeau
v.
Lavoie
&
Giroux. T. S.

On rule on the Prosh. to produce the contestation of Pltff to the declaration of the Tiers Saisi. —

No. 605
Brabury
v.
Burroughs

action for goods —
Nye for Defdt — price of goods not proved — a demand for interest not right.

No. 261
Shuter & Wilkins
v.
Boardman

action on note
Nye for Defdt — the partnership of Defendt. not made out w. Dickson — & the signature of Dickson only proved —

No. 1191.
Pothier
v.
Bingham
&
Baring & al

Hypothy action — Mondelet for Pltff
Rep. 663. v. Hypothy action proper in this form — The Defendt. pleads also that there are mortgages on the property —

The

the Interv^s party was bound to obtain the ratification of their title, which they have not done — the allegations of Mortgage have not been proved. — the Judg^t of ratification is made by the Interv^s parties admitting claims at their risk — but the Mortgages can never be extended beyond the value of the property as adjudged —

They had 2 grounds of Security. St. 9. Geo. 4 ch. 20. sec. 3. 12. —

There is an Intervention by Baring & Wilkins who claim the property as their own, and also the same defence w^t Defend^t —

Mr Radiger for Defend^t — The action is wrong in principle sought to have been a personal action —

Mr Buchanan for Interv^s parties — a Judg^t of ratification was to be obtained and the pay^ts delayed till then — the oppos^ts made to this ratification were not admitted but all right reserved to the parties making them, as it was not a question to ex. the validity of these oppos^s — but to allow them to stand on their own validity — These oppositions are now proved by the facts & articles —

1 Bourg. 478 — No 17. 18 proceed^s similar to a decret Volontaire — The stipulation of confirmation of title is equal to clause of franc & quitte, & the opp^n are a trouble.

Mondelet — The clause of franc & quitte applies only to the arrears of rent —

The oppositions can be exercised only on the proceeds of the sale, & not beyond it —

There is no proof of the liability of the Pltff under his administration as Exer of Fortier, as nothing certain is ascertained, except the words valuable and extensive — to which no validity can be affixed —

No. 1835
Bostwick sal
Driver —

on law —

action by Indorsee agt Indorser —

Nye for Defendt — no demand of payt on the maker before the action — the certificate of Notary is a demand of the late Thos. McKim or his representatives — this uncertain — whether on one or on the other —

Mr Day for Pltff the protest was made in the usual form —

No. 1771
Bostwick sal
Boardman

on law —

Nye for Defendt — The action premature three days of grace not allowed —

Chitty. Bills. 264.
Pothier. Chang. No. 187.
Bayley. 197. 8.

Day for Pltff — the exception here ought to have been special & not by general demurrer

No. 960
Pratt
&
Pearl — } On Defdrs. mo. to be discharged on the writ of Ca. Sa. was not renewed on the death of the King —

Mondelet for Pleff — The writ here did not abate by death of the King. 1 Com. Abolement. letter H. No. 38. —

No. 886
Phœnix Bank
&
Pearl — } Same point —

No. 178
U. State Bank
Pearl — } Same point —

No. 1305 & 262
Fraser
&
Stephenson Cas
&
Mantelet Sur } on Report of Experts —

Friday 12th October

Prest.

Ch. Justice Reid
Justices Umacke & Rolland

No. 1954.
Rodier, Ed
v
St Denis —

Pliff's mo. for Serment decisoire of Dept
Stanley for Defendt objects to want of power of Altz in advocate —

No. 2435
Molson
v
Meyer
&
Hamilton
opt

Pliffs mo. to dismiss the Oppn
Walker for Opport —
delay granted to 15th

No. 1910
Robertson & al
v
Jones
&
Dickenson &
al — opt

Pliff's mo. that faits & art. be declared confessed —
Walker for Oppt 2 Oppts have been examd — the third has no knowledge of facts — no personal service on Mr Alger — has been absent in U. Canada —
Mr Bourret, he has been in Montreal since

No. 1444
Poitras
v
Marotte

Pliffs. mo. for a Comm. Rogre to ex. Thits —

No 840.
Crevier
v.
Liberdage

On action d'injures.—
Pliff. mo. to ex. relations of party, there being no other Wits present — cites Dautry —

Mr. Cherrier opposes the motion, as the law does not admit of it.— 9 Tullier 454.—
Jousse — The Wit. examined has proved nothing in favor of the Pliff — The declaration states that the words were spoken in the presence of a great number of persons.—

Mr. Bleury in answer, insists on the exception allowed by law where facts take place in the interior of a family —

No 1784
Ross, Cur'
v.
Degrés

On Defendts mo. to be allowed to take off 2 defaults & entire appce —

No 1579
Coupal
v.
Roi
&
Metivier T.S.

On Pliff. mo. for Judgt —
Mr Bender for Defendt — the Judgt. at Defdt was rendered in error — as the Oblign. on gt it is founded, is made by on Thoin dt. Dubois, & not Roi — that Judgt could be rendered only for £10.10 — for the ferme of 21 sheep for 2 years at 5/. each —

Mr. Bleury for Pliff, the proceedings are correct —

No. 1750
Berthelet
v
~~Jackson~~
St Marie
& Ste Marie opt

On merits of opposition —

Bender for Pleff, this is an opposition to sale of the moveable property of the Defendt — ~~to~~ which the oppost claims a right to arrest as the land sold to him by Heroux whom the Pleff represents, was mortgaged to the Sœurs Grises for a larger sum than that demanded — but the opposn is ill founded, inasmuch as there are 6000# in his hands now due to Pleff for six terms of payt of the land & more than sufficient to discharge the debt —

Bleury for Oppost — the Pleff is obliged to guarantee the Defendt — agt all trouble from the claim of the Sœurs & Defdt ought therefore to be entitled to retain in his hands money sufficient to pay the mortgages

No. 1074
Driscoll
v
Ferguson

Action for Attorney's fees —

Driscoll for Pleff — certain recompense was to be paid to Pleff in case a certain opposition was ~~to be~~ dismissed —

Mr Fisher for Defdt Dec-Drort vs avocat — contract illegal —

O. Denvi. vs Avocats
2. Jousse. Inst. Civ. p. 461. No. 40.
Id. p. 515. No. 83.
Fr. Dec vs Avocat p. 155.
Brillon vs Avocat No. 13.

Repn vs Avocat p. 797
2 Henrys. liv. 4. quest. 55 —
Fromental vs Avocat —

No 2432
Farrall
Hilton & Baird

action for wages of a Journey man —
Bleury for Pltff moves to reject the testimony of witnesses —

Fisher for Defdt — Verbal testimony is admissible cites case of Green v Hilton — decided some time ago — Denizt. vs Consul des Marchand p. 369 — The brother of one of Defendts — was examined for Pltff — & to whose competency it is objected — This Wit shews that Pltff is not entitled to the tables & desk he claims —

Bleury for Pltff — proof is sufficient to establish the whole demand — has objected to the testimony to establish a contract of apprenticeship of Pltff wi Defendts — This not the case of Merchandize a where materials were sold — But the evidence so given is insufficient to prove the claim set up by the Defendts —

Fisher word marchand, is like trader —

No 1046
Binder
Jackson

action on promy note —
Binder for Pltff — the note conditional, to be paid on his purchas's a certain lot of land

Mr Rossiter for Defendt — The action is premature at all events only one sum of £5 — had become due — The Pltff has not proved that Defendt is in possessn to the present day. —

No 2126.
Foisy & al
v
Atkinson —

Action on deed of Sale —

Bleury for Pliff — there was found a difference on the measurement of the land 219 arp. & 2 perches — which reduces Pliff demand to £54.5 —

Cherrier for Defdt submits the report of the Surveyor, but contends that she ought not to pay Costs — The first measurement was ex parte & not binding on Defendt — & therefore a second measurement was agreed to, and there appears a difference between the two measurements of 60 acres —

No 469.
Ainse. —
v
Aimond

Action on Obligation —

Bleury for Pliff — demands Jugt for the amount of his demand inasmuch as the Defendt has left the farm contrary to the terms of the Obligation —

Lafontaine for Defdt 2 years allowed for payt. of note unless he left the parish — the Defendt has not failed. ✕

No 341.
Smith & al
v
Glagow
&
others mis en Cause —

Hearing on law on the acct. rendered

Mr Brennan demands that the parties be admitted to make proof over to 15th

No. 1835
Bostwick & al
vs
Driver —

Defendt plea of demurrer over-ruled.
1st The Court thought that the general demurrer here was insufficient to bring into question the point touching the days of grace, & conceiving that Defendt should have pleaded specially that the action was premature, as on the face of the declaration a sufficient cause of action was set out — 2d the demurrer went to all the Counts of the declaration, agt none of which there could be any objection, except the one by which the Note was set out — this was therefore bad in point of pleading —

—

in the terms of his obligation — & if there be doubt it must be interpreted in favor of Defdt — It is also in proof that Defdt has sowed a great quantity of grain & had produce suffts to answer Pleffs demand. The Defendt has pleaded to the insufficiency of the obligation & proved it from the mouth of the Pleff, as it appears that he had compromised a felony committed by Defendt at all events the half of the grain only is due to Pleff.

Bleury in answer — It is in proof that Defendt left the farm of the Pleff within the year, & therefore the Note became due within the year —

The value for the Note is sufficiently proved, & this from the avowal of Defdt who acknowledged that he had not accounted to him for all he owed him. —

Saturday 13th October.—

Prest.

Ch. Justice Reid.—
Justices Umacke & Rolland

No. 2214
Bourgeois
v.
Parent —

on Defendts. mo to dismiss the action from want of proceeding —
Mr. Mondelet for Pliff — the law under which the proceedings were instituted has expired.—

No. 1082.
Robert de Namur
v.
Stuart —

action for work & labor —
Mr. Ossullivan for Defendt. — The Pliffs were ordered to appear & answer over to the Interrogatories

No. 512
Wm Tate
v.
Blackwood
&
Blackwood
& ux —

On opposn. claims the goods seized —
Walker for Oppt. — the effects seized under a separation contractuelle wt. Defendt. — as belonging to oppt. before her marriage —
p. 207. Repr. Sepn. Contr. no inventory requisite —
Lebrun. liv. 2. ch. 3. sec. 4. No. 16
197. Pigeau. 2 vol.
Renusson. p. 151.

Mr Bleakley for Pleff. There was in this case only an exclusion of Communauté — There is no proof of the marriage between opposts —

No 1170
Breard & ux
v
Beauchamps & ux

On law
Quest. whether a Defendt who has filed no plea is entitled to cross-ex. the Wit. produced by the Pleffs
Mondelet for Pleff contends that by law when Defdt was in default, he had no right to such cross-examn — 1 Pigeau. 391 — the default for not appears & not pleading are put on the same footing — see p. 396 — Ravaut, p. 11. 14 Pro. Civ. Poth. p. 94 — 1 Pigeau 271 — note (a)
The same principle holds in the provincial laws & in the practice of the Court — that causes conducted ex parte are the same as by default — Order 25 Geo. 3. ch. 2. sec. 6. 7. 8. St. 41. Geo. 3. p. 35 — ~~words~~ sec. 3. — Rules Prac. sec. 7. p. 14 — old edit. —

Monday 15th October.

Prest.

Chf Justice & Justices Uniacke & Rolland

Counselles
Clyhorn } On Defdts mo. to reject the intervention filed by Vallée sal.

Stanley for ~~Pliff~~ Defdt objects to the reprise d'instance —

Smith
Parlier
Rossiter } On two motions — one for hearts on rule obtd by Rossiter for contrainte — son mo. to reject the inscription as the parties are not at issue. —

No 2129
Barnes
Galipeau } on Defdts mo. for Pliff to fyle pt of Atts

~~No 1569~~
~~Guichaud~~

No 413.
Douglass
Bullis. — } action hypothecaire —

Mr Taylor for Pliff — In 1807. Pliff obtd a mortgage from Boyle — in 1808 — Boyle died — left a will, Kennedy legatee — he possd the land in 1810 action agt. Kennedy — made a sale to Dfdt —

Pliff

Pltff obt^d Ingt — send out Exón — seized land & sold — for £120 — Pltff purchased it — there being no oppn to sale — did not pay money to Shff — took possn of land, but without giving security to Sheriff, who returned a folle enchere — Pltff remained about 17 years in possn — not knows the Return of the Sheriff — The Defendt afterwards brot a ~~Judgt~~ action gt Pltff & eventually obt^d Ingt — on which the ameliorations were ordered to be accounted for by Defendt — to exent of £130 — Pltff to retain possn — The Pltff action is now on his obligation to which several pleas are put in — & on first of which proof was directed respecting the possessn & the enquete has been closed — the plea of prescription must fail — as no possn has been proved — 1 Desp. 389 — no prescription without possession. an attempt to prove takes a crop of hay in 1810 — but this not a possn & if it were it has been interrupted — 1 Lapeyrere — vo Prescripn p. 514 —

The next plea is chose jugée — there is no room for this plea, nor is it applicable, being for different objects — N. Fr. Poth. 888 — Obl.

Next plea is Executeur de son tort — no evidence —

Next plea, that Defendt — is not detenteur & therefore the action does not lie — By Ingt of 1831 — the Defdt is declared proprietor — Pltff is merely detenteur a titre de précaire — & holds for the Defdt — The Defendt is proprietor — & can mortgage — he ~~must~~ may make a delaissement or pay — this is an

alienation

alienation — Delaissem^t — Encyclop. de Jurisp. 1 Pigeau 594 — N. Denizt. v^o Delaissement § 2 N. 4 —

Detenteur. Loyseau, de l'action mixte — considers a detenteur as proprietor. de l'action mixte. liv. 2. ch. 2. N. 2. 6. 8. 10 —

Ecry, Jur. v^o poss^n — p. 608 — 608 —

The Pltff could not prescribe any right to the property under any length of possession he can be charge the nature of his poss^n —

The next plea — is for ameliorations made on the property — These ameliorations if any were made by Pltff, the Defend^r never having made them, & never having possessed the land —

An Incidental demand for rents issues & profits — to this the Pltff has pleaded chose jugée — except to rents subsequent to 1830 — at rate of £9 ff an — the Defend^r has made a proof of more, but Pltff has objected to this as being a matter settled by the Judg^t already rendered. —

Mr Boston for Defend^r

The first plea to this action is prescription — here there having been no proceedings for upwards of ten years, the prescription is acquired —

The Pltff should have alledged something in bar of the action in the ten years — but noth^s is said ag^t. it — the plea is therefore conclusive —

Poth. No. 48. Prescrip^n — Hyp. p. 471 — The Pluff here is obliged to declare that the Defend^t was detenteur & allowing it was through the poss^n precaire of the Pluff, as this was the Detention of the Defend^t — The Defend^t here shews a sufficient title, and a possession under it — The poss^n of Pluff is that of an usurper —

Rep^re v^o Prescription. p. 306 — & p. 308 — no poss^n is requisite if there has been a negligence of ten years in proceeding — He who produces a title is presumed to possess under it. Id. p. 310 — Poth. p. 583. 4^e Vol.

18. There is no evidence here to shew that Defd^t ever diverted himself of this poss^n he had under his title. Poth. 4 Vol. 544 — when a person once possesses under a title, it requires a very special act to shew that the party has been diverted of that possession. — here there is nothing in allegation or proof to shew that Defend^t was ever diverted of his right —

2 Plea Chose Jugée — altho' part of the ~~plea~~ demand set up by the Defend^t in his action, for the pay^t of this obligation has not been adjudged upon by the Court, yet that Judg^t is now conclusive — Poth. obl. No 885. — No. 886. 887 — there might be a requête Civile to draw this point before the Court to have its Judg^t on the question, if omitted, but nothing of this being done, the Judg^t is conclusive

3 Plea — as to the Executor de son tort abandoned —

4 Plea — That Defend^t is not the detenteur, as he holds the property & enjoys the revenue — &

by

by such enjoyment may have reaped enough to pay the debt in question —

5. Plea — as to Improvements — defendt entitled to the improvements allowed to Pliff — & also the rents subsequent to the ~~Judgt~~ bringing of the action in 1827 —

Cherrier for Pliff in reply —

As to 1st Plea of prescription — there can be no prescription without actual possession — Poth. hyp. p. 471 — §. 6. The possn of Defdt should have been shewn to be such that it had been completed at the time of the action brot — agt him — The Pliff here is declared to have been the possr de bonne foi by the Judgt of the Court —

Another plea of Defendt is that he ~~was~~ is not the Detenteur of the property — Poth. Hyp. 43~~4~~5 the action hyp. must be brot agt the propr & not the person in possession, as in case of a Usufructor. The authority from Loyseau is also positive —

That chose jugée does not apply, as by the Pliff being obliged to give up the property, his right of Mortgage was necessarily reserved — 463. Hyp. Poth. —

As to the improvements — had the Defend paid for them, he might have a right to claim them

Boston in reply — one of the two principles here alledged by Pliff must avail Defendt —

№1055
Handyside
Donegani
Donegani

Rule for hearing discharged, from want of
sufficient notice of inscription. —

Tuesday 16th October

Prest.

Ch. Justice Reid

Justices Pyke & Uniacke

No.

Molson & al. v. Richardson & Holt. oppt.

On opposition for a horse —
Hinshaw for Pppt. — says the case is made out —
Mr Griffin for Pltff, says he has not contested the opposition —

No 341

Smith & al. v. Glazow & Mis en Cause

Hearing on law on acct. rendered —
Mondelet for Pltff — no question of law —
order for proof

No 1080

Desjardins & Lavoique

action hypothecaire —
Lafontaine for Pltff — one Sabourin alienated a land to his son, who made an oblign to Pltff, soon after the parties rescinded this act — In the act of alienation there is a clause that the son had not power to mortgage or alienate the land — this rescination being

voluntary

voluntary cannot affect the rights of Pleff —
It is enough that the son was proprietor
Poth. Hyp. 425. n 4. the clause of non-alienation
is to be considered rather as a counsel, than
founded on any necessary Cause — N. Denizt —
Defenses d'aliener. p. 74 —
Ricard. tr. Subn. p. 322. when the prohibition is
pure & simple & sans Cause, it is not binding. —
That this property was under the controul of
the son & his property & liable to his engagements
& the father could not sell or alienate it —
Mr. C. Casimir. The clause here is a prudent
precaution to secure the land for the payment
of their annuity — the prohibition here was
made only during the lifetime of the donors &
on the express condition that without this condition
the act would not have been made —
refers to the authority of Poth. who says that a
man must not only be proprietor, but have
the power to alienate —
Lafontaine — the donation must divest the
donor of all right of property — donner & retenir
ne vaut — but the donation conveys the whole
property to the donee — This is not a condition
on which the donation was to be rescinded
refers to case of Roi v Groux. No 226 — in Sum 1830
or 1831 —

No 1050
Robertson & al
Dubois
Tassé T.S

On merits

Bourré for Pliff. The T.S. declared that he owed nothing to Defdt except about £10 having paid the balance — The Pliffs contested this declaration — The Pliffs produced two obligations made by T.S. to Defdt — The T.S. answers to this, that these obligations had been transferred by Defdt to one St Jean in payt of wages — The Pliffs contest the right of Defdt to make the transport, — because the debt transferred by St Jean to T.S. was not clear & liquidated, nor was it ~~due at~~ for a debt due at the time — That Defendt was at time in a state of insolvency & would not make the transfer to the prejudice of his Creditors — Poth. Obl. No 627. & seq. — Repre vo transport. p. 256. 2e Col. 1 Pigeau 646. 7. The Pliffs had obtained a Indst some time before this transport — that St Jean did not complete the time for wh he made the transport — That the T.S. has made an opposition for his wages & claims a preference as priveledged for the wages due to St Jean — this priveledge is denied — the transport being null — and if due, it can attach only on the goods in the Store —

Lafontaine for T.S. The Indst of Pliffs was rendered 2 months after the transport — There was a contract between Defdt & St Jean for service on wages on 1 Augt 1831 — a year was then due — the transport was made 23 Decr 1831 & signified.

was

and the balce declared by T. S. was what he owed, and his declaration has not been proved to be false — This not a transport made by the Debtor but by a Creditor having a privilege — The T. S. had a right to compensate St Jeans. debt wt what he owed to Defdr cites. Denez. vo Compensation ~~No 5.~~ p. 5 — There is proof that Defendr continued his business until the end of the Winter after the transport — It was only in March last that the effects of the Defendr were seized by the Pltffs — there has hitherto been no discussion of the Defendrs property to ascertain that he is in deconfiture. — there are here no other apparent Creditors of the Defendr but the Pltffs —
Repn vo Banqueroute p. 151. — N. Denizt vo Faillite — cites an arrest, where the failli made a transport gt was held good — Repn vo Compensation p. 280. first Col. —

That the sum for wages was stipulated & due & was liquidated, & if he did not complete the time it was the fault of Defendr who dismissed him without Cause — saying he had no further occasion for him —

As to the opposition — the oppost is entitled to the whole demand upon all the property of the Defdr without distinction. Dec. Droit. vo Domestiques vo privilege —

Mr

Mr Bourré – The bankruptcy is proved – & if not proved, the Pluff would be the premier saisissant –

Under the contract wt St Jean, he could legally be discharged on giving him notice for a just cause & as the Defendr carried on no more trade, it was a just cause to discharge him. –

Poissan
Montanary
Curr
&
Robert oppt

On apposn –

Lafontaine for Pluff – action hypoth –

The land was sold to oppt. & by him sold to St Denis, who was sued en decn d'hypoth. Robert demands now that Saisie be declared null, 1 Pigeau 633. 4 – no such right under his privilege –

Mr Binder for Oppt – The appost has proved that Pluff is paid by Judgt he has obtained agt the debtors of his Debtor –

No 2296.
Turpin
Choquet

On law –

Mr Biband for Pluff – says that before the Saisie arret, there was reconciliation between the Defdr & her husband – has filed the act to this effect – The Defendr has not produced any receipts for the pretended paymts she alledges –

2 Argou. p. 210 – 2 Pigeau 234 – Repn vo Separation 84. Lebrun 282. 3 – 3 Gr. Cont. p 190. No 41 – 219. 220 Sepn Repre – Poth. Cont. Mar. No 524 – Comte 524 –

Lafontaine for Defendt — Pltffs wife sued out 2 saisie-arrets agt Debtors of Pltff. on action en sepn & Pltff was condemned by Jurdt. 18 April 1828 to pay a considerable sum to his wife for her rights — Masson was one of T. Saisie & was condemned to pay to Pltffs wife what he owed to Pltff — since the death of Masson, his wife the Defendt — is prosecuted for part of the money which her husband was condemned to pay to the Pltffs wife —

That the retablissement of Comté between Pltff & his wife never having been signified to the Defdt or her husband, she cannot be liable to pay a second time — This retablissement of Comté should

Lebrun liv. 3. ch. 1. No. 25. p 326.7

have been signified, and made by a special act and insinuated. Lebrun — Poth. Comté No 529 — third persons cannot be affected by the reconciliation not known — nor insinuated. —

Mr Greece for Pltff in reply — Defendt had a sufficient knowledge of the reconciliation by the answer put on to Defendts exception. —

No 1940
Gates & Co
"
Ogden

action on a note —

Walker for Pltff. note drawn in favor of Defdt in 1819 at Waddington — note indorsed & presented at Bank for payt & protested for non-payt — question as to sufficient notice to Defdt — There are several ~~facts~~ matters pleaded — insufficiency of notice — to ascertain the notice the ~~Defendt~~ Pltffs found it necessary to ex. Defdt on facts & art. The Pltffs wrote a letter intimating the dishonor of the note — & presumption that Defdt had received notice from Chipmans who lived at Waddington also

refers to 7th Interrogt proposed to Defendt — admits the protest of the note in 1819 but contends that certain remittances made by Chipmans to Plffs were to be in the discharge of the note —

The Defendt admits the receipt of the notice of the non protest by answer to 10th Interrogt — that is 9 days after the protest, yt was sufficient by the act of 1793 — ~~being~~ Waddington being out of the Province & 120 miles from Montreal, & at a time when there was no regular conveyance to that place by post. —

The Chipmans have not been ~~proved~~ called to prove the payts to Plffs — the only belief of Defendt is adduced —

Gales is exd by Defdt on facts & art. & denies all agreement as to payt of note in the way supposed by Defendt —

The Court ought to divide the answers of Defdt on facts & articles — Defdt speaks to but belief & recollection — although the fact was to be easily ascertained from Chipmans the neighbours of Defdt. —

Ex Poth. 158. When the fact is one entire fact it cannot be divided, but when the facts are separate they may be divided — especially when there is other proof — Nouv. Desingt. vo Confession p. 127. — there is other proof here — Poth. obl. No. 799. — N. Ferrier. vo ~~abus~~ aveu — The fact here is not averred positively by Defendt but by belief — 1st Vol. 617. arrêt de Bardet. 31 May 1630 — 236. 7. Bull. N. P. — where there is strong presumption agt the fact alledged. 4. Henris 6e quest. p. 18 —

Proc. Cv. Poth. 70 — Starkie 291. Doug. p. 787.
Peake. p. 20 — 4th Starkie, p. 68. Phillips 110 —
Ev. Poth. p. 159. 160 — Bull. N. P. 237. Gilb.
Ev. 44. 52. — 542. Bos. & Pull. 2 vol. Peake 56.
Peake says facts only evidence that are positively
asserted dont out. — 157. 158. Ev. Poth. 2d vol.
That there never existed any agreemt between the
Chapmans & Plffs. that their remittances should be
exclusively applied to the discharge of this note —
Refers to evidence of Meredith Ogden when Defendt
never alledged that the note had been paid — but
merely want of notice —

note protested 10 July 1819 — exh. No 4 — letter from
Defdt to Plffs — in 1813 — when he admits the note to be
State due for a valuable & his liability only for want of
notice —

255. 7. as to Diligence — Starkie — matter of law & fact.
case 2 H. Bl. 529 —

Buchanan for Defdt The Indorsement of bill is
in blank & no claim on plffs — the indorsement ought
have been filled up. — The indorsement to a firm
different from the present — alledged that at the
time it was indorsed to H. Gales & Co when no
such firm existed, it was Horatio Gales & Stephens
which exist after the indorsement — & Plffs. can on
that can support action only as indorsees of
H. Gales & Stephens, yet is not alledged —
2d The Plea of prescription — the presumption bars
in favor of Defendt — he tenders his oath as to payt —
altho' Defdt was out of the province, yet presumption
holds — The Statute says nothing on the subject —

This Stat. borrowed from Ordre. of 1673. 21 art. tit. 5. & art. 22 — which is declared to hold as well in regard of Minors as absentees — it being general in Stat. of limitation to save the rights of absentees where this is the intention — The residence of Defdt was known & he might have been sued at his domicile.

Note drawn by a foreigner payable to a foreigner in coin of which the value is not ascertained. —

The answers of Defendt — cannot be divided this is held to be the general jurisprudence of the Country — but in any case the debt has been discharged to a greater amount than the balce mentd in a paper marked A attached to the answers of Pltff Gates on faits & art — & Defendts are entitled to a deduction of £142 —

Walker for Pltff — the note in blank conveys a title here — frontier being merchts — The note declared upon & that protested are the same — There is nothing to shew that there was such a partnership as Gates & Nephew, the whole transactions were carried on with the Pltffs — or rather wr. Gates personally —

The prescription here will not apply as regards absentees — the absence of Defdt beyond seas is a good bar to this plea — Laws on pleadings —

2 Chitty on pleads — see form of Replr —

4 Stockee. p 894. 900. 901 — Ordre. 1673. Louisse —

5 Tit. 21 art. p. 64 — Repre. 327. 337. vr Prescription on a general principle — N. Ferrier vr Absent —

Repre —

Repn. vs Absent — 4. Starkie 894 —
Defendt. is entitled to have deducted the balce. in hands of Pluffs. due to Chipmans. —

Wednesday 17th October

Prest.

Ch. Justice & Pearson Judges

No. 1910
Robertson & al
vs
Janes & al
&
Dickenson
opt.

On opposition afin de conserver

Walker for oppost. — claims a share of the monies levied — Opposts. became bound as sureties of the Defendt. — to pay ten Creditors 10/ in the £ — & gave notes to this effect — This claim opposed as the money was paid into the hands of the Oppost. — This was decided in case of Mc Neder & Perrault —

Bourret for Pluff — The opposts. are not entitled to their claim — their proceedings have been irregular & they have interfered improperly with Defds. property the opposts. cannot have more right than those Creditors whom they represent — these Creditors having made over their rights for 10/ in £. they have discharged the debtor the presumption is they have received their 10/ — but here there may be more than 10/ for the Creditors the

Pluff

Pluff. ought to be paid, the monies levied, but no account is rendered of the property received by the Trustees to see what is due to the Creditors — That the Trustees having received property to indemnify themselves agt the payt of 10/- to such of the Creditors as acceded to the Trust deed, the oppts cannot interfere with the property here levied — That at the time of the seizure the Defendr carried on business openly & publicly, & on seizure of his effects, paid the amount of the Execution — refers to the testimony of the Trustees —

Walker for Opposts — It is owing to the obstinacy of the Pluff. that they have not received their dividend — they insist on obtaining 20/- in £ —

No 2239
Drolet
Gaudette } action of damages for breach of Contract —
Bruneau for Pluff — Defendr by Indt. of the Court in June last was condemned to make the road, he now submits the Case saying that he is unable to make the road —
Greene for Defendr — submits that only £5 — is due to Pluff —

No. 2465
Porteous
n
Deschamps } action de bornage — on Report of Surveyors
Mr Cherrier for Defendr — question as to Costs — The parties purchased from him who possessed according to a certain term of division, & who sold accordingly —

The report of the ~~Arbitrator~~ Surveyors ascertains the existence of this separation —

No. 2008
Marcoux & Darpentigny } Cause submitted —

No 1721
Legouet & Crevier } On law — action for damages for breach of Contract

Bleury for Defendt. The Pluff obtd. a Judgt. which he has denatured, and cannot claim damages by his present action, for either the sum of £60 — or £15 —

Moreau for Pluff — action is founded as well on the original act as on the Judgt. & a subsequent act —

No 1055
Hardyside & Donezani & Donezani Intrs } Action on recognizance —

Walker for Defendt. The action cannot be maintained — on 20 Apr. 1831 Judgt. in favor of Pluff — appeal — Judgt. confirmed 30 July — Exoin on that Judgt. Oppn. by Defdrs. of payt. — oppn. dismissed. — an appeal from this last Judgt. — & Security entered into, and the question of the present action now in appeal, & therefore the action cannot be maintained —

The Intervening parties ~~here~~ are the Garants of the Defendrs. and that an injustice might be done to them, if the Defendrs. were condemned to pay the Judgt. to Pluffs —

Boston for Pltff. states proceedings had — The Defendrs here have offered noths agt the present action, & if condemned they must have their recourse agt the original Debtors — The Defendrs ought to have called in the original Debtors & obliged them to plead to the action as the recourse of Pltffs — agt Defendrs was on an acquired right which must be allowed without a sufficient defense. — The Intervention here cannot be received, it sets up a claim already adjudged upon by the Court — and it shews no bad result to them should Judgt be rendered agt the Defendrs

No 2404
Falconer
vs
Smith — } action for value of a note or to have note returned

Mr Clarke for Pltff did not appear —
Mr McCord for Defendrs says that there is not enough on declaration to maintain the action — it unites trover & assumpsit, without any proper conclusion, —

No 483
Dandurand
v
Sauvé — } action on deed —
Blaney — no Enquête had in Cause —
Rodier for Pltff. not necessary when action is founded on an acte authentique

No 866
Coyteux
vs
Couvillon
&
Couvillon
opt

Oppos^n afin d'annuller — on law —
Lafontaine for Pliff, Judg^t in favor of Pliff
we reserve to Defd^r for his act^n — & which
he now sets up ag^t Judg^t — and for work
done since the institution of action — & lastly —
compensation of a debt due to Defd^r — as Tutor —
Mr Turgeon for Oppos^t —

No 1954.
Rodier
vs
St Denis

Action on note —
Mondelet for Pliff demands Judg^t
Stanley for Defend^r — no protest filed to support
demand for interest —

No 1731.
Snowden
vs
Langevin
&
Dumouchel
Intev^s

On law — on Intervention —
Mr. Green for Pliff — the Interv^s party shews
no right to intervene in this Cause — nor has
he any right to do so, as Pliff has agreed to
discharge all right ag^t him —
Bleury for Int^r party — The Defend^r sold a land
to the Interv^s party at time he was liable to Pliff on
a Contract entered into — The Int^r party undertook to
pay 1000^d to Pliff on act^t of Defd^r but as Pliff has
still prosecuted Defd^r — the Interv^s party has an interest
to prevent any Judg^t being given, q^t might affect the Int^r party

No 2575.
Racette
&
Chebroux
&
Geo. King. Cur
&
Ls. Brien Gart
&
Andre Brien Gart
&
Jos. Picotte —
Intes

On merits of all the demands —

Delete — noths said

No 1232.
Smith & al
&
Buchanan

action of account —
Buchanan for Pltff —
Defendt. did not appear

Thursday 18th October.

Prest.

Ch. Justice Reed
Justices Pyke & Zeniacke

No 1832
Howard
v
Farrs

On Pleffs mo. to reject replication to answer
Mr Mondelet for Pleff, this replication is irregular as it does not join issue, but is a demurrer to the answer.
Mr Fisher for Defendt, the replication is rather a refusal to answer —

No. 645.
Miner.
v
Hall.
&
E contra

Defendts mo. for a Com. Rogn —

No. 1898
Hart
v
Conyré

on Defendts mo. for delay to plead
David for Pleff objects, delay has already been given to the 15th —

No 1203
Dallaire
v
Bonin

on ments — action to obtain possessn of a lot of land sold to Pleff by Defendt —
Grant for Pleff. the plea is that Defendt was

was intoxicated at time of executs Deed — & that he has suffered a lesion by the transaction — The evidence adduced does not substantiate the Defendt plea — the Pltff's demand is on the contrary made out —

Bleury for Defendt — The plea here is fraud in the pltff — also that the property given in exchge by Pltff did not belong to him — & lastly lesion the two first points have been sufficiently proved refers to testimony of Bourgeois, to shew the state in which Defendt was in at the time. —

The Pltff had given the lot of land in question some days before to his Children —

Moves to reject the testimony of the Notary before whom the act was passed —

The wits. Chapd Maine, who is a stranger to the parties who says the ~~part~~ Defendt was in a state of intoxication, and that the act was passed about 4 o'Clock in the morns —

Grant for Pltff — The witnesses referred to by the Defendt — are proved to be persons not worthy of credit — the other witnesses of the Pltff shew that Defdt was not in liquor

No 883
McPherson
Durocher } action for a debt contracted in a foreign country —

Walker for Pltff — action brot. on 2 promy notes, & after Imgt. sued out a Ca. Sa —

The

Defendt claims a right of exemption from the arrest - but Pltff contends that this exemption does not extend beyond the place where it was granted - It is admitted that in 1825 the Defdt became insolvent, & that by a law of N. York in 1829. a debtor might be exempted from personal restraint on observing the formalities required by that act - In 1825 the Defendt presented a petition to be so exonerated, and made an assignment of his property for the benefit of his Creditors - one of whom the Pltff then was - The Defendt afterwards came to this Province, where Judgt was obtained agt him, & the usual executions sued out thereon

The law relied on by the Defendt - is merely local - 2 vol. p. 316. Kent's Comrs - Lettres de Repit. Pothier 302 Proc. Cov. may be assimilated to this proceeds. 3 Bl. Com. 289. - admits that when a debt is discharged in one Country it is discharged in all others - this will not hold as to the mode of enforcing the execution of a Judgt - rendered here - as well might it be said that because real property in England is not liable to personal debts, it ought to be so here - the law of execution of Judgts is local - & is subject to judicial power. - the Debtor by coming here deprives the Creditor of the benefits of the bankrupt law, & ought not therefore to be allowed to benefit by it - this Court cannot enter into the enquiry ~~at~~ how far the Creditor will be entitled to shew fraud in Debtor - by a fraudulent transfer made by him in the U. S. to obtain his discharge - this Court has no power over this proceeds -

6. Vesey. p. 735 – the Creditor should be in a situation to make his claims available agt the Debtor – 368. 361. Kames. pr. Equity – & p. 369 –
2. Ch. Kent. 321 – the law holds only in the State where made – & p. 324 – the contract travels with the party wherever he goes –
Kames. 229 – & p. 358. 360 – the law where the debtor is sued must be observed in the exam of it. Erskine Instit. 2 vol. 475 – Hubert – De conflictu legum 1 lib. tit. 3. Id. 2 vol. lib. 42. tit. 1. Effectus sententiae – the Judge to determine in case of foreign according to law of Court –
7 Johnson Rep. 117 – similar case in N. York – where the general principle is held that discharges to insolvent debtors is merely local. –

Mr Taylor for Defendt. – In 1825. the Defendt. was resident in State of New York, became bankrupt & by law of 1813 – an exemption is extended to the debtors agt. ~~personal arrest~~ for the discharge from their debts on observing certain formalities – refers to the clause of the act –
The debt for qt. the debtor is now prosecuted was contracted in the State of New York –
The effect of the law is not local, but attends the debtor wherever he goes –
4 T. Rep. 184. 9 – all civil relations between foreigners recognized in other States –
5 East. 130. 1 what is a discharge in one State is a discharge in every Country – 4. T. Rep. 182
Hunter. v Potts – 1 Bos. Pull. 138. 140. 141 –
3. Vezey Jr. 149 – 8. Bar. & Cres. p. 638 –

2 H. Bl. Rep. 409. Phillips v Hunt —
This a bankrupt law. 1. Burn. Cress. p. 116 — the B. law of England recognized in foreign Countries —
3. Maul. & Selwyn. p. 595 — 2 Wm Bl. Rep. 410 —
It would be giving the Pltff an unjust priviledge to allow him to prosecute for his debt & obtain his debt, unless this benefit extends to all Defendt Creditors
2. Bell. Com. p. 436 — The Defendt. entitled to forolution of the law by having complied with its injunctions
2 Bell. 688 — discharge in one Country is a discharge on all countries. —

Mr Charrier for Defendt — The law of N. York in the object in question is a local law, but whose effect was a general effect — The inconveniencies to the Creditor as to the benefits he might have in N. York under this law, does not say that the principle will not extend here as to the Debtor —
The authority from Johnsons Rep. regards the opinions held touching the conflict between the general laws of the States and the local laws of particular States as to their operation —

Mann v H Erie — 7 ~~Oct~~ Feb 1831

Cites case Card. v Astor in this Court — in 1829 —
Natural law points out that the law of State where the contract is made, ought to govern it throughout

Walker for Pltff. The particular law of Insolvency in N. York would not operate in other States of the Union — 2. Kent. 323. — there cannot be a partial introduction of this law here, of that part which is favorable for the Debtor, where the benefits in favor of the Creditor cannot be introduced —
The discharge from the contract, is different from a partial discharge, or mode of inforcing contracts —

323

The cases cited from Bos. & Ps. does not apply
it regarded the construction of contracts, not
the remedy under ~~them~~ it under the law of England.—
The certificate of bankrupt is a discharge admitted
by law.—
If the State of N. York had exempted the lands of the
debtor from exbn — would not follow that this law
would apply in this Country, while the Contract
remained.—
The Case of Kentucky of depreciated Currency—
Judgts must be enforced according to the laws
where rendered.—
Case from Johnson's Reps. applicable—
A partial discharge can have effect only in the
Country where given, while the Contract subsists
In Card. v Astn, the principle was not recognized
by this Court — but the Defendt obtained a
general discharge & was allowed to plead it.—
453. E. T. Reps. shews opinion held by Court
in Milan v Fitzjames, was not correct.—

No. 951
Jos. Turgeon
v
Robitaille

Pltff asks Judgt—
Brunean for Defendt says Pltff ought
to pay costs of in grate — & be discharged from pay
of rente & pension salvo of £24—

No. 1607
Talon
v
Betts

On law—
Fisher for Defdt has demurred to the
first count in decbr as insufficient — as the
Pltff

Pleff has not alledged that Arnold & Ford were the proprietors of the timber & had a right to the Saisie Revendication, Poth Vente. No. 109. — also No. 93. — No. 95. in fine —

Had Pleff even alledged this right in Arnold & Ford, he has not alledged that he has lost the possession of the timber, a matter not to be presumed.

It does not appear that this Saisie Rev. still subsists. Poth. No. 88 —

Cherrier for Pleff. It was impossible to have called the party as guarant here, a passing person — the declaration is sufficient. —

No. 2435.
Molson
vs
Meyer
&
Hamilton opt

Mr Walker for appost — says proof is suffit
Mr Cord subsists case —

No. 1082.
~~Robert~~
vs
~~Stuart~~

No. 1873
Gregory
vs
Chisholm
&
McKay
& others opts

Action hypothecaire. —
McCord for Pleff. Defdt made a delaissement the property sold & monies returned & oppositions came in — the contest now is between the Defdt Chisholm & Roque & al' as to the preference to be had on the monies levied — As to Pleff he contends that he is entitled to his Costs on this action —

No 2410
Panet & al
Leprohon
& McNabb & al

Mr Cherrier for Bouchervilles says his claim his made out & admitted by the act filed

Mr Peltier for Leprohon opposes ~~for~~ a fin de charge for a titre clerical — Mr Leprohon created the titre clerical on the land at Longue Pte and was consented to by the Bishop of Quebec this rente is not rachetable during life time of oppost —

Mr Guy for Pfff, do not admit the demand because the Court has often rejected similar claims, it being merely a hypothecary claim constituted by the oppost — on his property to the prejudice of the prior Creditors, among whom the Pfff is one —

Mr Bruneau for McNabb & others claims by oppn — afin de distraire — No 3. 4. 5 —

No 1412
Roi
Lionais
& Roi & ux opt

On opposn —
Cherrier for opt — an opposn — by heirs Davids for the sale of land to Defendt — but Dower was constituted on the share of one of the heirs for which security is demanded

Mr Lafontaine for Pfff & oppt — claims the caution agt this dower as it is a Customary Dower, & the property may increase in value —

Hericourt Inv. p. 302. No 12 — N. Denizt. vo Garantie p. 55. — Id. vo Douaire p. 224 & suiv. — Repre vo Ajudicataire. p. 168. 9 — N. Denizt vo Dureté. p. 46. —

No 201.
De Rouville & Grant opt } question at whose instance the Liens par bénéfice d'Inventaire should be put in Sait
Mr Mondelet for Pet contends that it is the oppost —
Mr Beaubien for oppost contends that it ought to be the Pet —

Friday 19th October.—

Prest.
Ch. Just. Reid
Justices Pyke, Umacke & Rolland

No. 1015.
The Sol. Genl v. McDonell } Judgt. for Pleff—
McRolland differed in opinion, considers the Certificate of the Clerk of the Crown of the Estreat entered in Court ag. the Defendt. as insufficient evidence of the fact, & that a certified copy of the entry in the Register of the Court was requisite.—

No. 1017.
The Sol. Genl S. Henry } Same Judgt. & dessent.—

No. 2438.
Bastien v. Tait, Cur. & Grant. Opt. } The Saisie rulle set aside & declared null & void—

No. 168. 353. & 1002
R. Gillespie & al v. Spragg & al & McGill & al } Judgt.—

№2174.
Paquet vs Lamothe } Requete to obtain attachment & Contrainte for the payment of the Costs adjudged in the Cause, rejected — the Court holding that in principle this remedy was granted only in contested Causes, and in matters where there was an appearance of useless litigation, which did not appear in this Case —

№483.
Dandurant vs Sauvé, dit Laplante — } Judgt for Plff — but as there was a delay stipulated for payt — the interest granted only from the expiration of that delay, although it was on a Sale of real property — see Rps vo —

№1046.
Bender vs Jackson } Judgt for Plff for sum demanded — I differed from the Court, being of opinion that the delay granted to the Defendt did not begin to run until the condition had happened on which the note was to be paid —

№2432.—
Farrall vs Hillon & Beard } Judgt for Plff for £8.16.8 — & costs as in the Inferior Court — The Court made a deduction of about £7 — from Plff's demand on the principle that he had agreed to give up the price of work done by him to this amount — in order to make up the time he had lost as an apprentice to the Defendants —

Mr

Mr Justice Rolland dissented, as he considered that the transaction was not commercial, and the consent of the pleff to give up the amount in question, being above 100t. could not be proved by Witnesses, nor by a relation of the parties. —

Pothier v. Bingham & Baring &c

Judgt.

Tate. — v. Blackwood & Blackwood & ux — Oppts

The Court considered the clause in the marriage Contract to amount to a Separation Contractuelle & therefore that an Inventory was not necessary to entitle the wife to claim her separate property — but the proof being weak, it was ordered that she should appear and be examined on her Serment Judiciaire

Saturday 20th October
Prest.
Ch. Justice Reid
Justices Pyke Umacke & Rolland

No. 1074
Driscoll v. Ferguson } Action dismissed

No. 840.
Crevier v. Liberdeau } Motion to examine relation of Pliff as a temoin necessaire rejected.



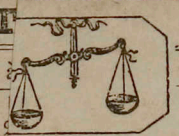
JUILLET

Le ☉ entre au ♌ le 22 à 4h.
☽ le 4 à 6h 40m Soir. | ☾ le 2
☉ le 12 à 6h 2m Soir. | ● le 2



AOUT

Le ☉ entre à la ♍ le 23 à
☽ le 3 à 5h 56m Mat. | ☾ le
☉ le 11 à 9h 34m Mat. | ● le



SEPTEMBRE

Le ☉ entre à la ♎ le 23 à 3h. 53m
☽ le 1 à 8h 47m Soir. | ☾ le 17 à
☉ le 9 à 0h 40m Matin. | ● le 24 à

Cou.	Cl.	MOIS.	Sems.	FETES.
H. M.				
7 47	b	1	DIM.	3 Oct. de s. Jean Baptiste.
7 46	b	2	Lundi	Visitation de la s. Vierge.
7 46	b	3	Mardi	s. Antoine de Pad. (13 jn.)
7 45	b	4	Mercre	s. Basil, év. et doct. (14 jn.)
7 45	r†	5	Jeudi	De l'Octave des Apôtres.
7 44	r	6	Vendre	Octave des Apôtres.
7 44	b†	7	Samedi	ste. Marguerite, Reine, (10 j
7 43	b	8	DIM.	4 Dédicace.
7 43	b†	9	Lundi	ste. Elizabeth, Reine. (d'hier
7 42	r†	10	Mardi	7 Frères, Martyrs.
7 41	b†	11	Mercre	De l'Octave.
7 40	b	12	Jeudi	s. Jean Gualbert, Abbé.
7 39	r†	13	Vendre	s. Anaclet, pape, mart.
7 39	b	14	Samedi	s. Bonaventure év. doct.
7 38	b	15	DIM.	5. Oct. de la Dédicace.
7 37	b	16	Lundi	N. D. du Mont-Carmel.
7 36	b†	17	Mardi	s. Alexis, *Incipit.* (2 juin.)
7 35	b	18	Mercre	s. Camille de Lellis.
7 34	b	19	Jeudi	s. Vincent de Paul.
7 33	b	20	Vendre	s. Jérôme Emilien.
7 32	b†	21	Samedi	s. Léon II, pape. (28 juin.)
7 31	r	22	DIM.	6. ste. Magdeleine, *sol.* s. Jaq
7 30	r	23	Lundi	s. Appollinaire, év. mart.
7 29	b†	24	Mardi	s. Henri II, Emp. (15 juil.)
7 28	r	25	Mercre	s. Jacques, Apôtre.
7 27	b	26	Jeudi	ste. Anne.
7 26	r†	27	Vendre	s. Pantaléon, mart.
7 24	r†	28	Samedi	ss. Nazaire, &c., marts.
7 23	b	29	DIM.	7. *Sol.* ste. Anne. M dim. d'ac
7 22	b†	30	Lundi	ste. Marthe. (d'hier)
7 21	b	31	Mardi	s. Ignace de Loyola

Cou.	Cl.	MOIS.	Sems.	FETES.
H. M.				
7 20	b	1	Mercre	s. Pierre aux Liens.
7 19	r†	2	Jeudi	s. Etienne, pape, mart.
7 18	r†	3	Vendre	Invention de s. Etienne.
7 17	b	4	Samedi	s. Dominique.
7 15	b	5	DIM.	8. N. D. des Neiges. M
7 14	b	6	Lundi	Transfiguration de N. S.
7 13	b	7	Mardi	s. Cajétan, *Incipit Eccle*
7 12	r†	8	Mercre	ss. Cyriac, &c., mart.
7 10	vl†	9	Jeudi	De la Vigile.
7 9	r	10	Vendre	s. Laurent, mart.
7 8	r†	11	Samedi	*Jeûne*, de l'Octave.
7 6	r	12	DIM.	9. ste. Claire, *sol.* s. Laure
7 5	r†	13	Lundi	De l'Oct. M [3 dim.
7 3	vl†	14	Mardi	De l'Octave.
7 2	b	15	Mercre	ASSOMPTION, de la ste. V
7 0	b	16	Jeudi	s. Hyacinthe.
6 59	r	17	Vendre	Octave de s. Laurent.
6 57	b†	18	Samedi	*Jeûne*, de l'Octave.
6 56	b	19	DIM.	10. s. Joachim, *sol.* Assom
6 54	b	20	Lundi	s. Bernard, doct. *Inc. Ec*
6 53	b	21	Mardi	ste. Jeanne de Chantal,
6 52	b	22	Mercre	Octave de l'Assomption.
6 50	b	23	Jeudi	s. Phil. de Beniti.
6 49	r	24	Vendre	s. Barthélemi, Apôtre.
6 47	b	25	Samedi	s. Louis, Roi.
6 46	b	26	DIM.	11. *Sol* s. Louis. M 5 d
6 44	b	27	Lundi	s. Joseph de Calasantz.
6 43	b	28	Mardi	s. Augustin, év. doct.
6 41	r	29	Mercre	Décolation de s. Jean Bte
6 40	b	30	Jeudi	ste. Rose de Lima, Vierg

Cou.	Cl.	MOIS.	Sems.	FETES.
H. M.				
6 37	b†	1	Samedi	De la ste Vierge. 2M
6 35	vr	2	DIM.	12. Dim 1 septembre.
6 34	b†	3	Lundi	s. Etienne, Roi. (hier)
6 32	vr	4	Mardi	*Or. Fid.*
6 31	b	5	Mercre	s. Laurent Justinien.
6 29	vr†	6	Jeudi	
6 28	vr†	7	Vendre	
6 26	b	8	Samedi	Nativité de la B. V. M. M
6 25	b	9	DIM.	13 s. Nom de Marie, Sol. Nativ. M 2e
6 23	b	10	Lundi	s. Nicolas Tolent. M [dim. sept
6 22	b†	11	Mardi	De l'Octave. M
6 20	b†	12	Mercre	De l'Octave.
6 18	b†	13	Jeudi	De l'Octave.
6 17	r	14	Vendre	Exaltation de la ste. Croix. M
6 15	b	15	Samedi	Octave de la Nativité. M
6 13	vr*	16	DIM.	14 M dim. 3 sept.
6 12	b	17	Lundi	Stigmates de s. François.
6 10	b	18	Mardi	s. Joseph de Cupertino. [M
6 9	r	19	Mercre	*Jeûne*, 4 *Ts.* ss. Janvier, &c. mt.
6 7	r	20	Jeudi	ss. Eustache, &c., mart. M
6 5	r	21	Vendre	*Jeûne*, 4 *Ts.* s. Mathieu, ap. M
6 4	b†	22	Samedi	4 *Ts.* s. Thomas de Vill. év. 2M
6 2	r	23	DIM.	15 *Sol.* s. Mathieu, M 4 dim.
6 0	b	24	Lundi	N. D. de la Merci. [sept.
5 59	r†	25	Mardi	ss. Corneille, &c., mart. (16 sept.)
5 57	r†	26	Mercre	s. Lin, pap mart (23 sept) M
5 56	r	27	Jeudi	ss. Côme et Damien, mart
5 54	r†	28	Vendre	s. Vinceslas, duc et mart.
5 53	b	29	Samedi	s. Michel Archange. [dim. d'oct.
5 51	b	30	DIM.	16. s Jérôme, *sol.* s. Mich. M

OCTOBRE

Le ☉ entre au ♏ le 23 à 5h. 9
☽ le 1 à 2h 44m Sr. | ☾ le 16 à 3h 4
☉ le 9 à 2h 43m Sr. | ● le 23 à 1h



NOVEMBRE

Le ☉ entre au ♐ le 21 à 9h. 3
☉ le 8 à 3h 47m Mat. | ● le 22
☾ le 14 à 10h 58m Sr. | ☽ le 30



DECEMBRE

Le ☉ entre au ♑ le 21 à 8h. 10
☉ le 7 à 3h 34m Soir. | ● le 2
☾ le 14 à 7h 38m Mat. | ☽ le 3

Cou.	Cl.	MOIS.	Sems.	FETES.
M.				
7 50	b	1	Lundi	s. Rémi, év.
7 48	b	2	Mardi	ss. Anges Gardiens.
7 47	vr†	3	Mercre	
7 45	b	4	Jeudi	s. François d'Assise.
7 44	r†	5	Vendre	ss Placide, &c., mart.
7 42	b	6	Samedi	s. Bruno.
7 41	b	7	DIM.	17. *Sol.* du Rosaire, 3 M 2 d
7 39	b	8	Lundi	ste. Brigite, veuve. [d'
7 37	r†	9	Mardi	ss. Denis, &c., mart.
7 36	b†	10	Mercre	s. François de Borgia.
7 34	vr†	11	Jeudi	
7 33	vr†	12	Vendre	
7 31	b†	13	Samedi	s. Edouard, Roi.
7 30	r	14	DIM.	18. s. Callixte. pap. mart.
7 28	b	15	Lundi	ste. Thérèse, vierge.
7 27	vr†	16	Mardi	
7 25	b†	17	Mercre	ste. Hedwidge, veuve.
7 23	r	18	Jeudi	s. Luc, Evangéliste.
7 22	b	19	Vendre	s. Pierre d'Alcantara.
7 20	b	20	Samedi	s Jean de Canti.
7 19	b	21	DIM.	19. N. D. de la Victoire,
7 17	vr†	22	Lundi	[4 dim.
7 16	vr†	23	Mardi	
7 14	vr†	24	Mercre	
7 12	r†	25	Jeudi	ss. Chrysanthe et Darie, m a
7 11	r†	26	Vendre	s. Evariste, pap. mart.
7 9	vl†	27	Samedi	*Jeûne* de la Vigi e.
7 8	r	28	DIM.	20. ss. Simon et Jude, a
7 6	vr†	29	Lundi	Lect dim. 5. [5
7 5	vr†	30	Mardi	Lect fer. 2.
7 3	vl†	31	Mercre	*Jeûne*. de la Vigile.

Cou.	Cl.	MOIS.	Sems.	FETES.
H. M.				
5 2	b	1	Jeudi	**TOUSSAINT**, *d'Ob.*
5 1	n	2	Vendre	Trépassés, lect. fer. 3 port. do
4 59	b†	3	Samedi	De l'Octave.
4 58		4	DIM.	21. s. Charles Borromée, 3
4 56	b†	5	Lundi	De l'Octave. [ms. du pt d. 1
4 55	b†	6	Mardi	De l'Octave.
4 53	b†	7	Mercre	De l'Octave.
4 52	b	8	Jeudi	Octave de la Toussaint.
4 50	b	9	Vendre	Dédic. Basiliq. du Sauv.
4 49	b	10	Samedi	s. André Avellin.
4 48	b	11	DIM.	22 s. Martin, év. 2 M dim. 2
4 46	r†	12	Lundi	s. Martin, pap. mart. *Incipit.*
4 45	b†	13	Mardi	s Didace.
4 44	vr†	14	Mercre	Respons. dim. 3.
4 43	b	15	Jeudi	ste. Gertrude, vierge.
4 42	vr†	16	Vendre	
4 41	b†	17	Samedi	s. Grégoire Thaumaturge, év.
4 40	b	18	DIM.	23. Déd. Bas. s. Pier. M dim
4 39	b	19	Lundi	ste. Elizabeth, veu. *Incipit.*
4 37	b	20	Mardi	s Félix de Valois
4 36	b	21	Mercre	Présentation de la B. V.
4 35	r	22	Jeudi	ste. Cécile, vierge, mart.
4 34	r	23	Vendre	s. Clément, pap. mart.
4 33	b	24	Samedi	*Jeûne*, s. Jean de la Croix.
4 32	r	25	DIM.	24 ste. Catherine, *sol.* s. And
4 31	r†	26	Lundi	s Pierre d'Alex. év. mt. [di
4 30	vr†	27	Mardi	
4 29	vr†	28	Mercre	3 Lect *Incip.* fer. 5.
4 29	vl†	29	Jeudi	De la Vigile.
4 28	r	30	Vendre	s. André, ap.

Cou.	Cl.	MOIS.	Sems.	FETES.
H. M.				
4 27	b†	1	Samedi	De la ste. Vierge, *Incip* fer. 6.
4 26	vl*	2	DIM.	1. de l'Av *sol.* s. Frs.-Xavier.
4 26	b	3	Lundi	s. François-Xavier.
4 25	b	4	Mardi	s. Pierre Chrysologue, év. 2
4 24	r†	5	Mercre	ste. Bibianne, v. m. (2 dec.) 2
4 23	b	6	Jeudi	s. Nicolas, év.
4 23	b	7	Vendre	s. Ambroise, év.
4 22	b	8	Samedi	CONCEPTION, *d'Ob.*
4 22	vl	9	DIM.	2. De l'Avent.
4 21	b†	10	Lundi	De l'Octave. 2
4 21	b†	11	Mardi	s. Damase, pape. 2
4 21	b†	12	Mercre	De l'Octave.
4 20	r	13	Jeudi	ste. Luce, vierge et mart. 2
4 20	b†	14	Vendre	De l'Octave.
4 20	b	15	Samedi	Octave de la Conception.
4 20	vl	16	DIM.	3 De l'Avent.
4 19	r†	17	Lundi	s. Eusèbe, év. mt. (hier.) ant.
4 19	vl†	18	Mardi	
4 19	vl†	19	Mercre	*Jeûne*, 4 *Temps.*
4 19	vl†	20	Jeudi	Messe de la Vigile.
4 19	r	21	Vendre	*Jeûne*, 4 *Ts.* s. Thomas. ap.
4 19	vl†	22	Samedi	*Jeûne*, 4 *Temps.*
4 19	vl	23	DIM.	4 de l'Av. Sol. s. Thomas.
4 19	vl	24	Lundi	*Jeûne* de la Vigile.
4 19	b	25	Mardi	**NOEL**, (*Fête d'Obligation.*)
4 20	r	26	Mercre	s. Etienne, 1 mart. (de dév.)
4 20	b	27	Jeudi	s. Jean, ap. évang (de dév.) 2
4 20	vl	28	Vendre	ss. Innocents, mart. 3
4 20	r†	29	Samedi	s. Thomas, év. mart. 4
4 21	b	30	DIM.	Du Dim. dans l'Octave. 4
4 21	b	31	Lundi	s. Sylvestre, pape. 4