Kings Bench Montreal.

Civil Pleas.

February Term. 1833.

April Term " "

June Term. " "

October Term. " "



JANVIER.

Le ☉ entre au ♒ le 21 à 0h. 38m

☉ le 6 à 2h 51m Mat | ● le 20
☾ le 12 à 6h 33m Soir. | ☽ le 28 à

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

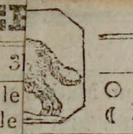


FEVRIER.

Le ☉ entre aux ♓ le 19 à 3

☉ le 4 à 1h 51m Soir | ● le
☾ le 11 à 8h 20m Mat. | ☽ le

u.	Cl.	MOIS.	Sems.	FETES.
M.				
52	r†	1	Vendre	s. Ignace, évêque, mart.
53	b	2	Samedi	Purification de la ste. Vierg
54	vl*	3	DIM.	SEPTUAGESIME. Sol. Purifi
56	b	4	Lundi	s. André Corsin, év.
57	r	5	Mardi	ste. Agathe, v. m.
58	r†	6	Mercre	ste Dorothé vierge et mart
0	b	7	Jeudi	s. Romuald, Abbé.
1	b	8	Vendre	s. Jean de Matha.
2	b†	9	Samedi	De la ste. Vierge.
4	vl*	10	DIM.	SEXAGESIME.
5	b	11	Lundi	ste. Scholastique, vierge. (1
7	vl†	12	Mardi	*Or. Fid Mis. Sine Tractu.*
8	vl†	13	Mercre	
10	r†	14	Jeudi	s. Valentin, prêtre, mart
11	r†	15	Vendre	ss. Faustin et Jovite, mart.
13	b†	16	Samedi	De la ste. Vierge.
14	vl	17	DIM.	QUINQUAGESIME
16	r†	18	Lundi	s. Siméon, év. mart.
17	vl†	19	Mardi	
19	vl	20	Mercre	LES CENDRES.
20	vl†	21	Jeudi	
22	b	22	Vendre	Chaire de s. Pierre à Ant.
23	b	23	Samedi	s. Pierre Damien, év. do t
25	vl*	24	DIM.	1 du Carême. *Sol.* Mathia
26	r	25	Lundi	s. Mathias apôtre, (hier.)
28	vl†	26	Mardi	
30	vl†	27	Mercre	4 *Tems.*
31	vl†	28	Jeudi	



MARS.

Le ☉ entre au ♈ le 20 à 8h. 29m

☉ le 5 à 11h 42m Soir. | ● le 21 à 6h
☾ le 13 à 0h 53m Matin. | ☽ le 28 à 5h

l.	MOIS.	Sems.	FETES.
l†	1	Vendre	4 *Tems.*
l†	2	Samedi	4 *Tems.*
vl	3	DIM.	2e. du Carême.
b†	4	Lundi	s. Casimire, roi, 2 M
l†	5	Mardi	
l†	6	Mercre	
b	7	Jeudi	s. Thomas d'Aquin, 2 M
b	8	Vendre	s. Jean de Dieu. M
b	9	Samedi	ste. Françoise, veuve. M
vl	10	DIM.	3e. du Carême.
r†	11	Lundi	40 Martyrs de Sébaste. (hier) M
b	12	Mardi	s. Grégoire, pape et doct. M
vl†	13	Mercre	
vl†	14	Jeudi	
vl†	15	Vendre	
vl†	16	Samedi	
vl	17	DIM.	4e du Carmême. *sol.* s. Joseph
b†	18	Lundi	s. Patrice, év. (hier.) M
b	19	Mardi	st. Joseph, 1r. pat. du pays. M
vl†	20	Mercre	
b	21	Jeudi	s. Benoit, Abbé. M
vl†	22	Vendre	
vl†	23	Samedi	*Cessant Suffragia.*
vl*	24	DIM.	De la Passion.
b	25	Lundi	ANNONCIATION, (d'Ob.) M
vl†	26	Mardi	
vl†	27	Mercre	
vl†	28	Jeudi	
b	29	Vendre	N. D. de la Pitié. M
vl†	30	Samedi	
vl	31	DIM.	DES RAMEAUX.



AVRIL.

Le ☉ entre au ♉ le 20 à 3h.

☉ le 4 à 9h 46m Mat. | ● le
☾ le 11 à 7h 13m Soir. | ☽ le 2

ev.	Cou.	Cl.	MOIS.	Sems.	FETES.
.M	H. M.				
39	6 21	vl	1	Lundi	
37	6 23	vl	2	Mardi	
35	6 25	v.	3	Mercre	
33	6 27	b	4	Jeudi	Saint, 1 classe.
31	6 29	n	5	Vendre	Saint, 1 classe.
30	6 30	b	6	Samedi	Saint, 1 classe.
28	6 32	b	7	DIM.	**PAQUES**, 1 classe.
27	6 33	b	8	Lundi	Fête de Dévotion, 1 classe
25	6 35	b	9	Mardi	Fête de Dévotion, 1 classe
24	6 36	b	10	Mercre	De l'Octave.
23	6 37	b	11	Jeudi	De l'Octave.
21	6 39	b	12	Vendre	De l'Octave.
20	6 40	b	13	Samedi	De l'Octave.
18	6 42	b	14	DIM.	1. Quasimodo (Oct. de Pâ
16	6 44	b	15	Lundi	s François de Paul. (2 d
15	6 45	b	16	Mardi	s Isidore, év doct (4 d'A
13	6 47	b	17	Mercre	s. Vincent Ferrier. M (5 d'A
12	6 48	b	18	Jeudi	s. Léon, pape et doct. (11 d
10	6 50	r†	19	Vendre	s. Herménégilde, roi, m. (1
9	6 51	b†	20	Samedi	De la ste. Vierge.
7	6 53	b	21	DIM.	e s. Anselme, év. doct.
6	6 54	r†	22	Lundi	ss. Soter et Caïus, mart.
4	6 56	r†	23	Mardi	s. Georges mart.
3	6 57	r	24	Mercre	s. Fidèle de Sigmar. matr.
1	6 59	vl-r	25	Jeudi	s. Marc Evang *Abstin Pr*
0	7 0	r	26	Vendre	ss. Clet et Marcellin, papes
58	7 2	b†	27	Samedi	De la ste. Vierge.
57	7 3	b	28	DIM.	3e St. Famille,
55	7 5	r	29	Lundi	s Pierre, mart. *incip. apo*
54	7 7	b	30	Mardi	ste. Catherine de Sienne, vi



MAI.

Le ☉ entre aux ♊ le 21 à

☉ le 3 à 7h 52m Soir. | ● le
☾ le 11 à 1h 53m Soir. | ☽ le

v.	Cou.	Cl.	MOIS.	Sems.	FETES.
M.	H. M.				
53	7 7	r	1	Mercre	ss. Philippe et Jacques, a
52	7 8	b	2	Jeudi	s. Athanase, év. doct.
50	7 10	r	3	Vendre	Invention de la ste. Croi
49	7 11	b	4	Samedi	ste. Monique, veuve.
47	7 13	r	5	DIM.	4e. s. Pie V, pap. Sol. s
46	7 14	r	6	Lundi	s Jean Porte Latine, (e
44	7 16	r	7	Mardi	s. Stanislas, év mt.
43	7 17	b	8	Mercre	Apparition de s. Michel
42	7 18	b	9	Jeudi	s. Grégoire de Naz. év.
41	7 19	b†	10	Vendre	s. Antonin, év.
39	7 21	b†	11	Samedi	e la Ste Vierge.
38	7 22	b	12	DIM.	5e.
37	7 23	vl-r	13	Lundi	*Rog.* ss. Nérée &c. m
36	7 24	vl-r	14	Mardi	*Rog* s. Boniface, m. M d
35	7 25	vl-b	15	Mercre	*Rog.* De la Vigile,
34	7 26	b	16	Jeudi	ASCENSION, *d'obliga*
32	7 28	b	17	Vendre	s. Paschal Baylon.
31	7 29	r	18	Samedi	s. Venant, mart.
30	7 30	b	19	DIM.	s Pierre Célestin, pap
29	7 31	b†	20	Lundi	s. Bernardin de Sienne,
8	7 32	b†	21	Mardi	
47	7 33	b†	22	Mercre	De l'Octave,
27	7 33	b	23	Jeudi	Octave de l'Ascension.
26	7 34	b†	24	Vendre	s. Ubalde, év. (16 M
25	7 35	r	25	Samedi	*Jeûne* de la Vigile.
24	7 36	r	26	DIM.	PENTECOTE, 1
3	7 37	r	27	Lundi	Fête de dévotion, 1 clas
2	7 38	r	28	Mardi	Fête de dévotion, 1 clas
17	7 39	r	29	Mercre	*Jeûne des 4 Temps,*
0	7 40	r	30	Jeudi	De l'Octave.
19	7 41	r	31	Vendre	*Jeûne de 4 Temps.*



JUIN.

Le ☉ entre à ♋ le 21 à M

☉ le 2 à 6h 53m Mat. | ● le
☾ le 10 à 7h 27m Mat. | ☽ le

.	Cou.	Cl.	MOIS.	Sems.	FETES.
.	H. M.				
3	7 41	r	1	Samedi	*Jeûne des 4 Temps.*
3	7 42	b	2	DIM.	1. STE. TRINITE'.
3	7 43	b	3	Lundi	s. Grégoire VII, pape. (2
3	7 43	b	4	Mardi	s. Philippe de Néri. (26
3	7 44	b†	5	Mercre	ste. Mag. de Pazzi. (27 M
3	7 44	b	6	Jeudi	FETE-DIEU, *d'Obligati*
3	7 45	b	7	Vendre	De l'Octave.
3	7 45	b	8	Samedi	De l'Octave.
3	7 46	b	9	DIM.	2 Dim dans l'Oct. *Proc*
4	7 46	b	10	Lundi	De l'Octave.
4	7 46	r	11	Mardi	s. Barnabé, ap.
3	7 47	b	12	Mercre	s. Jean de *Facundo,*
3	7 47	b	13	Jeudi	Oct. de la FETE-DIEU.
3	7 47	b	14	Vendre	st. Basile. év. doct.
3	7 47	b	15	Samedi	s. Norbert, év. (7 juin.)
3	7 47	vr*	16	DIM.	3e.
2	7 48	b	17	Lundi	s Antoine de Padoue,
2	7 48	b†	18	Mardi	ste Marguerite, reine, (1
2	7 48	b	19	Mercre	ste. Julienne, vierge
2	7 48	r†	20	Jeudi	s. Silvère, pape, mart.
2	7 48	vr†	21	Vendre	
2	7 48	vl†	22	Samedi	*Jeûne* de la Vigile.
2	7 48	b	23	DIM.	4e Sol. s Jean Baptiste.
2	7 48	b	24	Lundi	s. Jean Baptiste,
2	7 48	b	25	Mardi	s. Guillaume, Abbé.
3	7 47	r	26	Mercre	ss. Jean et Paul, mart.
3	7 47	b†	27	Jeudi	De l'Octave.
3	7 47	b†	28	Vendre	*Jeûne de la Vigile* s. L
3	7 47	r	29	Samedi	ss. PIERRE & PAUL, a
3	7 47	r	30	DIM.	5e. Commémor. de s. Pa

Amse	Hemond	28			
Archambault	Monjeau	44	239	263	
Aubertin	Raymond	48	120		
Archambault	Duplessis	124			
Anderson	Forsyth & al	160	180		
Andrews	Hanson	176			
Archambault	Brien Durocher	238			
Boucherville	De Bleury	241			
Berthelot	Gauthier	264			

Bostwick	Ford	2			
Barnes	Gallefreau	2			
Bostwick & al	Bowron	4			
Blanchard	Smith & al	9	50	60	120
Becket	Noxon & al	12			
Blackwood	Jones	22	107		
Brisson	Connolly	28			
Blodget	Woodworth	36	236		
Boileau	Boileau	39	91	116	
Bouchard	Courteau	39			
Bowker	Higgins	39			
Burt	Delisle	41			
Beardow	Gamache	47	152		
Beaudin	Bourdeau	47	51		
Bankgellon & al	Aberdeen & al	56			
Benis	Williams	57			
Bellamy	Gilbert	67	105		
Brown	Buchan & ors	67			
Boston	Duff & al	85	91	92	181
Boardman	Chapman &	95			
Bleakley	Kearney	106			
Boston	Boardman & al	108	262		
Blanchard	Smith & al	126	184		
Berthelot	Dumont & ors	134	175		
Beach	Dewitt	136			
Badger & al	Dewitt & al	145			
Boucherville	Cicot	151			
Beardow	Gamache	152	230		
Bisson	Vallée	153			
Beaujeu	De Longueuil	156			
Belin Blair	Guy	163	264		
Beaudry	Benoit	166			
Blanchard	Decoigne	168			
Berthelot	Dumont & ors	175			
Bradbury	Metzler	176			
Bourgeois	Parent	183			
Berthelot	St Marie & ors	228	263		
Bourassa	Vandal	231			
Bastien	Grant	236			

Chapman	Hondlow	5	13	
Cunard	Lynch & al.	24		
Coupal	Roi & T. S.	29		
Clarke	Gilbert	30	220	
Connel & al'	Lacroix	53	220	
Caine	Barett	67	71	78
Cartier	Bridgman	69		
Cook	Davis	76		
Coit	Reeves	78		
Cartier	Menard	94		
Confroy	Cuvillier	130	233	263
Classon	Seymour	133		
Chaney	Field	148	179	
Coupal'	Guertin	153		
Cuvillier	Fessier & ofs	158		
Cane	Burn	166		
Caron, jun	Hamault & al	167	180	
Comte. Jos.	(On Petition of	182	264	
Corkit	Bowker	239		
Cutter	Reynolds	241	250	
Coupal	Guertin & al'	241		
Cartier	Cartier	248		

Dorwin	Robitaille	12			
Dorwin	Carthers	13			
Desjardins	Larocque	17			
Doyle	Howse	26			
Douglass	Bullis	40	143	235	264
Duffy	Bull	45			
Delorme	Desrivieres	59	78		
Desrivieres	M'Gill, Cur. & al	96			
Denau ex parte	Oppost & Ralfe	114			
Demers	Gibson	117	259		
Demers & al'	Gravel	127			
Dawes	Leduc	133			
Dumas	Turgeon & al	135			
Desforges	Lefevre & al'	136			
Duchenois	Desmarets & al	144			
Desmarais	Labaye & ux.	152			
Duprés	Marcotte	152			
Dwight	Warner	161			
Delorme	Doucet & ofs	166	234		
Duplanty	Bilon & al.	177			
Deshautels	Fussier & Earl	226	232		
Dorions	Bagg	229			
Desforges	Piccard	230			
Duvernay	Viau & al'	234			
Dumouchel	Proulx	251			
Dawes	M'Eachren	259			
Drouin	Labrosse	260			

English —	Larrivée —	85				
Ferrie —	Herbert —	2	48	54	71	
Folson —	Brownlie	6				
Fraser —	Stevenson & al	26	50			
Fisher & al	Griffen —	33	110	178		
Freligh	Freligh —	34				
Fisher —	Boardman	45				
Ferrie —	Herbert —	120				
Fisher —	Dillon —	170				
Fournier	Bowstead	181				
Fowler —	Fry —	183				

Gillespie & c	Spragg & al	24			
Gibb & al	De Martigny	24			
Gagnon —	St Dizier & al	47	57		
Green —	Decker —	55	58		
Gauthier —	Shay & al	58			
Gausselin —	Brazeau —	126			
Guichaud	Fay & Fay & Co	162			
Gibb & al	Philips & Co	169	263		
Gibson —	Aicot —	178			
Gordon —	Perry —	234	263		
Guertin —	Guertin —	232			
Gagnon —	Peeling & Ewart	235			
Griffin —	Andrews & Co	251			
Gibson —	Demers & al	258			

Hart.	+	Jones & al'	1	55	96	262	Johnson & al	+ Papineau	103	
Hart.	+	Grant & Ewd.	3				Johnson	+ Dampier	105	237
Hutchinson	+	Mead	43	121			Jones	+ Shepherd	119	
Hart.	+	Baron	47	51			Johnson	+ Beckwith	156	
Howard	+	Farr	68				Irvine	+ Deseve	172	
Hedge	+	Aberdeen & al	103							
Hutchinson	+	Armstrong	164							
Holt & al'	+	Martinant	168							
Howard	+	M'Kenzie	227							
Hoe	+	Duverney	234							
Hubert & ux	+	Cartier	247							

Kimbert & Bedard 247
King & Burton 262

Larocque & Valois 9
Labelle & Parizeau 31
Lacroix & St James 35
Languedoc & Denault 35
Lacombe & Lacombe 36 51 68
Le Breton & Ogden 102
Leslie & Deshautels 116 178
Lebrun & Marchisseau 137
Lea & Burlingham 138
Leonard & Mooney & ors 142
Leclaire & Laroque & al 150
Langlois & Lauzon 159
Lacroix & Lacroix 229 241
Lamb & Bussola & al 234
Lauriere & Lacroix 238
Lamagdelaine & Sauvageau 247
Lindsay & Cuvillier & JS 251
Languedoc & Dupuis & Gar[t] 257

Miner	Hall & Ewart	3	17	262		
Meltote	Charest	9	79			
Metzler	Imbault	14				
Macdonald	Decary & al'	16	69			
McPherson	Durocher	21	40	75	114	
Milotte & ux	Robert	22				
Molson Jr	Alger	24				
McGill	Burton & al'	25	128	180		
McIntosh	Fraser	37				
McGee	Baker	43				
McLaughlan	Brodie	45	144			
Mcdougal	Tiffin & al'	72				
Mcdonald	Wyatt & al'	73				
Melhote	Charest	79				
Molson & Co	Ogden & hts	80	121			
Molson	McGibbon	81				
Moncur	Wilkie	83	178			
Merleau	Fournier	119				
Masse	Brien & Durocher	132	182			
Martigny	Dubois	135	149			
Menard	Questin	152				
Moses	Archambault	169	177			
Mowatt	Beardow	170	180			
Mills	Fuller & al'	176				
Montreal, Corp^{n}	Rules & Police	178				
Millar & al	Taylor	226				
McNider	Loney	228	263			
Masse	Larocque & al	231	263			
Molson	Flaherty	238				
Morrison	Snowdon	247				
Monjeau	Charron & ors^{l}	250				
Mpherson	Durocher	253				
McVicar	Dawes	256				

Nichols	Bunthusen	6	94	121		
Nelson	Beaufils	71	181			
Nowlan	Cuvillier	104				
Newbold	Frost	172	262			

Ogden	Cochran	74				
Orr	Swords	159				
Ogden	Devins & al	174				

Poitras	Marcotte	3	163		
Pickel	Laforce	13			
Perkins	Kempt	16			
Patty & al	Donegani &	16	50		
Power	Carty	30			
Pilotte	Falcon	34	51	70	
Page	Stevens &	47			
Portoous	Deschamps	114			
Pack & al	Gardner	134			
Pinet	Morin	136			
Pinet	Nichols	142			
Panet	Leprohon &	154			
Pollock	Jackson	163			
Poitras	Marcotte	163			
Perrault	Roxon	175			
Pagniolo	Gagnon	239			
Quesnel & al	Bradford	125	132		
Quintal	Charron	230			

Russel & Co	Field	8	50			
Robertson &	Dubois & J. S.	21				
Raymond	Lynch & al'	25				
Robert	Stuart	29	50			
Robinson	Becket & al	42	120			
Raymond	M'Killip	68				
Roi	Godu & al'	68				
Racine	Lussier	69				
Richardson	M'Kay & Ives	80	81			
Rolland	Ayer & al'	92	128	142	155	
Rasco	Desrivieres	104	178			
Ritchie	Gilbert	139				
Robertson & al	Jones & al'	139	172			
Rousse	Ranger	174				
Rolland	Ayers & Desrivieres	180	233			
Roi	Bussola	183				
Redpath, John	ex parte Ratiffe	230				
Roi	Bechard	260				

St. Ours.	Deschamps	14	50			
Smith.	Mills & opt.	15				
Shedden & al	Adams	34	50	54	58	
Salt	Farquhar	32				
Scriver	Gilbert	46	51	246		
Sabourin.	Larocque	67				
Seffinghall	Hewitt.	96	105			
Smith.	Brown & opt.	111	115	179		
Saffray.	Brampton & al	123				
Smith	Glagow & al	131				
Sorel-La Fabrique	Jones	140	151	179		
Smith.	Porter & Rossin	141	179			
Spalding	Gugy	148				
Samson	Comptois	153				
Stuart.	Thompson	161				
Smith & al	Buchanan	168				
Starnes	Desforges & al	226				
Scriver	Gilbert.	246				
Spalding.	McLaughlan	258				

Thawelle	Sauvé	127
Trudelle	Weilbrener	227

Welsh	+	Cook et al	5	13
Wadsworth	+	Boardman	71	
Whinfield	+	Stewart	75	
Walker	+	Langlois	141	
Wallace	+	Mc. Lee & ors	153	

Vallée	+	Herrieux et al	46

February Term. 1833.

Friday 1st Febry. —

Pres.t
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Uniacke
Mr Justice Rolland —

Ka. Rp on ps:
Hon.y 4.c —

No 2229
Bostwick et al
vs
Boardman } over to 2d —

No 226
Hart
vs
Jones et al } On Plffs mo. for a new Comr Roy. to ex. Wts to rebut testimony adduced by Defts —

Hart for Plff, says he has now filed the requisite Affidavit to support the motion, for the want of which the previous applic.n for a Comr Roy — had been rejected —

Mr Walker for Defts — The application is irregular made to support his imperfect evidence — not to rebut that of Defts. of. is surely adverse to that of Plff — The proof of an avowal made by Plff as to state of the goods, is not material

Hart in reply, the Plffs right to rebut Bostwicks testimony was specially reserved to him —

Bostwick vs Ford. — On Mr Day's motion for Pltff, to set aside the bail to the action given by the Defend. as Pltff had no notice thereof. —

Mr Nye for Defendt The Pltff had sufficient notice as he was present in Court when the bail was given & made no objection thereto, but on the contrary decided thereto.

Saturday 2d Febry. 1833.

Present

all the Judges

No 1329 Ferrie vs Herbert — On Pltff's mo. of Pltff to ex. Defendt on facts & article

Lepton for Defendt — The inquête was closed & the demand is too late —

No 2129. Barnes vs Gallipeau — On Defendt mo to discharge inscription of the Cause, & to be permitted to fyle a plea —

Rollins for Defendt Defendt was prevented from the State of the River from coming to town —

Mr Griffin for Pltff — The affidavit of Defendt is insufficient — the plea was due in October — a months after the time was expired. The Defendt says he came to town. —

№ 1884.

Poitras
vs
Marcotte

On Defendr mo. that Pltffs Enquete be closed
Mr Johnson for Defendr The Pltff not
having done diligence to complete his evidence

Mr Bleury for Pltff — he does not he applies to have
the inscription of Cause discharged, on acct of the
absence of Witnesses — moves to revive the order made
thereon —

№ 645.

Miner
vs
Hall
& contra

On Defendrs mo. to revive & prolong return
The Com. Rog. issued in this Cause —
Mr Day for Defendr The Com. is now obtained
by the Pltffs Commissioners —

Mr Walker for Pltff — The documents produced in
support of this application have not been filed &
cannot be taken notice of

№ 2318.

Hart
vs
Grant
& contra

On Defendrs application to be allowed to file
a Copyright of Deed in U. Canada & discharge hers
and also on the hearing on the merits —

Mr Bartan for Pltff, the Defendr has produced
a paper which he ought to have had a knowledge
of the paper he produces —

Mr Buchanan for Defdr The rules were
granted on false representations upon a great debt

Mears

than was due — & the Ludr. on which the demand is founded being much less than the note given — has now received a paper which shews the true amount of the debt, which Defendt prays he may be admitted to pay —

Boston for Plff — Plff never agreed to take any composition of his debt — There was more due to Plff than for wh the Notes were given — The Note given in 1828 & on which Defendt alledges fraud, is not in question in this case —

No 2229.
Bostwick tal' vs Bourdon an

On Plffs mo. to reject Special bail given by Defts Atty. Day for Plff — bail given without his knowledge —

Mr Nye for Defendt produces the affidavit of one of the bail to prove consent of Plffs counsel to the bail — He waived his right to notice —

On Defendts mo. to quash the writ —
Mr Nye — no indorsement on the writ of Capias to authorize the Atty issuing out the writ — refers to the rule of practice —

Mr Day on contra — The writ is indorsed as required but signed by the Prothy instead of the Atty issuing out the writ — The indorsement is a notice to the Sheriff to let him know what bail to take —

Monday 4th Febry. 1833. —

Prest.

all the Judges. —

№ 479.

Welch
v.
Cook et al

On Defendts mo. to quash the process as the Pltff making the affidavit has been convicted of perjury. —

Mr Nye for the Pltff, that altho' Pltff cannot be a witness in a cause where others are concerned yet the making an affidavit in his own cause when made to the satisfaction of the Judge — & the truth of the affidavit is not to be looked to —

See 4. Dowl. & Ryl. Rep. 144
Park, Jr. Brockley —

№ 58

Chapman
v.
Hordlow

On mo. to quash Ca.

Stanley for Defendt — no sufficient indorsement on the writ — no sum mentioned in it — the affidavit made before the Prothr of this Court — ought to have been made by the Pltff himself according to the form in the Statute —

Mr M'Cord for Pltff — no sum is specified, but Defendt is too late, as he has entered sp. bail — without reservation of right of exception — 1 T. Rep. 330 — 1 Bos. Pull 250. — exception to be taken before appee — 2 Har. Dig. — But the want of sum not material 1. Tid. Prac. 159. 9th edit. Connelly v. Fingland. Febry. 1824 — where the service of process was maintained.

Stanley. The practice here, the bail must be given before the Defendt can be heard — the case cited does not apply as to service of process. —

№ 54.
Folson — Brownlie

On Defendts mo. for security for Costs —
Blaney for Pltff — the affidavits not sufficient —

№ 1547
Nichols — Benthusen

On Defendts mo. to close Pltffs Enquete —
Walker for Pltff. There is no conclusive entry on the Enquete book to bind the Pltff in this Cause —

№ 253.
Borthwick et al — Donezan et al

On merits.

Action on 2. promy Notes — Indorsee agt Indorsers

Mr Walker for Defendts — notes drawn by Eager in favor of ~~Pltffs~~ Order duly there indorsed — one 26 June 1830. The other 28 Sept of same year — The note for £100 — was merely a renewal of the note for £150 — on an arrangement between parties — The dates of the notes correspond with the time the first note had to run — The plea here is usury — The note here was discounted by Lamb for Eager at rate of 12 P cent — The evidence on this point is given by one Albert Ware — refers to paper marked C. a letter from Mr Lamb. who appears that he had paid of both notes after they had come to maturity — one note for £150 was protested

procured by Lamb, the other by the Bank — Lamb's name not on the note, but usury having been committed in the formation of the note of £150 — There is no proof of usury on £100 note — Thus Bouvier. Instit. Com. ¶2053. The Court of Law in England have annulled the transaction note in the hands of innocent parties when usury has been apparent in the transaction — Woolrych. p. 396 — Com. Law the title of the party may be affected by usury altho' he does not derive his title thro' any person using such usury —

1. Selwyn's N.P. p. 326 —

Mr Driscoll for Pltff — no proof that Pltff have participated in the usury, nor derived their title from any person using such usury — No evidence of usury whatever, except Mab of ware — The Com. was irregularly executed — The Interrogatories were not regularly proposed to the Witness as required by the rules of practice — moves to reject this evidence from the Record — (This objection appears to be ill-founded —) The evidence however is insufficient, being but one Witness — Usury is not a fact concerning any commercial matter — no proof of usury between any of the parties in this case, & there is no proof of any injury accruing to Defts even if usury had been proved — Denies that the £100 note was given to replace the £150 note, they are separate transactions

Walker in reply — This is a commercial case & might have been tried by a Jury —

Nº
Russell & Cº
vs
Field. —

On Equity

Fisher for Plff — action by Capias — Plea — of abatement — That Defendt arrested on State for same action — Plffs have demurred — The Plea is not in form — ought to have shewn that Court before which was complaint — No such plea admitted as pendency of suit in another Country — as no Judge there can be executed here — Com. Dig. vº abatement. H. 24. Nº 9 — no pendency of suit in inferior Court — 11 East. 118. Hall. v Abbey. 124 — 9 East. 192. Buchanan v Rucker — 7. N. Dempr. vº Droit des Gens. 259. — Ld. Vº Hyperthegra 761 —

Boston for Defendt — The plea of litispendence here must be admitted as sufficient — That is not only a Ca. ag the person but an attachment ag the property of the Defendt — The Defendt has been here arrested again for the same debt — 1 Pegram p. 199. The documents of Defendts defence are before another Court & cannot be had here —

—

see 4. Pardessus. Droit Com. p. 200. —
Bac. abr. Tit. abatement.

Tuesday 5th February.—

Prest.

all the Judges.—

No 87.—
Mellor
vs
Charest

On Defendr motion for delay to plead
Mondelet for Plff— The process was served
on the 20th Dec. last & the Defdt has had sufficient
time to prepare his defence— question is a simple
one—

No 72.
Larocque
vs
Valois

On Defendr mo. for delay to call his Garant
Mr Cas. Brunau for Plff opposes, as process
served in vac last— upon to last day of term

No 1414
Blanchard
vs
Smith et al

On Defendr mo. for a new trial—
Walker for Defendr— the Verdict is against
law and evidence,— and the damages
excessive— Sale of hats by Plff to Defdt— Defdt & Plff
negotiate in 4 & 6 months— before the notes fell due
a report that Plff was about to leave the province—
Plff was arrested— on trial, Defdt action was dismissed
the Court not being satisfied that Plff was about to
leave the Province— On this present action was
brot & Verdict for Plff for £350— The opinion of the
Court was in favor of the Plff on all the points— but that
there appeared no malicious conduct in the Defendt in thus
suing out the Ca. ad Resp. The facts in favor of

the

the Defr. was the clandestine disposal of the property in which sale which he had purchase for retail business, also the insolvency at the time of Pluff — fraudulent preferences to some of his Creditors, by delivery of goods to them — the purchase of the Nats ought to have been considered as made with a view to bankruptcy — The almost immediate sale & conversion of Pluffs property into bought the means to be carried off — unknowing any intention to abscond — and under the information that Pluff was about to depart the province —

Pluff declared he wanted the goods for his retail trade — & that he had no means but from the sale of the goods to pay Defr — The clandestine sale of the Nats he bot from Defr almost immediately were suspicious acts — The long credit given to Pluff. was to assist Pluff to sale by this credit — The sale to Bridge of his whole stock & leaving his sign board over the door of the Pluffs store after this sale were frauds in Pluff — Sale by Pluff to Bass of part of Defrs goods at same price at which Pluff had bot them from Defr to pay off an old debt — This a gentleon of probable cause — & the fraud a mercantile fraud, & it was the duty of Pluff not to have created any suspicion in the mind of his Creditor — Ivesson Ordr 1673. p. 182. 3. 4 — ads p. 181. Tassan. Vo Faillite — & N. Denys. p. 204. 5. Banqueroute — Bassage p. 61. Hyp.

Bell. Com. p. 3 2. 261 — 263.

When Defr finds himself in an insolvent state he can no longer dispose of his property to one Creditor in preference to another — & he does it gives Cause ground to act of the Debtor — Kames 308. & 311 as to presumptions of a mercantile fraud — Bell Com. p. 263. — Kames 222. 203 —

Now the Debtor has converted all his property into negotiable security, so that there remained only the person

of

of the Debtor of which the Creditors could exercise their remedy, & was presumptive evidence of his intention to quit the province.—

As to probable cause. N. Denizt vo Calvennis — Ld. vo Denonciateur — 221. 3 Repse vo Presomption 575 tit 32. art. 1. Ordne 1667. Inspiton.—

Mr Day for the Pltff — States facts of transaction between Pltff & Defdt subsequent disposal of entire stock by Pltff to Bridge — There is nothing to have justified Defts to have arrested the Pltff —

Repse vo Jr aisment — Creditor can expect payt only in case of failure, before the expiration of the term of payt — 1 Pothier Pr. Cou p. 35. 121. 437. 438 — Polk Obl. 231, 235. — sale of goods at vil prix, is not alone proof of fraud.

Repse p. 149 vo Banqueroute

Esp. N. P. Evid. p. 408 —

Mr Walker was heard in reply. —

The Court adjourned till Thursday next to morrow being the Fast day appointed by the Governor's Proclamation. —

Thursday 7th February.—

Prest.

All the Judges.—

No 93.
Beckett
v
Norcondale
&
Ashton. T. S.

On motion on behalf of T. Lewis for delay to appear & make his declaration—
Fisher for Pltff. The T. Lewis must appear in person or by Special power of Attr — There is neither here — The affidavit does not say that there is nothing due by T. L. to Defdt —

bl. v S. amt

No 276
Darwin
v
Robinette

On Defdts mo. to quash the writ of Latitat sued out—
Chitty for Defdt. The Pltff has not a true copy of the writ nor has been given, & no indorsement upon it — at least not certified by the Sheriff — The year not mentioned in the writ — The ord. of 1667 requires that the copy of Process must be certified by the Sheriff
Wentworth, for Pltff, the process is regularly made & certified — as to the indorsement on the writ, it is not material for the Defdt this being a direction for the Sheriff —

Nr
Mathewson
v
Donegani

On Defdts mo. for delay to plead —

№ 2018
Pickel
vs
Lafore

action on note
Dorsoll for Defdt — Variance between note produced & that declared on — Chitty. 6th edit. 352. no mention made of the intent specified in the note as to wife, no authority from her husband authorising her to sign — Rejected for Authorization. —

Mr Pickel for Plff — although intent not mentioned yet he concludes for it — There are omissions [illegible] of the authorisation of the wife. —

№ 2221
Dorwin
vs
Caulkins

action for goods sold
Day for Defendt — Variance between declaration and proof — the Cask of nails in question was returned to Plff — & another & diffr Cask of Nails sold in lieu of it —

Chapman
vs
Hardlow

Defendts motion to quash the Capias disallowed — The Court considered the giving of Sps. bail & entering appearance by Defdt without reservation of right to his motion to quash the writ, was a Waiver of his right — & that the indorsement on the writ was a mere direction to the Sheriff. —

№ 479.
Welsh
vs
Cook —

Defendts motion disallowed — no sufficient record of Conviction of Plff —

Friday 8th Febr
Saturday 9th " } Enquete days.—

Monday 11th Febr.—

Crest.

all the Judges

№304.
Metzler
vs
Imbault } on Defendr mo. to dismiss from want of diligence on Plff

Stanley for Plff — cause in debt. on a mo. to ex. Defr on fait tort. —
Rottot for Defr — a promissory note on Plff in Acton tort —

№2717
De St Ours
&
Deschamps } Action for Lods & Ventes — Contestation —
Branchaud for Plff — demand founded on a contract of marriage 30 Septr 1827 by wh the father gave a lot of land to the parties on payt of a sum of 5000th to the donors — There was an estimation ordered by wh the value of land is estimated at 10,000 — Plff asks for nom. of P.V. of Experts — and Judt for Lods & Ventes on sum of 5000 — as being in exp of the law a sale of the property —
Mr Cherrier for Defendt — This demand is founded

on

on a petition de principe, as if there was proof of a sale of a portion of the property — This being a transaction between father & son, no lods & Ventes are due — The remboursement stipulated does not attach more on the real estate than on the moveable property given — This is not a sale from the father to the son, but a family transaction in which there is nothing due to the Seigneur —

Guyot. considers it as a mixte between parties

Pothier — same things —

The contract was a liberality by the father to the son — the only apparent difficulty seen is that the money is to be remboursed to the father, but this does not change the nature of the transaction — the presumption being that in such case this sum will eventually be found in the succession of the father —

17. Reps. p. 618. — similar case — the present case being however stronger — The case of Martigny & Branchaud was a different transaction, not so favorable Pothier. Defs — cited in this case —

M. Beaubien in reply — The value of moveables is to be deducted from the value of the realty — & it is on the value remaining that the lods & Ventes are due — refers to 17 Reps. 616 — where the principles contended for by pltff are laid down —.

Smith
Mills
& Smith } Fisher for Defendt — prays that action
be dismissed —
Pltff submits case —

№ 1332
Perkins
—
Kemp

Barnes for Defts prays action be dismissed
there being no proof —
Pltff submits case — Court reserves —

№ 2674
M^c donald
v
Decarry —
M^c donald
in Bs^t Groups

action on a transfer —
Blewett for Defend — ought to have his costs
agst Pltff —
Fisher for Pltff ought to have his recourse
on his Garant —
Blewett for Defts The Pltff ought to have his full
costs agst Pltff —

№ 1738.
Patty sale
v
Donegani &al

on merits —
Dres coll for Pltff — action agst Defend^s for
payt of monies as sundries of Own Exors —
Defend^s plead payt by a note made by Exors &
which he has satisfied — But the proof is that
this note was not paid when due & was taken up
by Pltff — a second note given by Exors. but
was not paid. — Chitty. 6^e p. 98 —

Walker for Defend^t — contends that this demand
was paid on 17. April 1830 — Exors entered into composition
w^t his Creditors & Defend^s became security — on 17 Ap.
1830 Exors gave his note for balce of his composition to Pltff
& Pltff. gave their receipt for the amount — The note
was taken up by Exors on 22^d July 1830 —
Rep^r 774. v^o Caution — Pothr. obl. № 406 — & № 530 —

The

1 Starkie 346 378. 9
1386 1390 —
2d. ps. 306 —
2d. 48. —

later decisions in England & the States shew that taking such a note may operate a discharge to the Caution — An admission by the principal cannot bind the Surety after the making the contract. —

Driscoll in answer — the receipt produced is not absolute, but states the consideration, which was a note — but this note was never paid —

The Defendants can make use of the acts of Esgr as their defence, and his acknowledgment must bind them. —

There is no novation —

No. 645.
Miner
v
Hall
&
E contra

action of assumpsit —

Walker for Pltff — various transactions between the parties. — In Spring 1830 — Gilbert entered into a contract to furnish cord wood to the King & entered into agreement with Pltff to act for him, exh. No. 1. & authorized to enter into contract for Gilbert for 1000 cords of wood — there is also a second agreement from Gilbert to enter into contract for wood of a smaller size — dated 4 April 1830 — Gilbert made a note to Defts of all his interest in the wood on 23 April 1830 — exh. No. 4 — to secure it from the Creditors of Gilbert. — Pltff. exh. No. 6 — Pltff is — constituted the Attorney of Defendt — who was to execute all the undertakings of Gilbert — exh. No. 7 & 8 — advances made by Pltff on and Defts & timber got out by Pltff The whole quantity of timber got out by Pltff was about 1150 cords — the moneys advanced exceeded 4000 $ — the moneys rec'd from Gilbert $1619 — leaving a large balance due to Pltff — exh is now demanded — The property in first part of exh. No. 7. came into hands of Defts — as it had never been seized by Sheriff of N. York —

The other 2 pages of exhibit shew the monies advanced by Duff on acct of the timber that was seized & sold by the Sheriff of St Lawrence County N. York — $2934 —
Ex. No 5 Defts receipt for 3 Drams delivd by Duff — & contain a part of the timber covered in 1st page of exh. No 7 —
The Incidental demand is not supported by any evidence, but that Duff has accounted for all the monies he has received —

Refer to evidence to shew that the wood mentioned in first page of exh. No 7 — came to possn of Gilbert in Spring 1831 — ev. of Isaac Brown — Interg. No 9. 222 — Wards answers to 9th Interrogs — Stewards do 6 & 11th — The items in 2d & 3d page seized by Sheriff — refer to 9th Interrg. Smith — Proctor — Thos Brougham, Potter, Templeton — Deputy Sheriff — 18 & 19th Interrogs — 4 Drams were carried off clandestinely by Gilbert — the other timber was sold —
Browns answers to Inter. 18 & 19 — shew the carrying off the timber by Gilbert & the remains timber sold — also to 22d Interrg — Manchester's evidence — Duff had procured nearly 800 cords of this wood — evid. of Austin. 6. 9. & 18 Ward to 9th Interrg — & to 19th Interrg — called to appraise a part of the property seized, & ye had been partly got out by Duff — This appraisement after the wood carried off by Gilbert — & ye added together the wards
Ev. of Isaac Brown — 9th Interrg — monies advanced by Duff on property seized — & the quantity of wood purchased by Duff — 929 cords — the loose wood not seized by Sheriff
The evidence of Steward to 13 Interrg on 2d Comm — 12th Interrg Ward re-exd on 2d Comm Wheeler. 12 & 13 Interrgs —
Defts wd. 3 Drams from Duff in May 1831 — & all the

wood seized by Sheriff came actually & constructively to the hands & Defts — refers to ev. of Burk under Sheriff — to 18 & 19th Interrogs — Brown. to 6. 12. 13. on 2d Comn — Ward to 6. 12. 14. 18. 19. 20 & 32. Interrogs. on 2d — Stewart on 2. 22 & 17. Gardner Brown to 18 & 19 Intrys do on Cross Ints — to 13 & 19 Intrs — on do on part comn Brown on 1st Comn — Ward & Stewart to 15 Intrys on 2d Com. Gardner Brown on 11th Cross. Int. on 2d Comn

The attempt to show that Plff had applied part of the wood to his own purpose, has failed — refers to Seymours evidence — all the property sold by Sheriff was bot in by Page for Defts

Miner had various transactions on his own act — and made large purchases of timber on his own act — besides what he furnished for Defts — Gardner Brown ev. on 2d Comn Tobias. ev. to 13 Interrog — Ward on 1st Com. 4 Cross. Inter Miner. 17 Cross — 2d Com. Stewart to 42d Int. — Brown 1st Com. 5. Cross — inter — Isaac Miner — 12. 9. 10 1st Comn G. Brown — 2d com. 23 Interr Ward. 2d com. 29 Intr — Seymour. 6. Int. on 2d — Tobias to 23. by Defts — on 2d Comn

The point in contest is as to the liability of Defts to pay for the property seized & sold by Sheriff — this Plff contends had been delivered to Defts & Gilbert — see ev. Bingham. Bown. Brown, Ward & Webster evidence — refers to Isaac Miner to to the distinction between the timber bot by Plff for Defts & the other wood. 6. 9. 10. 11. 12. 19. 22 Intrs — Louisville & Macon wood not included in the exhibit

As to the Compensation set up by Defendt — refers to the expenditure & steps & labor of Plff — the Commissioner he is entitled to — Ward says. 20 pr Cent — Isaac Miner

The monies advanced by Pfff — Bucks's contra — Def. estimates Pff's claim has would be $600 —
The correspondence between Gilbert & Pff before the assignment to Hall in 1837 —
Hall answers on part Interrogatories — Defs evades the questions & his answers must be disbelieved —

Mr Day for Defend — refers to a part rept to Pff's exhibit. No 1 — as to liability of ~~Def~~ Gilbert —
As to proof of articles in 1st page of exh. No 7 consists only of 3 beams of wood delivd to Defd — The surveys made subsequent to the transfer from Gilbert to Hall —
The power of atty to Pff does not specify what property was seized — The great difference in testimony of witnesses leaves the quantity of wood seized uncertain —
No proof of the quantity of wood seized & that got out by Pff as Pff was getting out timber for himself — this was necessary to make Defd liable — Ward, deposes to 81 cords beams furnished by him to Miner. qty had been seized — & then is another lists to another quantity — & this is all —
Isaac Miner the brother of Pff gives a strong evidence but not supported by other testi. —
Take exception to the Pff's amend filed —
It was expressly agreed that Pff should receive no compensation for his trouble — not entitled to any —
The Defend only liable in so far as the timber came into his hands —
Pff must have acted either as a Vendor or Agent — as Vendor shows no delivery of wood — as agent — he is bound to account for what came into hands — he had no power to dispose of it for his own purposes — bound to account for all he purchased — sold lumber in a concealed manner to Seymour — Whipple & others — to what of 27 beams value $810 — no part of which Pff has accounted for — Pff admits at times he was not the

agent

Agent of Defendr did at times that he was purchasing for Defendr according as he found wood suitable his purpose.

Nr 1080 Desjardins v Larocque	Defendr plea maintained –
Nr 883. McPherson v Durocher –	Defendr Petition maintained
Robertson & Co v Dubois & Tassé. opp	Two Causes united & Judgt
Gillespie & Co v Spragg and & Hutchenson Intervs	Judgt

Tuesday 12th Febry. —

Pres.t —

All the Judges. —

№ 2486
Blackwood
vs
Jones —

On Pltff's mo. to reject Defds plea —

Borton for Defend. The plea is regular — It consists of defence en droit — 2 plea — Exception — 3 general issue. —

Grant for Pltff — The law & fact are here blended together in the same plea —

№ 1438
Mulotte exrs
vs
Robert dal

On Law —

Mr Mondelet for Pltff — The Defend. has set up the renc. to the Succ.n of their mother —

Mr Charrier for Defend. The act of 22 Aout 1801 — is the act on qt. the claim for dower is founded, being a donation of the property, subject to the dower — Et. Robert married en 2d noces, & Defend.s is issue of that marriage —

1 Just exception is founded on a renon.n to the Dower 13 Septr 1821 and give a receipt for their rights & consent that Jn.n Bt. Robert dispose of the property in question without let or hindrance — altho' the dower was not then open, yet the renc. must avail after as binding on her This is not a renc. to a future Succession — It is alleged that there is no consideration for the renonciation — This

not

not a sufficient reason — a consideration may be presumed — but the party may exercise a liberality & give up their rights. —

That if the dower is claimed on this property, the party must pay the improvements laid out on it the Community must be indemnified for the monies laid out in this respect — 3 Fer. Gr. Com. p. 722. N° 52. admits that dower does however attach but subject to pay. for Improvts Poth. Douaire. p. 191. N° 178. in 12 Lebrun Succ. p. 383. note d'Espiard — Lemaitre — p. 296. — Poth. Douaire. N° p. 200. cas. Ermatinger & Dewitt, Mots & Lat. oppos. Jug. 11 Oct. 1830 — in this Court —

That the issues and revennes here cannot be compensated with the improvements, as the Defendr are possessors in good faith — & besides bear no proportion to the Value of the property —

Mr. Mondelet for Pltff. The first exception is without foundation — the act relied on is a mere nullity — it is a renunciation to a future succession — Poth. Succ. ch. 1. §3. p. 31 — 2 Argou. 182. 5. — art. 249. Cout. Small Commentary of Ferrier. — p. 137. Reps. 136. V° Renonciation 1st Col. — C. Denize. V° Renon.

The Dower is taken as found. Renusson — & the parties may claim it or not — Duplessis — ch. 4. sec. 1. p. 250. looks on the Dower as a créance a charge on the succession. Id. 240. 242. — Renusson. ch. 8. p. 81. Tr. du Douaire — N° 20 & N° 21. — art. 250. Cout. Paris — Reps. V° Douaire p. 308. 309. — Comm. de Fer. on 249 art. Cout. in 12 — The only authority on Pltffs is that of Pothier — But compensation ought to be made with the issues and profits — The maxim is that le Douaire de prent fonc —

Cherrier in answer — This is a question of Dower and not of Succession — The dower altho' not open might be given up by the woman, in so far as regards her rights —

As to the improvements they must be paid by the Demandeur —

No 922
Cimard
vs
Lynch
Lynch
mis en cause

On rule to put the heirs of Defendt en Cause that they be declared executors ap hoc —

Mondelet for Pltff — parties are called en as heirs of Defendt —

Mr Cherrier appeared for Defts

No 1909
Gibb & al
vs
McKinzy

Action for goods sold
Pickel for Defts — demand not proved

No 2058
J. Molson Jr
vs
Alger —

action for goods

Buchanan — proof goes only to goods sold & he admits to have received more than he has proved There is no proof of the account stated — No proof of the delivery of the articles —

Wednesday 13th February.

Prest

All the Judges. a

Raymond
v
Lynch
&
al. mis en
cause

On motion for declaring executory the Judgt rendered in this cause as the Defr as the mis en Cause as heirs of the deceased The mis en cause appeared by their Attorney but put in no answer — and on Taking mo. the rule was declared absolute as the mis en Cause without any proof made of the quality of ~~their~~ heirs the Court holding that being sued in that capacity they were bound, when they came into Court to deny their liability as heirs, as the presumption must be taken as them by their silence —

No 81
M'Gill
vs
Burton
&
Desrivieres
Dale par
reprise d'inst

On rule to shew Cause — &c. &c. of mis en Cause to be permitted to plead in writing —

No. 298.

Doyle & Howse } on Pltff's mot. to amend —
Grant for Defend. plea in abatement — cannot be amended —

Fraser Stephenson et al — opts } The question here is whether the claimants en sous-ordre are entitled to claim in right of their hypothèque or en vertu de leur — There are three Smith, Frost & Sandys — other claim en sous-ordre —

Smith, contends that his hypothe. is anterior & he is entitled to priority over the others — 3 Voet. liv. 20 — tit. 3. on personal property. Dig. Just. liv. 20. tit. 1 — l. 13 — liv 8 Code. tit. 23. — Poth. Hyps. p. 417. — & 427. — Rep^se 616. V^o Hyp. p. 617. — p. 292. D. Denis. V^o Hyp — Poth Obl. p. 354. — droit reel — N. Pros^t 343. — N. 188. Société — p. 602. Tr. de Consomption. p. 711 N. 9. — Just. sur les Conv. p. 286. 268. — Domat. liv. 3. tit. 1. sec. 2. art. 23. — N. Denis. V^o Hyp. p. 774 — point in question — Pigeau differs in opinion, but the authorities from N. Denis settle the discrepancy

Tibeau p. 270. 1. Héricourt ch. 11. sec. 4 N^o. 2. p. 282 1. Desp. 695 — 2 Vol. Gr. Com^n art. 107. p. 1168. — 1172 — Immovable inscriptions 1225. 1226. — 7 Pothier du Pan. p. 177 —

Objected that the oppos^n en sous-ordre was not put in en time — Héricourt — p. ch. 11. sec. 4 N^o. 2. p. 282 — it is in time if made before the deed of sale — 186-188

Mr Gale for Mr Frost. This question has been variously determined — It is necessary to consider what kinds of hypothèque are dont Issue. for it is only on the Immeubles that the hyps. can attach — art. Cout. 170 — meubles n'ont point de

de droit par hyp. obligee — de question then is the
84 hyp. in a somme de denier a real right or not. Art
84 & art. of the Custom says, that such hyp. is not
an Immoveable, but a moveable right — Then is
a distinction between droits reels qui are reputed
immovable & droits reels qui are moveable — the
action en complainte could not be brot. in this
right — according to 96 art. of Custom — Rep. p. 466
Droit reel — is called a droit attaché au fond —
Tab Com. p. 7 — 2 Fer. Pratt. Com. 4 D. Denizt. 561 —
Sous ordre — N. 2. 23 — 2 Denizt. 245 — V. Droit
reel. — Id. V. Immeuble. N. 2. 210 — Id. V. Meubles
N. 2. 10. 11 — the obligations here cited as not capable of being
mortgaged — Rep. V. Hyp. 621 —
1. Pigeau p. 821. 2. vol — 4 Vol. Q - Cout. p. 1271.
as to time at which these oppositions ought to have
been filed. Rep. p. 886. V. Collocation — the opposn
ought to have been made before the sale to preserve
the right on the fond. —
Mortgages just drawn in France under the new system
Ch Pelletier for Mr Soulegny — The right of Brown
was a créance mobiliaire in Whitford's Estate — If
mortgage attached to the right of Brown, he could not
transfer the right to any other person to prejudice of his
other Creditors — if Brown had however transferred his
right to any other, the Creditor Smith here could have
had no right en sous-ordre — If Smith had had
the right of mortgage on Brown's debt, he might have
come directly on Whitford's property and claim
this right, which was impossible —
But hyp. best but an inchoate right in the realty
Rep. 664. V. Hyp. — the right of mortgage is only a right to
sell the property, and not to take possession of the property

Has objected that Smith has not concluded to a preferable right of Mortgage on the property of Brown —

Smith in answer — The authorities cited by parties do not apply — Those from Pigeau & Hericourt are by themselves admitted to be agt. the practice — The question here is whether the right of the party to the debt & not the debt itself is moveable or immoveable — the authority from Dionysius is decisive as to a claim on monies arising from the sale of realty —

1343. 1 Vol. Gr. Court — on 89th art. is clearly establishes the right. —

No 2196
Brisson
to
Connolly

action for board & lodging &c
Grant for Defendt — The Defdt. was proprietor of the house & Pltff lived there as a servant — & not entitled to the present demand —

No 2469.
Ainse
to
Hemond

action on obligation —
Pleas for Pltff — asks for Judt for £14. — some shillings making allowance for the sum received —
Lafontaine for Defendt. Judt. ought to be given for a sum under the competence of the Court — the Etat he filed is different from that produced by Pltff The Defendt ought to pay only for 5 Years, as the date of obligation is in 1830 — & ought to pay only pipe minots —

№ 1379

Coupaldal Roi — Milwen et al

action on Saisie-arrêt —

Binder for Defendr. The Judgt. on which the attach — is sued out, it being at Amable Roi. & the present saisie is Amable Toi and the original oblgn is made by Amable Toi — There is an error in the Judgt in giving it for £25. when only £10.10 was due — —

№ 1082.

Robert — Stuart

action for work & labor —

O'Sullivan for Defendt has filed 42 receipts which were taken away by Plffs atts & communicated them as he says to Defendt attorney, but which the attorney declares he returned to Plffs. Atts — But to obviate difficulty — Defdt has been called on to answer on faits & articles — they were examined also under the order of the Court — The Defendt ought not to be deprived of the benefit of his exhibits but as Plffs atts is answerable for them — Thinks the action ought to be dismissed — The wife admits she gave receipts, but for other articles than the board and lodging, but could the party apply the monies paid to any particular object, not here in question, and which the Court must presume to be paid on acct of this demand — The action is also for other articles furnished besides the board and lodging

№218
Power
Carby

On Pltff's mo. to set aside plea of Defdt
Taylor for Pltff - Defendt pleads, that he was
never in possession of the lands - 2dly that
is an affirmative plea, & irrelative - 3dly that
is also an affirmative plea - & inconsistent with
the Pltff's demand - no certainty as to the time
when it belonged to the Crown - 4ly. That if
ever he took possession it was by permission
of the Crown -

Grace for Defendt - The plea is regular & sufficient -

№2363
Clarke
Gilbert

action for delivery of wood to Dfdt -
Walker for Pltff - Pltff agreed to deliver a
quantity of 250 to 500 cords pine wood at 17/6 -
The Pltff delivd 140 3/4 cords - & for the value of which
this action is brot - including value of some ash
oars -

Day for Defendt - The Pltff has not performed
his contract either in the time or according to the
quality of the wood stipulated - On 1 June there
was no delivery of wood, nor made till 25 June -
of the 140 cords afterwards delivered, one raft is
admitted to be short wood - only 105 cords have
been delivered according to Contract, & for which the
party has been tendered -

Thursday 14th Febr.

Prest

All the Judges. —

No 449.
Mackuskin
vs
Jones

Pltff. mo. to discontinue on Defdt paying Costs —

No 560
Labelle
vs
Parizeau

On Defendr motion that matters in contest be referred to expert —

Mr Lafontaine for Defdr — the object is for payt of mason work —

Mr Mondelet for Pltff — it is not a matter of right that Expert be named — the mo. ought to be suspended until it be ascertained that Defdr has done the work — —

No 1858
Sheddon dit
vs
Adams dup

Action on Note —

Smith for Defendr — no proof that the wife gave the note in her capacity of Marchande publique — the signature merely is proved — Pothier 463. Jurisprudence Rep. 836. Vo Autorization — Repse Vo Consent — mere signing not sufft — Pltffs have not proved their partnership as laid — se Ev. 133. 4

133.4

Mr Morgan for Pltff — the proof is sufft that Defendt was doing business for herself, which is enough — The Pltffs partnership is also proved —

№1966
Salt
vs
Farquhar

action for goods sold
Grant for Defendr the action not rejtd
the proof is remanet pour demand —

Friday 15th Febry

Prest

All the Judges. –

№ 2187.
Fisher dab
v
Griffin

On Plff's mo. that Interrogatories on Com. Roger be allowed –

Buchanan for Plff – objections to 6. 7. 8th Interrogs as to the quantum of the demand – St. 9. Geo. 4 ch. 20. sec. 2. not necessary that the notices in question should be published in both languages – the fees limited to the Printer by the 11th Sec. applies to each language and not to both – The presumption that the allowance here should be same as to the Sheriff

Mr Griffin – no evidence can be adduced, as the Statute has limited the amount of the demand

№ 172

On Mr Lafontaine's mo. to discharge proceedings since the 5th June last – In the Rule by Messrs to Gibson. the Parties agreed to give a possession to Lafontaine to appear – that Gibson shd pay to Buchanan £5. to do so – The Garnts were just on Writ at suit of Gibson – Gibson asked to 5 days further time to file his objections – the delay for Garnt expired on 13th Nov. last he filed notice from Gibson to plead – the time for doing passed without proceeding – was informed that Parties had appeared

appeared for Gibson – but appearance not made –
The Grant returned quod during all the term
of October last. without receiving any notice – left
for Quebec thinking that Terroux had or would
enter appearance – It was only yesterday he obtained
the Writs had obtained permission to proceed ex
parte in Nov. last – Observed that Gibson
had pleaded to opposition of Arrest – That during
the Term the Writs proceeded to Enquete during
that term and examined a Writ – Produces two
affidavits –

No 1149
Fulleigh
v
Fulleigh

On Report of arbitrators –
Mr Walker for Pltff prays homologation of
Report of arbitrators –

Mr. Grant for Defendt – There is an error in the
award by the arbitrators having allowed £57
more as Defendt than they ought to have
done – as compensation a claim for wages not
before them –

Mr Walker in answer – The affidavit states
only an accidental conversation with one of the
arbitrators which cannot affect his formal
award –

No 1461
Pilotte
v
Falcon

On Case –
Mr. Cherrier for Defendt – action for price of
land sold – by deed Vendor bound to deliver all
the

the titles duly quittances & renunciations, yt has not been done —

The other exception is founded on clause of franc & quitte, as he considers it — this Plff contends applies only to the Seigneurial rights — but it must have a general effect as applying to all the alienations of a lot of land sold clear of all incumbrances — Chatelain v. Laplante — 2 years ago —

Munro Defdt Oct 29

Mr. Mondelet for Plff — The purchaser cannot retain the money until the deeds are delivered — as to the other point, the case of Pothier v Bouffard is more applicable — but the clause in the deed is not a clause of franc & quitte, but of general warranty

No 1819
Lacroix
&
St James

Ou action on Obligation
Mr Lacroix admits a Set off of £24 from demand
Mr Bleury for Defr — has moved for a further answer from Plff to the last Interrogs —

No 1889
Langudoc
&
Denault

action for Loss & Rents —
Lafontaine for Defr — The action ought to be dismissed — his receipt for 300th has been admitted for the balance of 200th — he ought have brot his action in the Superior Court — as being a personal debt —
Buchanan for Plff cites cases. Can & Belt — & Hellon & Bond —

№ 2160
Lavombe.
Lavombe.

action for arrears of rents & pension Viager
Mr. Mandeleo for Defdt. four years only
of this demand can be allowed — cde Ord.ce of
1510. art. 71 — Ord.ce Fra. I. of 1539 — Conference
de Guenois. à Nouv.e Poth. Constit. Rente —
№ 138. — "The rentes foncieres only are excepted
Fer. Dic. vo Rentes — applies it to rentes Viageres —

Mr Rollin for Plff — The prescription here
does not apply — the rente here is foncier, a
prescription not applv.e N. Denys vo arrerages
p. 306 — Fer. Dic. vo arrerages — Repse vo
Rente. p. 159. — Id. vo arrerages — p. 621. —
1 Bourg. p 337 — 2 Bourg. 570 — Pothier.
Prescrip.s № 135 —

Potth. № 254.
constit. Rente.

№ 1552
Blodget
Woodworth
& Conha

On leave

Mr Borden — action for goods sold — Plea
a plea of compensation & Incidental demand —
The Defendt has proved 2 notes of Plff — not due
when action was brot & cannot be allowed to sue
it up as Incidental demand — One of notes declared
on by Defendt is not transferable by indorsement —

Taylor for Defendt there is a plea of compensation
for work & labor — & Incidental demand for two notes
one of which was payable after the bringing the action
but made long before — a new action not necessary —
It may be questionable whether one of the Notes be
transferable — but it is to a certain extent for payt

of

of money, & a bureau valued at 25 dollars —

№1704
Mc. Intosh
vs
Fraser

Action of revendication for 350 pieces square pine timber —

Walker for Pltff. In Spring of 1831. McKinnon gave an order to his foreman, & under it Pltff obtained the delivery of the timber at Scotch River in N. C. The Defendt was then employed in rafting out the timber wch had been cut for him by McKinnon the preceding winter — & it was understood that if Defendt could reimburse the advances he had made for the timber in question, he might also take this timber — The delivery of this timber was not however made to Fraser — who took possn

McGale for Defendt — The Pltff has made out no title to this timber — 2 of Defendt are merely labourers — If this was not the timber of the Defdt then there should be a deduction of the wages paid in carrying it to Quebec — The timber got out in 1829 is admitted on all hands to belong to Defdt he contd to employ McKinnon to cut for him in 1830 — under license from the Crown — The advances made by Defendt to McKinnon were for the Cutting the wood, to which Defdt was entitled, while the advances made by Pltff were in expectation that he would be paid out of the timber — The delivery to Pltff was not a legal one — no proof of the written order ever said to have been delivered — The timber was

afterwards

delivered to Defendt by Mr Hanson himself —
& a conditional bill of sale was given by Defdt
to secure the duties to the Crown thereon —
& to Nº 202. 205 — Poth. Proofs — & to Nº 218 — to shew that
Pluff had no sufficient delivery —

Master 393
Evidence 1042
— 1054

Mr Walker in reply, parole evidence may be
admitted of any extrinsic fact, even where there may
exist written evidence to the same point —

Saturday 16th February.—

Prest

All the Judges.—

No 1792
Boileau
~
Boileau
dal—

On Pltff mo. to reject the report of Experts—
Mr Cherrier for Pltff— the report is informal & must be set aside— Pltff demands that new experts be named— as the report now in Court shews the former experts are unfit to determine impartially—
Mr Bruneau for Defendt— considers that the report should remain, but that it shd be sent back to them to ascertain when the improvements were made— & also to ascertain the amount of the monies pd by Defendt on account of the sale.—

No 2571.
Bouchard
~
Courteau

On Pltff mo. for provisional allowance—
Mr Mondelet for Defendt— submits case—

No 1746
Bowker
~
Higgins

On Pltff mo. to reject exception filed by Defte
Buchanan for Pltff— This exception should have been filed on first day after assize being à la

M^c^Pherson
v
Durocher

On Plff^s^ mo. for a Com. Rog^rs^

M^r^ Charrier for Defend^t^ when a Com. Rog^rs^ is granted to a foreign Country, it must be under an affidavit –

N^o^ 413

~~Bubbis~~
v
Douglass
v
Bubbis.

On re-hearing on plea of prescription –

Boston for Defend^t^ to the plea of prescription the Plff should have made some special answer to shew his right to possess in exclusion of the Defts right. = The avowal of the plff. that the Defend^t^ was the detenteur, the defend^t^ was entitled under his title after a lapse of 10 years to set up prescription. The Plff is presumed to know his rights – he had no title to the premises – all he had was his hypothecary claim, q^t^ was necessary to be exercised in a certain time – The Plff was not the detenteur here, but the Defend^t^ was under his title – he once had possession and it must be presumed to be continued – The Plff's obligation was made by one Boyle – his grantor became proprietor, who in 1812 sold to the Defend^t^ from the moment the property came to poss^n^ of the Defend^t^ the Plff was bound to have exercised his right Defend^t^ had possess^n^ after the sale & that poss^n^ must be cont^d^ Rep^re^ Prescrip. p. 310 – & cd. 315 – to liberate from bad faith poss^n^ not good faith not necessary 318. – bad faith is not presumed – p. 355 – a commencement of open possession presumes it throughout – p. 326 – in such case the interested persons have no excuse ought to pursue their remedy –

Taylor for the Pltff. The Defendt was bound to prove his possn under the plea of prescription - but made no proof - & Pltff did not think he had any proof to make - If the Defendt had possn in 1812 Pltff contends he has lost that possessn but since that period the Defendt has not by himself, nor by any other person in his name possession of the property, he has lost it. Domat. liv. 3. tit. 7. Sec. p. 229. No 30. - Ency. Jurisp. vo possessn

When a person holds a possn for a year & day, he has acquired a legal possession - Poth. Possn No 64. No 73. 76. - 95. -

Repse vo possession. p. 206. - possession of year & day. Voet. liv. 4. tit. 3. No 17. - Domat. liv. 3. tit. 7. Sec. 4. No 2. possn even by voie de fait for a year and day will interrupt the prescription. -

Repse vo Prescription. p. 489 - as to interruption of possessn

Boston in reply - The pltff here might have exercised his right 20 years ago - when Defendt might have called in his garant - 15. Pand. Franc. No 2234. - 1 Bouv. p. 1083 -

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No 1340.
Burt
to
Delisle

On action for value of moveables taken possn of by Defendt

Mr Brunean for Pltff. her husband has left her some years past - She lived with late Mr Delisle as housekeeper with his sanction - The Defendt as legatee of his Son took possessn of all the property in his Son's house on his decease, and now retains it - She has proved

her

her property — refers to testimony of St Germain — & Mr Grey. — Jos. Donegani. — Alexis Chamberlain —

Mr Gale for Defendt — The articles in question were purchased for the Pltff by the late Mr Delisle —

No. 2213
Robinson
vs
Beckett
&
Contra

On action for remuneration for care and labor of Pltff about Defendt business —
Grant for Pltff — action for 3 years salary & other expences incurred by Pltff about the Defendts business. — Several Writs have been examined & have proved the demand — John Carter has proved the agreement, & also the promise to pay Pltff's agent his passage money from England — Henry Bell proves the services of Pltff. —

Mr Gale for Defendt — It was of importance that Pltff should have arrived early in Montreal, & it was specially stipulated that Pltff should leave Hull on 1st April. — Pltff however ent. the service of Defendt and remained with him about 10 weeks — The Pltff chose to leave Defendts service without any specific order — Defendt merely said, that if Mr Pltff did not behave better than he had done, he might leave his situation — Incidental demand for damages by reason of pltff leaving his service has been made out. —

Grant in reply. The evidence of Carter, being the Servant of Defendt ought not to be credited in those instances where he speaks for the Defendt —

№1584
Hutchinson
Mead.

action for house rent—

Boston for Defendt— lease by Lamb to hold from May 1830 to 1831 & to continue until notice— Lamb served a notice on 29 April 1830 to leave at end of the year 1 May 1831— Still at expiration of the year Lamb insisted that Defendt had taken the house for another year, & attached Defendt property This suit was afterwards discontinued— and the present action is brot for rent of the house because Defendt property remained under distress on the house at the suit of Lamb, after he had given notice to Defendt to leave it.—

Grant for Plff— The articles sued were under the control of the Defendt and might have been moved into any other house— but he retained the possn of the house and carried on his business there during the year— his sign was kept over the door, and his clerks remained in the house—

№706
Mc Gee
Baker

action for value of a quantity of Spirits
Sexton for Plff— contract between the parties that Defendt had undertaken to distil spirits from potatoes ~~for~~ and Rye— the contract is admitted by answers of Defendt on ~~fact~~ part. The Defendt says he has delivered 131 gallons Spirits to Plff, which is more than the quantity of potatoes delivered to Defendt— as he denies having rec~~d~~. ~~more than 24 bushels~~ any rye— The facts have

however

been made out by Witnesses — as to the quantity of rye and potatoes delivered to Defendt —

Grant for Defendt — Verbal testimony not har admissible — the quantity of potatoes delivered not proved — Spirits were delivered equal to the potatoes delivered — part of potatoes delivered to Defendt Brother who manufactured on his own act & Pltffs wishes to hold Defendt liable for what he delivered to ~~Pltff~~ his brother —

№1053
Archambault
&
Morgean

Action by Apothecary — plea prescription Cherrie for Pltff — Defendt has pleaded prescrpn to this that Pltff has answered by interruption — by means of a letter written by the Defendt to the pltff — but this is no interruption — it is not a trouble nor an acknowledgment, nor a demand Judiciaire — 1 art. 113 №6.7

Greece for Pltff — The answer to this plea, that the Defendt has not possessed in good faith — Poth. Prescrp. №131. — 1. Duplessis 518 — 2 Vol. 229. 3 N. Denis. 565. №39. — Poth. bail à rente — №200 — 1. Desp. Prescrpn 1st. 4. №29. Oct —

Cherrie for Pltff Poth. Prscpt. №357. — Prescrpn №39. 48. — 57. 53 —

See Poth. Prescrp. №52 —

~~№1188~~
~~Dubuc et al~~
v
№1056
McLaughlin
v
Brodie
& contra

action for wages—
Boston for Defts— The Pltffs action is not founded— Defendt— deliv.d a certain quantity of milk per qr— he became accountable to Defendt— Defendt has proved satisfaction of Pltffs wages & has proved also his Incidental demand—

Grant for Pltff The settlement qr— work plan was made & a 10 months before he left the Defts service— Objects to the Verbal testimony— The Pltff was a servant on wages— & never bot the milk from Defendt— was prevented by Defts from getting in the cart by a Notice from the Defendt— to the Customers not to pay him the money for the milk he had sold—

№1895
Fisher
v
Boardman

action on cart— statute—
Cox for Defts— no proof of intent— nor of dumping charges in the cart—

Fisher in answer refers to testimony of Dewar

№1935
Duffy
v
Bull

action for wages—
Sweeny for Defts— works due to pltff— pay.ts

Monday 18th Febry.

Prest

all the Judges.

No 692.
Scriver
&
Gilbert

On Pltff's mo. that Witness Willard be allowed to come up & amend his deposition & also that another Wr be allowed to complete his depos[n]

Walker for the Defendt this is contrary to all practice of Court & contrary to intent of depn the evidence was taken regularly read to Wr & signed by him — The Pltff closed his evidence & cannot be allowed to adduce further evidence —

No 1297.
Vallée
&
Herrenschmidt

On Defendt's mo. for delay to fyle the account

Mr Charrier for Defendt refers to absence of Mr Grey, w[m] whom he must have communication before filing the account — & besides all the necessary Exh. are not in his power at present —

Mr Pelton for Pltff. Objects to motion — The acct ought to have been filed in April 1831 —

№ 1791.

Hart
v
Baron

Action on Judgt. in District Court of Three Rivers

Mr Terrow for Deft. The Plff cannot have a second Judgt for the same debt — The Plff might have had his procedes in this District.

№ 2175

Beaudoin dup
v
Gamache

On law — demurrer to plea —
Bleury for Defendt submits plea —
Mr Stanley, the plea is inconsistent & irregular

№ 1298

Page —
v
Stevens
&
Clergy Casp

Oppn après de délivrance
Mr Lord for Oppt. the oppn admitted —
Draw Instr

№ 1321

Baudin
v
Bourdeau

Action en nullité — Law —
Mr Mondelet for Deft not bound to pay until his letter have been delivered to him — opposes en loto —
Mr Cherrier for Plff — this exception must be dismissed not being a sufficient plea to the action —

Gagnon
v
St Dizier
&
Bédard opp

Ore opposition — reserve of right of priviledge —
Bender for Oppt

№ 641.
Auberlin
&
Raymond

Hypothq action —

Binder for Pltff — . ~~Pltff~~ Curator to Succ. of one of
his uncles Quentin — by his will the late Quentin made
a will & appointed the Pltff's wife his universal
legatee — The Curator rendered an acct in which the
sum bequeathed to Pltff was included — The Curator
agreed in the name of his minor son a lot of ground
a rente constituée — This lot of land the Curator sold
in his own name to the Defendt — This lot of land
remained the property of the father until the sale
shall have been accepted & confirmed by his son
& so confirmed. The son is bound to reimburse to him
all his improvements which are considerable

Mondelet for Defendt has called in his
garant — denies that Gab. Quentin was the
proprietor of the lot of land, as appears by the
titles produced — The minor can purchase in
the way done here — he may make his condition
better — & on this action, fraud is not to be presumed —
Basnage — ch. 2. p. 19. — Repse vo Balement p. 228 —

Binder in reply — the property here was
evidently the property of the debtor — it was
an apparent fraud in making a purchase in
this manner —

—

№ 1329
Ferrie.
Hubert —

action to eject Defendt from a house &
for damages —

Doris well for Pltff Shop leased for 1 year

The

The Pltff, altho' not bound gave a notice to Defts to quit — The lease was for 1 year only — it is understood being print — the general usage is, when a lease is made, when no specific time is mentioned, it is understood to be for one year — claims damages for the over detention for six months —

Mr Sexton for Defendts no lease filed nor proved — no notice ever given to Defts to quit. — the verbal notice if ever given was too late as being given in February to quit in May —

2 Gr. Cont. p. 1250. Nº 42 —
2 Pigeau — 57. 8 —
Poth. Louage. Nº 29 —
Instruction sur les Loyers 176.7 — written notice —
Repse vo Congé — 462 Id vo Bail. p. 16 —
Denizt. vo 227. 8. vo Congé —
Ferrie. vo Congé —

Tuesday 19th Febr 1833.

Prest.
All the Judges.

No 420, H. Russel & Co vs Field	Defendants plea of litis pendence maintained
No 1414 Blanchard vs Smith & al	New trial granted
No 2717. St. Ours. vs Deschamps	Action dismissed
No 1738. Batty & al vs Donegani	Judgt for Plffs
No Fraser vs Stevenson & Smith & al opl,	Judgt dismissing Opposants claim of priority of mortgage
No 1082. Navnur vs Stuart	Judgt for Plffs
No Steddens vs Adams & sup	Judgt for Plffs

No Pilotte vs Falcon	Judgt maintg Defendts plea to security of mortgage—
Lacombe vs Lacombe	Judgt dismissing plea of prescription
No Scriver vs Gilbert	Petrs motion to amend depositions rejected—
No Hart vs Baron	Action dismissed—
No 1321. Beaudin vs Bourdeau	Defendants plea of exceptn Pri. dismissed

Wednesday 20th Febr 1833.—

Prest
All the Judges.—

No 1203
Dallaire
v
Bonin

Judgt for Defft

Milloy & ux
vs
Roberts & ux

Interlocutor — rejects first plea of Defrs and sustains part of 2d plea of Exup.rs

No 2061.
Starke
v
Crombie

Action dismissed — Sum demanded & proved being under £10 Stg —

No 253.
Bostwick
val
v
Donegani

Judgt for Defts —

April Term 1833.

Monday 1st April.-

Pres.-

Ch. Justice Reid.-
Mr Justice Uniacke
Mr Justice Rolland

Mr Justice Pyke had not returned from the Circuit to Three Rivers.-

No 656.

Connell val
v.
Lacroix -

Hearing on law- action on protested bill of exchange-

Beaubien for Defendt action on an inland bill drawn in augt 1832 payable 1 May 1833 - on this bill a protest was made on 26 Jany 1833 for non acceptance, upon which protest the present action has been brot ag. the Defendt as drawer, before the expiration of the term of payt by which the plaintiff concludes for the payment of the bill. To this action the Defendt has pleaded for a defenses au fond en droit, or demurrer, that the same cannot be maintained, as by the laws of this country all that the Plff could obtain

in

in case of a protest for non-acceptance, was security that the bill should be paid when it came to maturity but for the payment of the amount, as it may still be paid — cites. Savary. des Protets. ch. 7. p. 161 — Pothier. change. N° 70 — Pardessus. Lettres de change N° 193. — & Jousse on Ordre of 1673. —

Tuesday 2d April 1833

Present
All the Judges. —

Ad 1329
Ferrie
Herbert

On Plff's motion that debiré be opened, and the answering to facts & articles be taken anew, as the Defds answers ought to be taken according to the rules of practice —

Shedden & Coates. Cur
& Mathews opt

On Opp's motion to reject a pleading filed by Plff, be rejected — & that the monies claimed by Opport be paid to her.

Boston for Opport. states that paper came in too late

Mr. Morgan for Plff. on 11. March the Plff filed his answer to the Mayors Opport's answers in time as he had never been put en demeure —

№2218
Green
v.
Pecker

On M Rossiter's motion for Defendt
that the proceedings at the Enquete during
last Vacation, be set aside in as much as
the Pltff has sued out a writ of Ca. ad resp.
after the Defendt under new circumstances on
which Defendt has a right to contest
Godard for Pltff, admits no note — during last
Vacation a Ca. ad resp. was sued out on false
grounds — there is but one issue raised, and
no new demand —

№225.
Hart
vs
Jones et al

On objections to inscription of the
Cause for enquete on the part of the
Defendt without the consent of Pltff

Hart for Pltff the facts stated in his affidavit
are correct and true, although contradicted by
affidavit of the attorney for the Defendt still
it is not so positively asserted — The Pltff now
applies that this inscription be discharged
as the Pltff had committed no laches, and it
did not belong to a Defendt to take the
management of the Cause out of his hands

Mr Walker for Defendt refers to the affidavits
& states that the persons proposed to be examined
have already been examined by the Pltff, and to the
same fact to which they have already spoken
namely the state of the property

Due notice was given to Plff of inscribing the cause for enquete on the 20th March last, at which the Plff wished to take no notice, as he had a new application to make to the Court

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Wednesday 3d April

Prest

All the Judges

~~Ap 1857~~
N° 578
Bank of Montreal
vs
Aberdeen

Action for monies had & Hearing on law —

Mr Griffin for Defend — There is no allegation of damage whatever in declr — & the Court must refer to last Court — Christy 306 — Skeen 474 — The declr must state the damage to enable them — In case Delongueuil & Forrin on 20 Oct 1825 — £ L £ counts rejected —

Mr Gale for Plff the case cited differs from the present — no special grounds alleged in the plea here — it is sufficient to alleged that the monies demanded still due —

Griffin in case of Douglass & Dunn in 1831 —

Gagnon
vs
St. Dezier
Beleau opt

On opposition afin de conserver en mouvement—

Bender for oppt— claims the money levied as the effects were sold subject to her privilege— there is a claim of the Gardien for keeping the effects— Claims the payt of the rent due at time of opposn— & since becomn due— & costs of opposn—

The oppt the Gardien has done nothing on his opposn—

Mr Greene for the Gardien— There is suffrance endorse of oppt demand before the Court but the contest raised by the oppt Beleau has not been maintained—

No 888.

Bemis.
vs
Williams

On Defendt motion for Security for costs—

Stanley— action on note made in favor of pltff. wife, who is a party to the action— The affidavits filed by Defendt but ought not to be considered as made to support a motion made last term, when the wife was resident in Montreal—

Rossiter for Defendt— The Pltff. wife has now & resides where husband resides in the United States—

№ 1654.
Gauthier v Shay — Gravis def. mis en cause

On motion for Execution on Jugt obtd. agt Defendt — of the mis en cause as heirs of demand —

Mr Stanley for mis en cause — the rule is insufficient, not to that the parties are heirs of the demand — There is already a default & witness on gt Pltff ought to proceed. —

№ 2218.
Green v Becker

Defendt motion dismissed

Shedden v Coates. — & Mathews

Oppte
Pltffs. motion rejected — the Court being of opinion that the opposant should have put the Pltff en demeure. —

Thursday 4th April.

Pres.t
All the Judges —

№ 907.
Delorme
vs
Desrivieres

Mr Perrault's mo. for Plff to reject Defend.s plea & proceed ex parte — The plea is insufficient & no answer to the declaration, nor is it a copy of the delivered to the Plff conformable to the original —

Mr C. Bruneau for Defend.r the copy of the plea is correct, — The Defend.r here pleads want of consideration for the obligation

Mr Cherrier in reply for Plff — when the pleading pled in Vacation is irregular the rule ought to be strictly applied, & the plea rejected without leave to file another plea — The plea here is badly entitled — The matter pleaded is besides insufficient —

Saturday 6th April. 1833.—

Prest.

All the Judges —

No 1414

Blanchard
~
Smithsal

On Defendants motion for a new trial —

Walker for Defend — assigns following reasons. —

1. as to same Judge sitting a second time for trial of cause — it is usual when a new trial is ordered it is generally before the Bench — cites 3 Dallas 404 — case of same Judge trying two cases of a similar nature —

3 Dallas 404

6th ground — That was partial misconduct of the Judge — as to a matter of fact to be proved to shew an intention on part of Pliff to leave the province Vaughan's opinion the grounds on wh he founded it the opinion that the information given might be applicable to grounds an attachment ag Property — That no delay took place in issuing out Ca after the information received from Vaughan —

The Court called to give an opinion as to the effect of the Ordr of 1785 — question what shall be the sufficient evidence to support this application — it was never the intention of the Legislature to hold the Creditor to strict evidence — case of Mad. fieri facias warrant in Scotland — also a Debtor leaves England —

The

The circumstances proved by Defendt are numerous, and shew an evident intention of fraud—

The opinions of Jury were unfavorable to Defendt before the trial, refer to affidavit of Mr Douglass to shew the means used to influence his opinion & endeavour to prevent his attendance as a Juror.

Also affidavit of Geo. M'donald — & also the affidavit of Richd Coleman. as to request of the Juror not to attend the trial — also Caswell's affidavit—

application for a 3d trial not unusual — see Loffts Reports — The right to obtain this is undoubted — The course of attaint of the Jury no longer exists — granted were where undue is given on both sides. The magnitude of the matter in issue is a sufficient cause — & here it has been sought to create a prejudice in Minds of Jury —

1 Term Rep. 277 — 1 Bur. 54 — as to principle of no trial

Stra. 1142 — 2. Morgan Essays. 30. 31 — 60. & seq. —

1 Bur. 390 —

Peres Ab. 2d Trial. 473 — Lilla. A. G. No 7 — as to there being no 3d trial — but this opinion has been set aside

3 Morgan. 72. & 2d Vol 1. — 4 Bur. 2108 —

5 Peres Rep. 334. a third trial refused, because a mere matter of fact only in question — & matter of little value

Verdicts at Nisi Prius. Newen. Lilla A. G. No. 10 — Lilla Trial — Id. Z. G. p. 487. No. 4. —

2 Morgan. 1st. 75. —

262

Stubs. 466 — 2 Morgan. 198 — where an attempt made to practice with the Jury — & Id. p. 202 — 3 Burr. 1845 —

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as to interference with the Jury — by any party — 2 Morgan. p. 11. — Verm. J. g. No 6. tit. Trial — several authorities collected — Id. Dig. No 8. — No 11 — 11 Mod. Rep. 111. 2118 — Tidds Prac. 906 —

3. Brod & Bing. p. 272. 2 Bl. Com. 387. — 1 Mass. Rep. p. 521 —

2 Morgan. p. 20 — affidavits received from Jurors Vermont. Letters G. g. No 3. & 2 Morgan. p. 40 - 47 — 9 Price 134 — 2 Barn & Ald. p. 462. —

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As to the weight of evidence —

The jurisprudence of Defts supplied by Pltff himself — also fact of sale made by Pltff — the information rec'd by Defts — the want of malice — When Pltff purchased the goods he was unable to pay his debts — a few days after he gave a preference to some of his Creditors — paid debts of long standing out of those goods — & 24 days after made a disposition of his whole property — and a prospective inability to meet his engagements — Since that time Pltff has paid nothing to any of his creditors —

Defends evidence — the fraud of Pltff at time of purchase — application of note to pay. of his debts instead of getting a bill of exchange — for exported goods —

Insolvency at time of purchase — & made with a view of approaching insolvency —

300 preference to some Creditors over others — Bas rage. p. 61 —
a Clandestine disposal by whole sale of a great
part of the property soon after purchase —
a sale to Bags & Co Bonds not in the ordinary course
of business — & at cost prices —
The converting by Pfff of all his property into negotiable
security, was evidently not a mere to defeat his
Creditors —
p. 235 — Bell's Com. Law. notes given payable at a distant
period, is a presumption of fraud —
Has Pfff publicly notified a sale of all his property
it would have given Cause of suspicion — & of
privately done must be more so —
Fraudulent representations of Pfff on obtaining credit
from the Defendts — as the proceeds of the sale were the
only means he had of pay[t] — The profit to be made
by Pfff was an inducement to Defts to grant the credit
Bags's entering the property at same price, but at a
higher rate than he had promised to pay Defts —
only a few days before —
The remedy by Attachment would have been
negatived, as all Pfff's property was converted into
negotiable paper —
Describe evidence given by Vaughan —
Repr. W presumption — Bell p. 11. 220. 260 — 266.
Kames 222 230 — 303 — 308. — 311. Bell 263 —
Mr Day, for Pfff —
As to incompetency of Judge — Grants Summary p. 37 — Then
is no law on this subject —

Words said as to striking Jury — or as to misconduct of the Judge —

As to tampering with the Jury — Objects to the reception of Affidavits of Jurors — not admitted in England — contrary to their duty — embarrassing in them to interfere — Impey's Case. 358 — 4th New trial — never granted. on affidavit of Juror Wilson 330 — Rex v Timmins — Tidd. 929 — Burr. 2667. — King v Woodfall — 2 T. Rep. 281. —

Had the Jurors done their duty here or been impressed by the communications made to them they should have stated it to the Court before being sworn. —

The affidavit of Douglass states no facts, but merely states inferences — matters of belief — The language of the affidavit are of a character to assume facts & circumstances not at all ascertained in any way by him. —

Same remarks to affidavit of M'donald — Same affidavit drawn by same hand & dictated by same mind —

The men who were agreed not to attend, did actually attend the trial —

Refers to the affidavit of Blanchard, who explains the circumstances —

The tampering w^th the Jury is a cause of challenge but party cannot afterwards avail himself of it — Grant Summary p. 45 — not ascertained here that defendt had no knowledge of these facts until after the trial. —

The tampering w^th the Jury not brought home to the Pltff in the Cause —

The objection to the affidavits of Jurors has always been admitted, unless they can be brot home to the party in the Cause — Grants Summary — p. 52. — 54. — 62. — 63. — But no kind of bias was created on the minds of the Jury by any of the Communications here stated to have been made to them — Id. 63 — p. 491. Bar. & ald. Rep. Vol. 4th — King. v Edmonds — No favorable impressions raised by the communications refers to the circumstance of the pocket bill referred to by the Defendts affidavits. —

Chitty for Plff There can be no third trial in case of this kind merely on acct of the quantum of damages — This is a general opinion — Grants Summ. from p. 213 to p. 240 —

The law requires a positive affidavit that the Debtor is about to leave the province — but it is not a cause to adopt this course merely because the party had a right to attack the property, but which he could not exercise from the want of means or that it could be exercised —

Enters into a detail of the facts & circumstances of the Case —

3 Taunt. Rep. 231 — Swinton. v Marquis of Stafford — to shew that Jury are the proper Judges of the case

2 Salk. Rep. v. Trials. p. 649. — note (a)

1 Wilson. p. 22. & 330 — Rayn. 138. ~~Stra. 6~~ Salk 357. 9

Walker for Defendt in reply — When the affidavits of Jurors go to exculpate themselves & to impute improper conduct among them ~~Ld~~ then only such affidavits are refused — but never touching conduct of parties before

the

before the trial — 9th Prac. 134 — 909. Tidd's Prac. —
140. Bl. Com. 3d vol. — 1 Virgin. trial — p. 482. 452 —
2 Morgan. p. 47. —

Intimacy of party w. Jury is always suspicious 148 —
4th Black. Com. —

The affidavit of Blanchard is in direct contradiction
w. the three produced by defendt but admits his
having had comm.n with them three — but may be
fairly inferred that have been similar communication
with others of the Jury —

The relationship of Pugh's brother w. Pugh is suffo
to presume a privity & consent of Pugh to his acting

An attempt to create a bias, or a simple tampering
with the Jury is sufficient — proof of actual
bias, difficult — not required —

This trial not to be compared to a trial at
bar —

Monday 8th April
Tuesday 9th " } Enquete days

Wednesday 10th. April.—

Pres.t

all the Judges

No 1846
Bellamy
vs
Gilbert
&
E contra

On Defend.r mo. for a Com.n Rog.re
to ex. on Interr.s
Mr. Nye for Pltff.— cons.t to 15th.

No 1948
Caine
vs
Barett

On Pltffs mo. to proceed ex parte.—
Mr Smith, states absence of Defend.r
Attorney—

No 2070
Sabourin
&
Laroque

On Pltffs mo. for Judg.t on Verdict
of Jury with full Costs.—

Mr Bruneau for Defend.r contends that the
circumstances of the Case do not merit full costs—

No 50
Brown
vs
Buchan
&
Buchan

on mo. for folle enchere—
Mis en cause did not appear

No 984
Raymond
& McKellop

On law —

Mr Walker for Defd. The action is for an assault & battery — the declaration contains matters unwarrantable & cannot be joined —

Mandelet, the action is ex Delicto. for an injury done to the Plff —

No 1879
Roi
Godu dal

On merits —
Mr Mandelet heard for Plff —
Defend. did not appear

No 1832
Howard
Farr —

action for goods sold —
Mandelet for Plff. states that his case is proved by sufficient evidence —
Grosh for Defr has objected to competency of Thompson, he ~~being~~ having an interest in the Case — The other testimony in the Cause is irrelevant — no sufficient evidence for the demand for interest —

No 2160
Lacombe
vs
Lacombe

action for arrears of rente & pension —
Mandelet for Defend. only difficulty is as to the wages of the Servant girl — considers that Plff is not entitled to this part of his demand —

№2674
McDonald
vs
Decarry
&
McDonald
Grounds —

On final hearing
Mr Fisher — states that he has served the Defts on the party, but that no security has been given as says Defts

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№499
Cartier
vs
Bridgman

on law — whether the defences en fond en droit should be dismissed before going to evidence

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№758
Racine
vs
Larrivée

action en revocation de donation
on law

Mr Charrier for Deftd — here the objection is raised to the exceptions pleaded by Deftd — The first exception is that the Donation here set out is a deed of sale — on very onerous conditions, equal to the value of the property N. Denz. p. 207 & 208. Vo Conquet — Ricard. Donation p. 552. 562. — Poth. Donation. p. 507. —

The 2d Exception demands that in case Plff be entitled to his action, he be held to reimburse the improvements & disbursements of Deftd — on the land —

Mr Mondelet for Plff — The parties have treated the act as an act of Donation & must be bound by it — Rapoo p. 196. Vo Donation. 2d Col.

Whatever the charges of the act may be it is liable to revocation. 6 Pothier 471.

No. 1461
Pilotte
vs
Falcon.

action on deed of sale

Mondelet for Pltff offers to give the surety demanded & thereupon that Defdt ought to pay the costs, having made no offers.

Mr. Cherrier admits that not having made any offer he ought to pay costs, except as to his exception which being allowed Pltff ought to pay costs.

Thursday 11th April.

Pres.t —

Ch. Justice Read

Mr Justice Rolland. —

No 139.
Wadsworth
v
Boardman

Ca Pltff's mo. to proceed ex parte —
Frye for Defend.t — Pltff cannot proceed
for want of a power of Attorney —
Bourré for Pltff — there is a suffe power on the
record — but the objection is too late —

No 1948
Caine
v
Barrett

On motion on behalf of Defend.t to be
allowed to enter appearance for Defend.t
in lieu of Mr Davis his former Attorney

No 1329.
Ferrie
v
Herbert

On merits de novo —
Driscoll for Pltff — observes that here there
was a term & according to usage that term
terminated on 1 May & no notice required —

No 1416
Nelson
v
Beaufils

On merits —

Dm

Mr. McDonell for Defendt contends that he is not bound to pay Plff as he is bound by his contract to deliver to Defendt certain documents touching the title to the property that Mathiot was a party to the deed as Atty of Miss Fleurimont, but no mention made of this in the action—

The Plffs have made no proof — the Defts have proved the several signatures to the papers produced by them —

Not bound to pay nor to tender the money cites Poth. Vente. Nos 47. 48. — Repre vo Vente 480 — 1. Domat. p. 40. — 1. Bourj. — p. 479. —

Mr. Grant for Plff. Defendt has been in possession of the estate upwards of 12 years — The titles are an accessary, but their non-delivery will not destroy the principal obligation — By the deed no specific titles were promised to the Defendt — Lands were granted by location tickets, which are now lost — The Defendt had a share in them lands known well the titles under which they were held —

No 2286.

McDougall
Tiffin
&
Davis, Curr
&
Stark, mis
en Cause —

Merits de novo —

Grant for Plff. Defendt made a fraudulent sale to one Stephen Leith of the lot of land, who made a deed of

of gift to the minor son of the Defendt
The Court directed by Interlocutor dated that
Stephen Leith should be made a party to
the Cause —

Mr Bender for Appost — The appost demands
that the Saisin of the house be declared null
that the sale was made three years previous to
his failure to Stephen Leith — and Leith made
a deed of gift of it to the son of Defendt —
That Stephen Leith is now at Dieppe, but
instead of calling him before the Court, a
Curator has been appointed to him — this is
irregular, and defendt has applied to have
this appointment set aside. —

No 1762
McDonald
v
Wyatt
&
Savage 2nd
Ofb

On the appos — to sale of certain household
furniture —
Mr Scott for Pltff — Under for rent — the articles
seized in the house — the privilege extends to
this kind of furniture. refers to 161. art. Cout. p 1045.
1045
p 49
Henshaw for Appost — The furniture was lent to
Defendt by appost — The property was attached
under a Saisie-arret. and not as provided for
not under a Saisie gagerie —

Ogden
v.
Cochran

on motion for a contraint for a contempt. —

Walker for Defendt. The affidavits filed by Plaintiffs accord will show that no contempt has been committed — The timber was moved only after the Defendt had given security to obtain delivery of the timber — Prays Court to continue the rule to the first day of next Term —

Brantharan 6 Term Reps. 701 —

Friday 12th April. —

Pres.t
Ch. Justice & Mr Justice Rolland

No 883.
M.Pherson
vs
Durocher

On defends mo. to reject the Com. Rogs issued out by Plff —

Mr Taylor for Defendt — Three of Commissrs are Creditors of Defendt — & the Clerk is another Creditor, and are interested in the Cause —

Mr Walker for the Plff — The names of the Commissrs were given to Defendt and he must have known that the Commissrs were Creditors — but Defendt has joined in the Commission & named a Commissr on his part — only two of the Commissrs are Creditors of Defendt — but Carroll one of them did not act, the other was a Creditor only for one dollar — That the Judt rendered in this Case cannot avail the Commissrs should it be favorable to the Plff

Mr Taylor in answer, the Commission was granted, saving all legal objections — Party had not an opportunity given to him to object to the nomination of Comrs —

No 1560
Whitfield
vs
Stewart

on Defendt mo. to quash writ
Stanley for Defendt — objects to the regularity

of

of the service, as no copy of decln was served on Defendt nor left for him — The return was made on 6th but cause was not called till late — & on 2d default day he found the original decln but no writ filed at the office — The copy of the decln was filed at Sheriff's office only on the afternoon of same day of the return — This appears by the Sheriff's return —

The Stat. 7 Geo. 4. ch. 8. p. 386 —

Mr Nye for Plff. The motion is too late — motion was made on 11th according to Rule of Prac. p. 34. it ought to have been made on Day of taking off default — By Stat. — the decln must be left 3 days after the issuing out the Summons —

No 151.
Cook
" Davis

on report of Experts & merits —

Mr Walker for Plff — moves that the rule of reference be rescinded & set aside, as a power has been given to Experts which belongs to the Court alone — The action founded for damages for non-delivery of land sold to Plff by Defendt — There being a deficiency of about 22 acres — The Defendt have agreed to make up the deficiency out of lands on Township of

Chatham

Chatham — a rule of reference was made by the Court — submitting value to be ascertained by Experts — They value the land at 10 ℔ acre which is less than the sum tendered by the Defendt — and the Trois expert was a witness in the Cause — the Plff here is entitled to a reduction of price in proportion to the price of the whole quantity sold Lacombe Vo Vente. No. 10 — Bouvr. Int. 4. Sec. 2. No. 47 — 8. q. 50 — Poth. Vente. No 139 — 1 Desfr. achat. p. 46 —

Dans Defendt — no irregularity has been shown in conducting the report by the Experts — and besides Plff has by his acts waived all objections to this proceeding — There was no objection taken by the party to the Experts — 1 Pigeau 300 — All the arbitrators agree in Brown v the report when land is sold & described by its boundaries no action will lie for any deficiency — 1 Bouvr. p. 482. —

The claim for interest cannot be maintained — until adjudged by the Court, question here being for Damages — Tender made of 157 ℔ acre —

Mr Walker in reply — moves to reject report from Brown being named this arbitr — refers to Pothier Vente No 251. 3. as to the expression of <u>environ</u>. as extending only to the smaller quantity of the acre Poth. No 258 The price of deficiency must be regulated by the proportion of the price on the whole —

No 907
Delorme
vs
Desrivieres

On Law—
Mr Pinault for Plff. action for arrears of interest on obligation — to this Defr has pleaded that the house was badly built— This not a sufficient defence to the action they ought to have made their demande en reconvention — The consenting the obligr is a bar to this defence — This is opposing a damage to a liquidated demand —

Brunean for Defendr The house is now in a different state from what it was when delivered, it is now in a ruinous state — The obligation was consented in error—

No 871.
Coit
vs
Reeves —

action for goods — ex parte —
Mr Mc donell for Defendr no suffr proof made of the demand —

No 1948
Caine
vs
Barrett

On motion on behalf of Defendt for an appearance to be entered for him by Foster & Smith — & delay given to plead, as his former Attorney is now absent from the Country — & notice of Plff to proceed ex parte served at domicile when Attr formerly lived —

Saturday 13th April.

— Pres.t —

Ch. Justice Reid
Mr Justice Rolland

No 87
McNab
v.
Charest

on Pltffs mv. to discontinue his action on Defendr paying the Costs —

Mr Mondelet for Pltff — Defendr — obt. delay to plead — & pleaded on the 29th March — The Dfdr then filed an acte of revocation of the donation in question in 1830 — and also a deed of sale of the property in question by the late Pierre Charest to the Defendr — for a sum of £1000 — The consequence is that this action must fail — but this acte de revocation was concealed by Dfdt & the Pltff delayed & kept from the knowledge of the fact until the plea filed —

p. 498. 9. Pothr. Don. entre Hfs — a case in some respects similar

Mr Cherrier for Defendr — The ignorance of the acte of revocation, is no cause for grants Pltff her costs — she run the risk of every kind of defence to her action, & must stand to the consequences —

№ 688.

Molson & Co
v.
S. Ogden
&
Richardson
Intervs

On merits of principal demand vs the Intervention –

Griffin for Plff – action for flour & came to hands of Defendt belonging to the Plffs. & had been sent to one Arthur James, but came to hands of Defendt – The Intervention is made by a Creditor of Arthur James –

Buchanan for Intervs parts – There can be no revendication here, as the article has changed its form, & the identity lost – Banage p. 340. 1. ch. 14 – Rogue p. 34. 7. 1 Pegeau 465. – Parvessus 3e vol. № 1292 – 7 Poullain du Pare 212 – D. Denizt. vo. Revendication № 8. & 9 – Denizt. Arts de Normdie p. 379 – Here there was a mixture of wheat & several persons. from wt the flour was made –

Griffin for Plff. there was no sale of the wheat to James by Plffs. they were always the proprietors of the wheat – The flour was delivered the flour as the property of Plffs – and there is no evidence that there was mixture of the wheat –

№ 699

Richardson
v.
McKay. Cur
&
Molsons Intervs

action for bill of exchange & attacht – on wheat –
Mr Molson's intervention claims a part of wheat as his property –

№699
Richardson
M'Kay. Cur
& Evans Liter

On claim of Evans for 30 bushels of Wheat sent to Defendt will to be ground —

Buchanan for Pltff. cites. № 9. Revenue Laws O. Deviat — where mixture destroys identity — & in Duncans of claim for the Wheat there was a mixture of all the wheat together —

Griffin for Pltff. in first case admits that the Cribbings were the produce of different parcels of wheat & identity cannot be ascertained —

№2156
Molson &al
M'Gibbon

action for rent of a farm — 2 actions united

Buchanan for Pltff. several pleas are set up to the action. viz. That hops were delivered as & agreed in Payt. of rent — The answer is that the hops 7 1829 were unmerchantable — & Defendt by his letter authorised Pltff to sell them for best advantage & the produce applied towards the payt. of rent — but they were found to be unsaleable & are still on hand — Pltff admits the delivery of other hops afterwards in deduction of the rent — That Pltff are entitled to damages on Defdt for his neglect & the case of farm —

Boston for Dfdt. The Defendt owes nothing to Pltff. but on contrary the Pltff are indebted to him in a balce as & statement filed — all accts were settled between the parties up to 1 Decr 1828 — The rent some accrued has been paid by

Defdt

by the hops furnished by Defr — The Pltff were bound to provide a Kiln to dry them — but they were tardy in making the Kiln, and the hops were injured by the steam arising from the fresh wet of the Kiln — The hops were afterwards sent to Dublin — without necessity, & no sufficient diligence appears to have been used by him in disposing of the hops & the Pltff must be answerable for them —

There is besides a payt of 30 bushels onions — the property of a horse — & stoup of oats —

The 2d. action is premature & bad before the rent was due — and there is no room for damages for want of proper cultivation of the farm —

Buchanan for Pltff — There is a Saisie gagerie for the rent of the farm, which has always been allowed by the Court — Argues keeps it down so —

The Dublin Market is best place for sale of the hops —

There is no claim for onions &c in Plea —

The 2d action in april 1833 — & was not premature but even if it had state Pltff are entitled to a Dedt — ala Tuthill — &c. when the term expires during the pendency of the action, the party is entitled to Dedt —

No 2625

Moncur
vs
Wilkie

action for recovery of goods sold and shipped from Scotland to Defendr—

Griffon for Pltff—the demand proved—goods sent to be sold on Commission on act. of the Pltff—The Defendr charges his Commission on the sales, but says he has not been able to get in all the monies on act of insolvency of debtors The claim for the interest made by Defendr is not made out—

To this plea, there is a special answer, that there is a stipulation that when goods were thus sent for sale on Comn the party answerd for the debts on sale—where there is no agreement to the Contrary—also imputes gross negligence to Defendr—in the whole transaction—

Refers to the evidence on the question as to the general usage—

There appears to have been a want of diligence in making Sales—his neglect to render acct Sales, especially if Defendr did not consider himself not liable to answer for the debts—

The Defendr here was a Commissionaire—not a mandataire—nor a factor—distinction between a factor, 2 agents 2 Bell & ald. 142. Vo Commissionaire—Repos—160 Jd. D. Denys. Ed. rule p. 670—all the rules applicable to Mandat are applicable to the Commissionaire—he ought to be more strictly bound than the Mandataire as the latter is paid for his labor.

Comrs on Contracts. p 558—Comm. liable to an action

Poth. Mandat. № 46–47–

Repⁿ. p. 164 & Commissionaire – as to liability

p. 536. Comyns on Contracts –

№ 57. Poth. Mandat – & № 58 –

2 Toubeau p. 114. lw. 2 ch. 4 –

Id. p. 116 – 105 – 119 – 124 – 140. –

Walker for Defendt – This action cannot be maintained – This not an action of account for genral money Counts –

The invoices are not proved – the kind of goods sent not described – the Defendt acknowledges the receipt of 8 packages of goods but not the quantity they are stated to contain – The proof under the 2 stat. is not sufficient as the Plff himself is the person who makes the oath –

Statute on Ev.

The admissions of Defendt – cannot be divided –

The usage contended for by the Plff has not been made out –

As to the negligence of Defendt – refers to Scotts evidence –

No proof that Plff ever demanded an account Sales from Defdt – nor is he liable for the debts without contract to this effect –

p. 321. Woodcock's Com. Law – as to the undertakings of the Consignee to undertake under a Del credere Commn –

Id. N. P. 803 – 1 Term Repts. 112. 2 Kents Com. 487 –

1 Tennt. 571 as to nature of remedy in a case of this kind — no action till after demand —

Griffin in answer — The Defendt. admits by his plea the receipt of the 8 packages of goods — refers to the evidence of merchants with the Comm. or to the Commission & obligation of Consignee —

No 452
English
v
Larrabee

Ord Defendt mo. that all proceedings had since amendment of declaration be set aside —

Mr Walker for Defend — action on deed of loan for rent — Pltff allowed to amend — but no amended copy of decla — was served on Defdt — In Oct 1832 — application by Pltff to ex. Wits by a Com. Roy. owing to distance of their residence. On 10 Nov. last Pltff obtained a Com. to examine his witnesses — no time given to Pltff to proceed upon it —

Boston
Duff —
v
Boston
Dublin Bank
Grants

On action for tortious —

Walker for Pltff — lot in land of Shurrington. By legislature in 1823 confirmed the possession of Tenants — In 1824 Crown granted a New Patent of the Seigniory called S. Lawrence — not including the tenants who had titles from the Seigneur of Lasalle — on 6 Oct 1825 Mr Callum sold his Seigniory to his 3 sons — one of them Daniel sold to his 2 brothers — on 3 June 1829. They 2 sold the whole to David Mr Callum, in pt on specified

the

9 Geo 4. ch. 20

particular lots as granted to Old Mr Callum on 8 June 1829, Daniel Mc Callum gave notice of the ratification of his purchase under the law. The Quebec Bank & one Pozer opposed the ratification as hypothecary creditor — The Quebec Bank offered an additional sum of £150 for the property —

On 20 oth 1829. This Court declared its Judgt & adjudged the property to Quebec Bank subject to Pozer's debt & that of Crown —

On 2d June 1830 the Quebec Bank pd to Mr Callum wr consent of Pozer a certain sum of £2193. 18 — and substituted the Bank in all his rights —

On 4 June 1830 the Bank pd the debt of Crown —

On 12 March 1830 Puff purchased from the Quebec Bank with all the rights as held by the late Mr D Mc Callum —

The possession of the lot in question was obtained by the Defendt & dates from about the year 1819 & a deed was offered to him but he refused to accept it — The title of Puff is different from the usual titles of feodal property — here the dominium utile is vested in the Seigneury —

Plea. a prior title from late Mr Mc Callum and also improvements made on the land — but of this no evidence has been adduced —

Poth. Prop. p. 344 4t — 1 Bouv. 149 —

549. Repr Jane Alen — 360. 4 Poth. —

Bellewyn Tr. de Trefs — shews the nature of this kind of property — The Lus in re under Pluff's title vests in him alone — The Defendt — can have no legal claim as Pluff, but under any case of heirs of Mr Callum alone — 4 Vol. Poth. 343 — Lus ad rem, gives no right in the property —

Mr Driscoll for Defendt The Defendts have pleaded that the Pluff is not Seigneur — That the Quebec Bank had no right to acquire the property in question — Even had they had the right to acquire, they have and are bound to use a Common Seal & in their conveyance to Pluff no such Seal was used — The copys of the letters patent not here evidence, as by Stat. of 1829. certified copies from the Secretary's office only are received — The Pluff must stand in the same situation as Dal. McCallum as representing him in all his rights — McCallum sold the land to the Defendt but the conditions were not then ascertained, but to be afterwards settled — this appears by certain letters of McCallum and his agent — The Pluff's action is wrong, he ought to have tendered a title to the Defendt on certain reasonable terms — or that defendt give up and abandon the land — The offers made by the Pluff of a title here were onerous and oppressive —

But in any case the Defendt is entitled to his improvements being a possessor de bonne foi, under the title he obtained from McCallum —

In the Case of Pluff & Wm Gray

Mr Buchanan for Defendt in this case there is a Judgt rendered in favor of the Defendt declaring a right to him to have a title given to him —

The Pltff has no title – The Quebec Bank had no right to acquire, by Edict of 1743. no real Estate can be acquired by Mortmain – cites Granier on Ordre of Hypoth. p. 187 – says that Mortmain may bind up property to secure a debt – but the act creating the Bank inhibits the purchase of real Estate – by Sec. 8 – The form of the Pltff is insufficient, not being in the Corporate name nor under the Corporate Seal – In ordinary Concerns a Committee of Directors conduct their business but in all matters of importance the Corporate name & Seal must be used – Particulars from when the seal need not be used the Com. Dig. Franchises F. N° 13. – Peters draft Vo Corporation. p. 624 – Seal necessary. 4 Co. 75. 1. Bl. Com. 36 Geo. 3. c. 3. No suffe proof of Letters Patent – a certified copy ought to be produced –

The Defendr was encouraged by late Js McCallum to settle upon the land, this appears by letters from the Deputy & the Lords of this Court of 18 April 1828 This Lordp must bind the rights of the Pltff 44 Geo. 2 ch. 9. Law & 2. Sec. Dig. – & 28 Law of same title – Parks Com 44 Geo. 3. ch. N° 5 – 10 Tutlers. N. 199 – as to Lordp affecting real property –

The Defendr has set up a claim to improvements. The Lordp of confirmation of the title to the Bank cannot affect the acknowledged title of the Defdr

Mr Walker in reply on both cases – The Defendr has shewn no title, nor upon what terms they ought to hold the lands – The title to the Quebec Bank is confirmed by this Court, but for other reasons their title

ment

must be admitted — The Bank having a right to acquire Mortgages on real Estate, must necessarily be allowed to bid upon Sales of property to secure their Mortgages — 2 Kames on Equity — who says, when a right of Security is given, the means to effect this must be allowed — The power given to constitute a board to conduct the ordinary business, & the Directors are authorised to hold Mortgages. The same persons must be authorised to dispose of the property acquired subject to such Mortgages — The use of a Corporate seal not necessarily required in all acts of the Bank — it is said they may have such Seal, but the President & Directors act here in the same & as a Corporate Body — As to the copy of the Letters patent — this not necessary to maintain the Plffs. right, but under the late Law this copy is sufficiently proved altho' certified before the Law was passed, as being entered by a Known Officer —

The Indgt. of 18 April 1828 cannot be considered as conclusive, but leaves the right open — but in any case bind Mr. Callum only, or his heirs, but not the Plff. as he derives no title from Mr. Callum. The authorities cited upon to final Indgt. Mr. Callum might have created a Mortgage on it —

The title claimed by Defendt consists in a promise to sell, followed by tradition, from the late Mr. M'Callum — This is founded on some letters from Mr. M'Callum & his agents — This amounted only to a promise to sell, & bound only the person making the promise, but gave no title the essentials of sale are not found here — there

prior

prop & consentement – all Sales of real Estate must be in writing and before a Notary – O. Denys. Vo Notaire. p. 260 – Id. Vo Vente 270 – 13 Pandects Franç. p. 5 – 2 Argou. 233 – The letter of Mc Callum is not addressed to Defendt nor are they named in it – There is no agreement in it to sell the land – nor is any particular lot mentioned, nor price stated – The verbal evidence here is inadmissible, and now moves to reject it – 1 Desp. p. 20 – p 662 Tullier, Vol. 7 – No 557–8 – Rep.re p. 475. Vo Vente – 1. Bourg. p. 471. – 3 Tullier 303 – 1 Pigeau 224 –

O. Vo Notaire p. 260
3. Vente. p 270
13 Pand. Fr.s p. 5:6 – 42. –
2 Argou. 233.

The claim of Defdt here gives no right in the land but merely a right of incumbrance on it – This claim cannot be set up as the Pltff as he purchased the lots in question & all their rights, & the present claim could be set up only ag.t Mc Callum, but Pltff is not here in the rights of Mc Callum – The improvements formed part of Pltff's purchase & his title was confirmed by this Court – refers to case of Valliers. Vo Chandler at Three Rivers –

725. 2 Bourg
1406. 4 Ge Cout.

case continued to Monday to hear the counsel for the Garants. –

Monday 15th April.—

Pres.t
Ch. Justice & other Judgs.—

No 1792.
Boiteau
&
Boiteau

Ord Defend.r motion to reject report of Experts—

Mr Bruneau for Defend.r one of the Experts has not been sworn before any of the Judges—a third Expert has been named but not sworn & to this the parties never consented — one Trudel was sworn before the Magistrate, but it was one Theodore Trudel who acted — That Theodore is the Cousin of the plff — The report is besides informal and incorrect — First report set aside because Exp.s not been sworn — & new Experts named —

Mr Cherrier for Plff. There was a consent of the parties that the Experts should be sworn before a Justice of Peace, which is sufficient, and the same principle would apply to the Third Expert and so stated in the Report — which is sufficient there being no proof to the Contrary. —

Boiteau
Duff
&
Boiteau
&
Barsalo

Drummond for Defend.r — on reply on Exp.s Report necessary that said Trudel should be —

No. 752.

Rolland
vs
Appt dels
&
Dêfrs
2d. Appt

On appeals motion that the ensaisinement of Cause be discharged —

Beaubien for appt — The Plff has retained in his possession two of the Exhibits in the Cause — No 6 — not having been returned into the record by the Plff as the

Mr Mondelet for Plff — the Appt has not found the assignment Plff obliged to produce up proto — The exhibits in question are marked as to be produced at the enquête The appellant is like evidence in support of a possession — as to the filed book and plan are not necessary to be filed —

Boston
vs
Duff
&
Garant

Driscoll for Respdt — the contract of sale is sufficient without writing — may be made sous seing privé —

The deed does not purge the rights not open and the claim for improvements not affected by it the ratification does not affect Dent privileges or incumbrances, but this not one —

Mr Sullivan for the Garants — for Exeter Bank — Contests the right of demande en Garantie, as the claim set up by the Respdt do not require any Defence en Garantie — the contract between

the

Defendt & Mr Callum is merely a personal contract and does not affect the rights of the Bank — That supposing Pluff had purchased from Mr Callum himself — he would be his Successor à titre singulier this creates no obligation on the Pluff in regard of the engagements of Mr Callum — There is no real right, no Suite in re in the Defendt — 6. Tullier. 422 — & 10. Vol. p. 581. N° 3 —

The Confirmation of Pluff. title destroys every such claim as that of Defdt

The power of the Bank to acquire is not affected by the ordre of 1749 — as it regards only Religious Communities — the object of the Edict must be considered — here the object was merely to save its own rights — to prevent collusion between their Debtors and others to make an under Sale of mortgaged property — Denis. Vo Gens de mainmorte — Fbecourt p. 153 — Refers to the Edit des Bysocth. Grenier. p. 188.

The want of a Seal in the sale by the Bank to Pluff creates no defect in the title — according to the rules of the French law, no such Seal is — required in the transfer of real property from a corporate body or any other person —

The letters Patent from the Crown do not come in question —

Pothr. Vente. N. 127 —

№ 1678
Cartier vs
Menard

an Interlocutory to name Experts to estimate improvements.

№ 1547
Nichols
vs
Vanbenthuysen

Action on an award —

Walker for Pltff — parties were partners & submitted difficulties to two arbitrators — award & bond of submission —

M: McCord for Defendt — The ~~report~~ award of Arbitrators is iniquitous and unjust — has set up several causes for setting aside the award — The authority by the Compromis is the rule of conduct of the arbitrators — They did not sell the property for the but account but gave it over to Pltff on an estimation made by them — This estimation is shown to be at an undervalue — Arbitrators charge Defdt with a poundage for their trouble & charge nothg agt Pltff, and pltff own witness prove this — C. Denizt p. 241. vo arbitrage — Repr. vo Compromis — p 314. Id. p. 545. vo Arbitrage — 1 Coutot p. 96 Domat tom 1. lt. 14. sec. 2. § 6. p. 124. — Pothier 2 vol. No 52. p. 706 — No 82 —

Mr Walker for Pltff — The Capital has belonged to the Pltff — all the facts alledged are insufficient to set aside the award — the language of the

Compromis

compromis are sufficient to warrant the disposal of the property in the manner done by the arbitrators — but here the Defendt assisted at the estimation made by the arbitrators — the subsequent public sale made of the property shews that the estimation was advantageous —

No 9886
Boardman
v
Chapman
&
Contra

On arbitration —
Mr Buchanan for Plff asks confirmn of award of arbitrators —
Thurlow for Defendt objects to the award — nothing said about the Incidental demand — the arbitrators award money with interest — whereas no power was given to them in regard of interest. —
Mr Buchanan in reply — no objections raised to the award —

Tuesday 16th April.—

Prest.

All the Judges.—

No 786.

Desrivieres
vs
McGill, Curr
&
Gregory oppt
&
Desrivieres
dat —

On motion of Opport Gregory that the representatives of the Plff decd be put bld to take up the instance in the cause.—

Mr C. Bruneau, the proceedings are not regular —

No 787

Desrivieres.—
vs
McGill, Curr
&
Jno. Gregory dat opp
&
Desrivieres, & al
par. ups. d'inst

On similar motion. —

No 1312.

Seffingwell
vs
Hewitt —

On Plffs motion to amend
Nye for Defdt. This application to change the nature of the action —

No 225

Hart
vs
Jones dat

action agt Carriers
Hart for Plff action for value

of

of some crates containing a bottle delivered to Defts to be forwarded to N Canada — When the goods were delivered a receipt was given stating the receipt of them in apparent good order — On their arrival at Brockville the Consignees — refused to receive them from their damaged state of wh they gave notice to the Pltff — The Defends retained the goods until the freight should be paid — The goods were examined & found damaged. The plea is the general issue — but the proof goes to a variety of facts & circumstances wh should have been the subject of a special plea — The question here regards the rights of the Merchant and the Carrier — Moves that the depositions of Morse and Jones taken by Defts Counsel be rejected as they were in the employ of the Defends at the time and liable to the damage — Pl. Ev. 56 — 4 T. Reps. 589. — relevancy necessary —

Mr Walker for Defends The value of the property here is £25 — There are 4 Counts in declr — refers particularly to the first count to shew Pltff considers the intent in this action was not in the Pltff — The goods were consigned to Wm & Js Bell in Brockville. action for a crate earthenware and one of bottles — on the receipt of Defends — Abbot. p. 216 — receipt given with a saving reservation — The property sent to Messrs Bells without any order on their part, but to try the state of market there — They did not refuse the articles now in question from the bad state

in

in which they were, but because they did not want such articles — The articles are of a brittle nature, and had to pass over a great deal of land Carriage, over some of which it was impossible to be conveyed in safety — and it is impossible to say in what stage the injury happened — The Survey was made at Brockwell before it was sent on to the Bills — The objection apparent here is more to the packages than to their contents, as wd. appear from the Survey taken at Brockwell The Survey here is insufficient & of no value — Survey in such case as this unknown — The exact value of the property could not repay the expence of such a survey — The Defendt refused to participate in this Survey — it establishes nothing, it establishes no value or injury done to the contents — new packages only required — The basket of bottles only appears to have been damaged —

2 Commissions sent out to ex. Clerk in U. C. — Beckwith the Clerk who gave the receipt for the goods has been exam^d by Pltff & gave room to his exam^n — of ~~some but~~ by Defdt — his evidence is that the property was in good order, except 6 Crates — describes state of the other crates — The evidence of the persons who made the Survey does not establish any damage whatever to the goods — they do not even pretend to say what the contents of the crates were — The Messrs Bell are the persons interested in this Case, the goods were ordered for them

m

in England, & were deliv.d to Defend.ts as the property of the Bells — and the goods were sent on from Brockville to the Bells and received by them, and there is no proof that were not received by the Bells but were mixed by Bells with their other goods. But the damage here is not greater than is usual in property of this kind under all usual cases. Bell says, that after the contents of the 14 Crates were spread out, might be from £30. to £40 — but this damage might have occurred between Brockville & Bath — This might make a damage of 11/ — on each crate —

But the property when landed at Brockville was in same good order as when it left the Plaff's store — The seal of the packages first observed when put on board the boats at Montreal the straw also & Moulded & crates injured — The observation was made to the Plaff's clerk that some of the crates were in bad order, when he said they were well enough & that they should send them on — As to objection to testimony of Horn & Truax — no relation was necessary to render them competent — their competency was waived by them Cross-ex. on the voir dire — Pl. Ev. 132 It must appear that the loss must have happened by the act of the witness — which is not the case here — refers to the waybills on which a description of the property is inserted to — & there appeared bad order ascertained before these witnesses had the charge

132

of

them – Then documents are tantamount to a release in the eye of the law – 3 J. Rep. 32 – as it must be a present, certain devested interest – Starkie 746 – not doubtful matter – Temp. 2 Hardwicke 360 in such cases the objection can go to the credit only of the Wits. Gilb Ev. 232. – 1 J. Rep. 161 4. Burr. 457. Object of a release to avoid a loss – or obtain a benefit – But such here can of necessity – refers to case cited by Pluff 2 J. Rep 589 – when the damage happened by the act of the Servant, his evidence rejected – This not the case here – Starkie 753. & 769 – no particular Servant pointed out here by whose act the injury happened –

7

That some of the Crates were observed to be in bad order when they were landed from the Vessel from England – one of which was marked B.P. –

Damages are here demanded on property which the Pluff & his correspondents Bells have – appropriated to their own use –

As to receipt given by Beckwith, he may be permitted to shew under what circumstances it was given – extrinsic evidence here may be given. Stark. 1038 – evidence on mercantile Contracts admissible to explain meanings of certain words & terms. Stark. 1033. & seq. – & 1042. 3. 4 1054 – & 1016. & 1019 – 4 Esp. N. P. C. 189 – Stark. 1020 –

1038

Moves to reject evidence of A. W. Hart and Wm Bell, from interest in the Case – because of A. W. Hart forms one of the firm of Brig. Hart & Co

M

the Pltffs — as to the evidence of Bell — he is the real proprietor of the property in question —

Mr Hart in reply — Releases have been given by Depts to Buckworth & Leslie, and are equally necessary to Morse & Treacy — being equally the servants of Depts — This way bill is no proof — some irregularity before the Court — it is not a bill of lading, not signed by the Captn of the Boats —

2 Judd. 813 — ~~Bull. N. P. 290~~ objection to Bells evidence too late, ought to have been after being interrogated — 285. Holt. N. P. C. Peake on Interog. 24. 5. 6. — Bells objn how merely honorary to pay. 1 Camp. 144. — 1 T. Rep. 164 — the bare possibility of an action being brot does not render the witness incompetent. — Pltff has had a right to the testimony of Wr & he could not disqualify himself Bull. N. P. 290. —

555 Buckworth cannot be allowed to contradict the receipt he has given — Pl. Ev. 555 — 1 Taunt. 115 — & can or not — 3 Camp. 16 — Buckworth might be allowed to explain, but not contradict his act. —

4 Bott. tit. 9. — as to presumption that what is received on board ship is presumed to be in good order — all that it was necessary was to shew that the goods were delivered in good order & were found afterwards in bad order in the possn of Depts at Boxtwille Poth. 357. 2 Bell's Law of Scotland — as to the receipt to be given by the Master & his liability thereon — 2d. p. 355. — Pratt. des Lois & Consuls. p. 357 — Repsn v. Connoissance — as to what this receipt should contain & its obligation —

The damages due to the Pltff here 2 Bell. 363. No 1850

376 The value of the goods at the port of delivery is the damage due —

The

'Nº 90 Chart. part.

The Defendt. was wrong to stop the goods in his hands, until the state of the goods was ascertained Poth. Charte pte Nº 90 —

The Carrier is considered as an hosier —

The damage proved him is done to the 4 crates in question & not to all the crates — Valin Ordre liv. 3. tit. 3. de prot. art. 25. 26 —

Refers to the contradictions in Bulkeley's Evidence

No release pleaded to render Leslie a competent Witness

Nº 746
LeBreton
vs
Ogden —

} Action for damages occasioned by Defts non-performance of Duty —

M'Lord for Pltff. Pltff put a note of hand in poss.n of Defendt as a means of defence to an action brot. against him — Defdt. instructed to defend the action, but he put in no plea — Pltff was condemned. & he paid the money — & for the recovery of which the present action is brought —

Buchanan for Defendt. The note stated to have been delivered to Defendt. in 1819 — & new contract between them in 1823 — to this action Defendt has pleaded the double prescription of 5 years & 10 years — Denis. de Nouvelle Jurisprudence v. Prescription. Nº 1. — Justin Code 500 — Domat. pt. 168. —

There is no proof of the Contract as between the Pltff & Defendt — There is a variance between the Contract set out & that declared on ——

There is no proof of the payt. of the money by the Plff to Jones— Burton's evidence & receipt insufficient.

№554
Hedge
Aberdeen

Griffen for Defdr the partnership cannot be proved by the answers of one party—
3 Stark. 1072. 1074 — Peake Ev. 53.— Pothier 344.
Esp. on Ev. p. ch 2. Sec 7. § 2—
1 Starkie 161— where the admission of one partner admitted but there the other Defendr were outlawed —

Buchanan prays Decl. as Defdr on whom the fact last. served —

—

№642.
Johnson et al
Papineau

on Exception a la forme—

Mr Cherrier for Defdr— action en declr d'hyp.

It is alleged that one Bailey became indebted to Plff for work done & gave them an Obligation which created a mortgage on his property It is also stated that the Plffs did certain work on the land at the instance of the Defendr on the land for which they have a claim & privilege on the land This is a double kind of action, & contains a personal action as Defendr— and the conclusions here are as in a hypothecary action on the lot of land possessed by the Defendr

Mr McLord for Plff— The Plffs built a house for Bailey— & this property is now possessed by Defdr This is a second count in declr for the work done at the instance of the Defendr— & for which he claims also a privilege

№ 868.

Nowlan
v
Cuvillier

action for monies had & rec^d —
action ex parti —

M^r Perrault for Pltff, question here is as to the liability of Pltff to pay to a Defend^r a Commission on the monies he rec^d for Pltff the whole depends upon the answers of the Defend^r on faits & articles. —

Objects to the answers as setting up a claim for which he ought to have set up an Incidental demand — 1 Bardet p. 331 — 1 Pigeau p. 243. 4 —

M^r Peltier — the Pltff may use the Defend^r answers or not as she pleases — the authority from Bardet does not apply — this is an action mandati directa — the answers of Defend^r cannot be divided — Jour. p. 234.

—

№ 1428.

Rasco
v
Desrivières

Action on note —
Ivanez for Pltff — case submitted to Sommt decision of Defend^r — he has added many things which have no reference to the demand, & moves that this part of his answer be rejected —

Wednesday 17th April. —

Pres.t
All the Judges. —

№1312
Sessingwell
v.
Velvitt

On Pltf's motion to be allowed to serve a correct copy of declaration on Defend.t in lieu of that now served

Mr Nye for Defr objects — moves for security for costs

№1846.
Bellamy
v.
Gilbert
& contra

On Defend.ts mo. for a Com. Rog.s
Day for Defr — applies that the Pltff be told to join in the commission

Nye for Pltff — not stated where Wits reside — objects to the 2d Interrog.y — as containing a leading question — also to the 11th — refers to prove an agreement, which is inadmissible — also the 14th — reference to a paper not of record. —

№795
Johnson
v.
Dampier

On Law

Driscoll for Pltff, action for a term of years — although term of 10 years is given for the payt — held as Defend is about to leave the Province, the action lies immediately — 1 Pigeau. 35 — although this is for Dispossession of a real Estate, yet the principle is the same — The Plea is

1 Pga 35

Mr Buchanan for Defendt The Defendt has pleaded ~~the general~~ specially to the action, & also the generally action —

No 1656.

Bleakley
vs
Kearney —

on merits —

Mr Beaubien for Pltff. Mats marriage Contract between late Wm McKay & Eliza Davidson in Oct 1808 — monies settled on the wife to be employed in purchase of real property & exh. No 5. is a deed of purchase from Le Chevr Gregory of a house & lot — on 24 augt 1810. McKay pd to Gregory £1616. 13. 4 — being first instalment on 14 June 1811 the parties concerned & acknowledged the payment in the terms of the marriage contract — McRae pd the monies paid Le to Miss de St Ours of £238 — on the same terms & conditions — There ways had the effect of vesting in Wm Kay & his wife the property of the house so purchased, and which is now vested in the minors represented by the Pltff — The action is brot by Defendt as Tenant the property of this lot, as representing the late Wm McKay — & as entitled to hold the house during the life time of Defendt his 2d widow & her children 1. Revd. de la Loi annee - p. 18 —

Buchanan for Defendt Pltff. can have their hypothecary claim only — the mandatum stipulated in the marriage Contract has not been pursued — the purchase was not made by the Trustees the subsequent declaration of the parties will not remedy the purchase — It is a principle that

the

property ~~in such~~ altho' purchased with the monies of any
money does not belong to me. Brossard. Lettre H. No. 2.
1 Vol. p. 788 — No. 10. 11. 12. 13 en note — 2 Vol. 145. 2 Pothier
3 Duparc. p. 315. — 320 — Basnage 338. — 2 Jur. p. 49,
au 237. art. Cout. — 1 Vol. 311 Serieux. Cout. Mar. —
1 Mornac. p. 874 23 liv. 3 tit. 55 — Law — 21 chap. Bagnet
No. 300 — Droit de Justice — Renusson des Propres, ch. 6.
Sec. 19. he treats en No. 27 — when by a subsequent
declaration the husband declares the purchase to
have been made for the wife, and gives his opinion
as it — he refers to an opposite opinion of Dumoulin
but no such opinion is to be found — refers to —
Richebourg —

Mr Beaubien in reply — refers to same authority
cited by Defendr from Basnage —

No. 246.

Blackwood
Jones —

action en revendication — on Law. —
Grant for Plff. — action for pipes wine sold by
Plff to the Carter they him
Plff & fraudulently afterwards sold to Defendr —
refers to 176 — art

Bolton for Defendr This action cannot be maintained,
declaration & states that on 3 & 5 Novr 1832 the wine
& brandy in question were sold by Plff to Carter — the
remedy here pursued was made on 12 Dec after
the declaration contains no allegation of the insolvency
of Carter, or that there was fraud in the sale to the
Defendr — nor any seizure of Carter's property —
cites Duplessis 620 — Desjardins. p. 29. 72 87. no revendication

when

the property has been paid for 2 Bourj.ne 684. 78. 79. 80— here the Pltff does not allege that Defdt has not paid for the goods —

Pardessus. Nº 502. 1278. 1285. 1290 —

2 Rogues. p. 33. — art. 176. p. 1324. Gr. Comrs. & 1328 — art. 177 Cont. — The deed de Suite should be followed up promptly — more than a month had expired after his sale — delay given presumes credit given to the purchaser — a month at furthest is the only delay can be given — Bacquet. Nº 24. ch. 21 — Droit de Justice —

Grant for Pltff The authorities cited do not apply to the 176th art. of the Custom — the only objection here is that sufficient diligence has not been used — but this does not apply under this article — not necessary that it be alledged that the Vendee is insolvent, it is enough that the property has not been paid for — but no credit was given — the privilege of the vendor subsists with the property — it does not change its form —

2 Rogues. ps. 444. 446 — refers to an arrêt —

J. Vol. 210. Pontlain Du 1er arc — Pardessus. Nº 1277. 8. 83.

Boston in reply, the authorities cited apply in case of seizure of the property in the hands of the purchaser, but they will not apply where the interests of a third person are concerned —

Nº 845

Boston
vs
Boardman
Squires Intervs

action of revendication —

Walker to recover certain timber cut down belonging to Pltff — The Defendr stated he was,

not

not the proprietor, but had the possn from Squires, &
Squires intervenes and contests the right of the Plff
that logs were cut on the lands before Plff became
the proprietor — The Plff has proved his right, &
also the Cutting of the timber by the Defend— & his agents
moves to reject the testimony of the witnesses, as interested
& as facts are not of a nature to be proved by this
One Douglass ~~that~~ states he has a Knowledge that
certain individuals were allowed to set down on the
lands of Plff by whom permission was given to
Squires — Certain proves Verbals of Surveyor are
brot forward, which appear to have been handed
over from hand to hand till they came to the Interes
party — This is the lot No 2.— The same thing
applies to lot No 11.— In 1823 the late McCallum
held the lands and gave permission to certain —
individuals to set down on the lands — and that
one Ackley a Surveyor, made out several Procès Verbaux
of lots, which were sold & hawked about— But
no actual settlement was ever made under this Procès
Verbaux— In 1829 the Plff became proprietor — refers
to the Letters de Terrier on the Cause— their publication
when no person came forward to claim right in the
lands — The late Dr McCallum never parted with
the property, nor with the possession here — The
tenure of Plff here was en francalen which vested
him with the Soil — None of the Settlers could
acquire title in the manner they claim it from
McCallum — O'Brien Vs Nolan 260—
Pandects Laws (refers to authorities mentioned also) by which it
appears that no title unless by an authentic deed before a Notary

Parties have no lien on the property for improvements—
The wood growing on the land are parts of the Estate
& do not belong to the respondent—3 Jurist 207.—
207. 3 Jurist 307.—323. No 467. 465— No 394. No 407.— Ed.—
No 75. & 78— as to what is a possessor in good faith—
6 Jurist 899— p. 262. The title here as well as the
possession are put in issue here—
7 Jurist 624— as to condition resolutoire.—
Cite for commentator on 176e art. Cont. by Fav. de Con.
also 177e art. of Cont.—
Mr Grant for the Defendt— The action has been
conducted as an action en complainte— & not as an
action en revendication— The Pff has established no
title whatever to the logs in question— The Defendt
has proved a sufficient title, even allow unnecessary—
The parties have been in possession since 1822 of the
very lots upon which the wood was cut & which
had been laid out & surveyed & sold prior to the settlers of the day— The title here is sufft
to give a right to the timber— Poth. Pers. No 293—
No 324— moves to reject two depositions taken
after the inquête closed.—
Walker for Pff. The 2 depositions objected to by Defendt
were admitted in rebuttal of Defendts evidence—
The proof here is that the wood was cut down on the
waste lands of the Seigniory—

No 2235.
Fisher vs
Griffin

action by Mayor Power for publication of
notifications & conformations of title—

Buchanan for Pff— question now reduced to say what
the

the plff is entitled to for a quantum meruit — Contends it was not necessary to insert the notifications in both the French & English Language — & Plff is therefore entitled for his extra labor —

Griffin for Defdt Vide 4 Geo. 4. ch. 20 is a public & remedial Statute and ought to be liberally interpreted

No 2
Smith vs Brown & Gale appt Perry Intervr & Grigg mis en cause

Mr Buchanan for the Sale — no Sheriff's officer employed about the Sale of property can become a purchaser of property Sold. Here Mr Perry signed two of the advertisements under which the property was sold under the writ of Fund. exp[e] — and incapable of purchasing Adjudicatum. Bouchel. — refers to an arret — Bullon v[o] Adjudicatum. N° 39. 47. 53 — 2 Cont. p. 572 Despeisses ch. 92. — 1 Bardet ch. 96. 2 Vol. p. 157. — Brodeau sur Loust. letter D. Som. 26. N° 3 — De l'Hommeaux. ch. 135. 8 Brunean Comis. p. 48 — 159. 416 — Thibault Criées p. 119. — Henrion. 183 — Loudatys. p. 240. Stile Reviewed — Prost de Royer — v[o] Adjudicatum p. 757. Stat. 9. Geo. 4. ch. 6 — Sec. 14. the deputy Sheriff is incapable of purchasing at Sheriff's Sale —

This adjudication being null, the question how far the preceding irregularities should be considered the adjudicatum Despeisses 4[e] book. ch. 44. Pothier. N° 522 — N. Denys. v[o] Encheres 4[e] Sec. N° 2. — Poth. on Orleans. p. 805. 6. — 21[e] title.

When the preceding bid is void from the same is not made at all 2 De l'Hommeau p. 835. only instance when refused when the last adjudicataire was insolvent —

7 Toullier 720 — Proc. Civ. 311. 312 difference when proceeding is

Does not only vordable

Mr. Scott for Mr Perry & the Sheriff –

The old law will apply as well to Mr Gale as well as to the Deputy Sheriff from his being the adv in the Cause – The ordre of the King of France on this subject was to prevent undue influence in the sale of property – The ordre of 1629 not enregistered in Paris – Henrion. p. 179. 180. 181 – Kavanl. 296 Nouv. Dic. de Droit Civil & Commercial. Vo adjudication –

Nouv. Denizt. Vo adjudication. p. 234 – C. Denizt. co. Vo 1 Lange. ch. 40. p. 646. 7. Pairisville – Lemaitre. ch. 16. p. 561 – 2 Bourj. ch. 8. Sec 8. p. 727. Fr. Gr. Comre ch 16. p. 1428 –

Refers to 3d 4th & 7th admissions – All proceedings were regularly conducted – without fraud or collusion of any kind –

As to Statute & their construction cites Vener's abrd ch. Statutes – interpretation –

The functions of the Deputy Sheriff cease when the Sheriff was is present – here the Sheriff himself sold the property –

The 14th Sec. of Stat. refers to the person selling the property – it says, by him sold –

If the adjudication to Perry be null – the whole proceeding is null – Vo Enchere. Denizt – Poth. & Fer. Dic. de Droit – Enchere is a conditional offer & every proceeding bid becomes of no value –

Mr Walker of counsel for Mr Perry & Sheriff –

It is an unwarrantable proposition that Oppot should have the property at his Enchere should be adjudged to him – The object of the law by Ordre of 1629 has long ceased to operate in Sales of Estates – The terms of Offic under

the

Power of Sr B. is different from what it was under laws of France—

There is no instance to be found where the validity of an enchere has been called in question by any person but a creditor or person injured by an undue Sale—

That by the Prov[l]. Statute, no officer is prohibited from the purchase of property sold by execution, except the any person immediately making the sale—This to prevent abuses in making the sale—but where the Sheriff himself acts the powers of his deputy become suspended, and he is no wise considered as connected with the Sale—

Taking the words of Stat. the Coroner cannot be excluded from purchasing at a Sale made by the Sheriff—nor would the Sheriff be excluded in a Sale made by the Coroner——

The only fact of connection of the Deputy Sheriff with the Sale here, is his name being put to 2 advertisements for the Sale—but this was occasioned by the absence of the Sheriff—

Domat ~~Les~~ Ch. p. 24. 11 Sec

Thursday 18th April

Prest

All the Judges

No 208.
Ex parte.
Amable Denault
& Opposants.

On motion by the Petitioner to call in the his Garant.
Mr Lafontaine for the Opposts says it is too late — Cause enscribed for hearg —

No 736.
Porteous
vs
Deschamps

On Plffs motion for appointment of Experts in conformity to the Judgt in appeal Plff names Wm Hallowell. —

Mr Cherrier objects to this Expert as not a competent person —

No 833.
McPherson
vs
Durocher

On Defendr mo. for a Com. Rogt —
Walker for Plff resists the application — the Defendt has already had time suffte time & has neglected to do it —

No 2614.
Caine
vs
Bruneau et al

On Plffs mo. to be permitted to adduce verbal testimony of his demand —

Bruneau for Defendts The Plff alledges an agreement for the sum of 30,000 to be doing the work for the Defendts

Bleury for Plff. the contract is of a Commercial nature and may be proved by witnesses —

No
Smith. —
vs
Brower
&
Gale opp^t —
Perry Intervr

Mr Cherrier for the Oppost —

The opposition considered as raising a question of law, is clearly established, that by the old laws no public Officer connected with the sale of real Estate, such as a Sheriff can never become a purchaser The Ordre of 1629 altho' not registered in the Parlt of Paris was yet observed in practice, and rules and regulations were made by it to enforce and modify its enactment, and it was not necessary to allege fraud to cause of a purchase made by such a public officer — & the citations of Auts grounded on fraud do not decide the question The Ordre of 1663 introduced into this Country specifically all the Ordres of the King of France, under such modifications as His Majesty should see fit to make —

The Prov: Stat. is too clear and positive to admit a comment, it prohibits every Sheriff or his officers to purchase — There are 3 inferior officers here who are pointed out as superintending all Sales, and of whom the law is positive — That altho' the Sheriff have made the Sale, still the capacity of deputy Sheriff subsisted as a thing which never ceased although his functions may have ceased —

Indubitably if the adjudicataire gives soom for a new Sale, but not so in regard of the incapacity of the adjudicataire, as in such case his enchere is null & the same as not made & the preceding enchérisseur is considered as the last bidder —

Here the deputy Sheriff has interfered in the Sale by his signature to the advertisement, and having been employed in this part, the law does not distinguish as to the part the under officer is to have in the Sale of the property. —

1 Tallier, p 117. —

No 1792
Boileau
vs
Boileau

action for a rescision of an act of sale of Minors property to the Tutor —

Mr Chevrin the Tutor having sold & not being able to recover the price, the action is brot to rescind the sale — The Defendr comes & consents to the rescision in obtaining a restitution of the price paid & the improvements — The improvements may amount to more than the value of the improvents

Mr Brennan for Defendr consents to reimburse the money paid, with the amount of improvements before he is obliged to quit the land, on his consent to give up the whole land —

No 2200
Leslie et al
vs
Desautels

action en revendication —

Mr Bleakley for Plffs — Proof has been adduced of the identity of the articles — case of Bankruptcy

Mr Lafontaine for Defendr — The attachment sued out on the principle that the property never was out of Plffs — That on the 9th Oct last they came into hands of Defdt as curator of Louis Narcisse Roi illegally — To this the Defendr has pleaded that Plffs were not the proprietors of the property when action was instituted — also that the effets had changed nature — To this the Plffs reply that they had right to their action, as the late Louis Narcisse Roi was a bankrupt at the time of the action — This replication changes the nature of the action — The evidence goes to prove the sale of the effects to the late Roi — and that they were sold en credit — a few articles only seized — some of them changed since the sale, and part of the contents

sold

sold – that the Rum was changed – and part of the rum sold – But the action not being founded on the privilege granted by the 177th art. Custom it must be dismissed – Sm. 5. 24 D. Denys. p. 375. s. 72 Revendication – Ord de Moulins 378 seq. Duplessis. p. 620 – the property can be claimed Pardessus 534. N° 1288. The Plffs have since claimed a dividend on the sale of the goods –

Bleakley for Plffs – refers to Judt on 19th Feby 1828 – M'Nider v M'Gill, where the property was claimed as the property of the Plffs – and which were ordered to be delivered up on default of payt –

The articles seized have been identified by one of the Witnesses for Plffs – It is not proved that any alteration had taken place – The 2 casks of nails & chest of tea – were in same state – Refers case ~~M'Nider v Scott & M'Millan~~ – M'Nider v Stevenson et al 19 Feby 1828 –

N°. 1405

Demers. } action on deed of sale – 3 cases between the
to } parties –
Gibson. }

M. Lafontaine for Plff – a deed of sale was made on 10 Nov 1831 – by Plff to Defendt – The Defendt passed Ratification of sale & 2 oppositions were made on pt. Defendt – called in Plff as his garant – There was a charge on land to pay £5. 10 annually to one Bachant – There was a stipulation of a right of passage in favor Gibson over the land of Cicot – Cicot & Bachant made their oppositions The Plff took up fait & cause on Cicot's opposition & contended that the Statute of Ralph did not give the right to make such opposition, as the right did not

exist

of it – as that Act could not give a greater right to the purchaser that the Vendor had and therefore Cicot had no right to make such opposition – refers to Act of 1829 – which refers only to ~~Servitudes~~ Hypothèques. – 2 Pigeau 122. – Repert. vo Hypoth. 676. – Id. vo Servitude – p. 264.5 – Desgodets. 47. No 5 –

Mr Rossiter for Defendt in Gibson –

Mr Mondelet for Cicot – he is called & by an advertisement in the Gazette giving a right of passage on his land in favor of Gibson, he came forward & made his opposition – The question eventually how may be for the costs – Cicot had reason to come forward seeing a right of Servitude annexed a writ on his land – and altho' without a title this right would not exist, yet there can be no costs of the action en garantie as by him, as the proceedings on that head are have no connection nor are joined with the demande en ratification

Lafontaine in answer to Cicot – the oppos^{n} of Cicot was unfounded – the Judge of Ratification could give no right of Servitude to Gibson on the land of Cicot –

As to the opposition of Bachant, contends that he is not bound to depend en garant as his claim as Gibson was bound by his title to pay Bachant the object of his opposition – & therefore the action en garantie in this respect is not founded – all that Bachant gained by his oppos^{n} was his right of mortgage on the land two more. Poth. Vente No 87. 182. 187. –

Vente No 87
182

In

In the case of Demers v Gibson — Plffs have admitted the non-existence of the servitude on the land of Cicot & propond to leave it to Experts to ascertain the value of this right of servitude

To the action of Gibson v Demers — Defend[t] has pleaded litispendence — the same question must arise here, as that already before the Court on the other two Cases — Pltff can have only a diminution of ~~damages~~ the price for want of the right of enjoyment of the servitude in question to be estimated by Experts — Poth. Vente N. 205. —

540 — C. 205

No 637.
Merleau
vs
Fournier

{ On Exception —
Beaubien for ~~Pltff~~ Defr admits plea — but contends that he ought not to pay costs —
Pelton for ~~Defendt~~ Pltff Defendr says he was always ready
This Pltff denies, & Defendt has reported before action —

No 1304.
Jones
vs
Sheppard

{ Action pétitoire —
Sexton for Pltff — refers to the evidence in the Cause

Friday 19th April.

Pres.
all the Judges.

No. 1329.
Ferrie
vs.
Herbert
— action dismissed

No. 641.
Aubertin
vs.
Raymond
&
Quintin Gar
— Judgt for Pltff

No. 2213.
Robinson
Beckett
& contra
— Principal & Incidental demands dismissed

No. 2363
Clarke.
vs.
Gilbert.
— Judgt for Pltff.

No. 656.
Connell
vs.
Lacroix.
— Defenses au fond en droit maintained

No. 1414
Blanchard
vs.
Smith et al
— New trial Granted

Hutchinson vs Mead — } Action dismissed — diss.d Ch. J. —

No. 1547.

Nichols — vs Vanbenthusen } Action dismissed —

No. 688.

Molson & Co. vs Ogden — — } Judg.t for Ptff.s — Intervention dismissed
Richardson Int.s

June Term: 1833.

Saturday 1st June.—

Prest.

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

Mr Justice Uniacke having met w. an accident was unable to attend this Term.—

No. 1345. Saffray v Brampton & al

On Pltff— mo. for a new trial —

Mr Blakeley for Pltff - action for an assault the Pltff has proved the assault by Defts— but the Defendt gave in evidence certain words in provocation which were admitted as a defence to the action by the Judge — which was a misdirection— the plea is not guilty — no plea of Justification and no words could have been admitted as a justification — Denot Vo— Voie de fait — 4 Bl. Com. 183—

2. That evidence of reconciliation was admitted by the Judge, altho objected to, which was irregular. This would have required a special plea — 1 Chitty Pleading pa. 437— 3 Stark. Ev. 1462— 466. Starkie on Slander —

Mr Grant for Defendt denies the fact, that the Judge never told the Jury that words were a justification to the action — this was no ground for a rule to grant new evidence — could go only in mitigation of damages —

The party has just in his bill of exceptions to the evidence on the 2d objection, & Plff cannot have the double benefit of this motion & the Judge on the bill of exceptions. —

No 904
Dumont
vs
Dumont
&
McNaughton
mis en Cause

On folle Enchere & rule for contrainte par mis en Cause —

No 101.
Archambault
&
Duplessis —

On rule obtd par a Notary for a contrainte for not having delivered the copy of an act executed before him —

Mr Lafontaine states that the copy was delivered only on the 29th May, altho' ordered to be delivered on 21 May — & ought to pay Costs —

Mr Pelletier for the Notary, states the facts alledged in his affidavit of the occupations of the Notary which prevented him from delivering the copy sooner — & that the copy of the order of the Judge had not been communicated to him in time — That no demand was made for the copy before the 29th May, altho' it was prepared by the 17th April —

No. 3.

Quesnel & al
vs
Bradford

On action by the Proprietor to expel the Defendt from the possession of a house possessed by him —

Mr Cherrier for Pltff, the evidence adduced him to prove the lease, is the question to be determined, and the proof here is the admission of the Defendt on an action for rent of the same premises, to get demand the Defendt made a confession of Lease. The demand was rent on a Verbal lease, for a limited time, but no notice given to quit prior to the expiration of the lease — The action of Pltff instituted contained the terms of the lease and time of expiration which Defendt by his confession, admitted, as he acceded to the demand for the rent —

582 1 Dunt. Droit. Merlin — Vo Confession. p. 582. —

Mr Scott for Defendt — The confession of Lease was given on an action for rent on a former lease, and also goes on to state a further lease for one year & part of the rent due on the new lease — The object of that action was to recover a sum of money & not to establish a title for any further rent. & therefore the confession of Lease can avail only for the rent, and for the object then demanded, but cannot be extended to any new action — Poth. ob. No 701 — The cited authorities can apply only to the objects the parties had in view — qt. in that action was to recover a sum of money — Dic. For. Vo Preuve. S. Section p. 31. & 35 — also Vol. 10. p. 405 — art 299. — Domat bk. 6. Dic. 1 No. 12 p. 248. — cites Merlin quest. de droit — as above —

Pub. in Ev. p. 333—

№ 2193.

Gausselin
to
Brazeau

212

action en séparation de biens — default — Cherrier for Plff — on question whether the wife who has brot. nothing to her husband, and who has no particular talent, is entitled to her separation when her husband is a dissipated character —

Rule discharged

Monday 3d June.

Present

Ch. Justice Reid —

Justices Pyke & Rolland

Le Blanchard
&
Smith & Lovell

The Defendr. moved to put off trial on the affidavit — which was granted —

Tuesday 4th June. —

Prest

The Chief Justice, &
Justices Pyke & Rolland

No 1545

Dennis dit
Granville

On Plff mo. to reject the plea of part pleaded by Defendt be rejected as irregularly made — as a plea en fait & not as an exception

Turgeon for Defendt the plea of part is an exception & a good plea

No. 1918.

Thauvette
vs
Sauvé —

On Defendt mo. to call in his garant, and that delay be given to him to plead until the delay for pleading by Garant be expired —

Mr Cherrier for Defendt The former practice of the Court was to grant the delay required. 1. Pigeau 77 the proceedings by exception, appeal in garantie formelle & simple — and as the proceedings were suspended en favor of the garanti, this must apply to the delay of pleading while the garant is made a party to the Cause —

Mr Brunean for Plff — objects to the application this a personal action ag Defendt when delay cannot prejudice the Plff proceedings — but Defendt has

sold to his garant, & charged him to pay — but this cannot delay Pltff —

No 752.
L'Hon. J. K. Rollaud
& Ux
Dessureaux dal
opps

On Law

Mr Mondelet for the Pltff —
The Pltff has sworn a land belongs to the Succ. of Dan. Ieyer, on this oath the opposts claim the land as being in the Township of Stanbridge & not in the Seigniory of Monnoir — & the question is to determine where this land is situated — I conclude that it ought to be ascertained by an operation of Surveyors on certain facts to be admitted by the parties —

Cause to 8th —

No 81.
Jas McGill
&
Burton —
&
Dessureaux dal
pour reps. & cclame

Ou Law —

Mr. Mondelet for Pltff — The question here is to ascertain who is the proprietor of the Township of Stanbridge, whether the heirs Dessureaux or all the children — It was decided in the case of Mess[rs] Sparks that the primogeniture had not place in consequence of the Stat. of the Imp[l] Parliament — 6 Geo. 4th Ch. 59. —

Mr Bruneau reps to 6th claim of Prov. Stat. of 1829 — 9 & 10 Geo. 4th —

Mr

Mr Beaubien for Francis Desriviers the eldest son of late Franc. Desriviers — contends that the question touches the right of primogeniture has not been decided in the Case referred to, or at least the facts here are different — in that case the question regarded the Lands of a person deceased long before the Stat. 6. Geo. 4 — & the question there was whether the Stat. of 1774 had transferred to the eldest son the right of primogeniture —

The Stat. 6 Geo. 4 — was a prospective law whereas our right did not fall within it as the Land had devised before the passing of the Statute — The Township of Stanbridge was granted in free & Com. Soccage — States the genealogy of the parties to shew the appt. Francis Desriviers is the eldest male issue & entitled to claim the property as his own — at the time of the decease of the late Franc Desriviers & his wife the Stat. 6 Geo. 4 was not made & the right was acquired by the Son — being so acquired, no subsequent law could divest them of it — The Statute of the Provl. Parliament was published only on 1 Sept 1831 — The Stat. in question is no law, has no legal effect, not having been approved within the 2 years from the time of passing it — There was no law to authorize his Majesty to give a subsequent sanction to this law —

The Stat. 1 Wm 4th contains that H. of Assembly

cannot

cannot make a law to set aside an act of Parliament of Gr. B. — When His Majestys Sanction was given, the law sanctioned did not exist, could have no effect, or not having been sanctioned in the 2 years from the making of it — Ex post facto laws can have no effect —

Mr. Mondelet for Plff in reply — The case adjudged has answered all the objections here raised —

—

No 1132
Comfroy
vs
Cuvillier et al

action for arrears of rent —
on lease

Mr. Mondelet for Plff — the concession to Mrs C. alone, husband jointly with her husband, as the separation she had obtained had never been operated, & therefore both were liable —

The 224 & 234 art. of the ~~Mr Pelton for Deft~~ Custom treat of the Separation de biens & particularly 234. That the ~~Jugement~~ of Sep^n must be operated — 2 Pigeau 195 — Gr. Com: p. 184 on 224 art. Charondas on the art. 224 & 234 — No 11 — supra & other auths

Mr Pelton for Deft — the Deft: has wished to know whether the purchase in question forms part of the Community or not — & as to be able to dispose of them —

The only object of art. 224 - is merely to preserve to the Creditors by the husband prior to the Sepn their rights upon the property of the husband - but the question is - whether the separation has a legal effect or not. Vide Code of Notoriety, 324 p. 307. No 11. 3° Vol. Fr. Com. The Pltff can have no interest to prosecute her action against the Defendt the husband, as the Creditors are always liable - The law works to the use of children, as well as that of Creditors & therefore all collusion is narrowly watched -

Mr Mondelet - the separation is null. 1 Duplessis 433 - 6 Bretton. Vo Sepn de corps p. 129. 1 Bourjon 5e partie de la Com. No 16. 217 - Chopin - cited by Duplessis p. 433 - 2° Vol. -

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No 341.
Smith
vs
Glasgow
&
Kierzkowski
mis en Cause

on and rendered

Mondelet for Pltff - on 2d Chap. of Reville - have objected, because the rent since 1814 belongs entirely to Pltff ought not to have entered into the act. of the Community - on 3d Ch. of Reville - Pltff have not proved the receipt of £22 - & accounts may be rejected - on 5 Chap. de Defense the 1st item - is wrongly placed there & should be rejected - refer to 262 art. Coutu. as to the repairs to be allowed - on 8e Chap. de Defenses - the Pltff deny them and the same have changed -

The parties have gone to proof as to the value of the rent of the houses & Pltff have charged the rent accords to evidence —

Brunan for mover Cause — The bed given valued at £12. It ought to be allowed as Pltff — as to the repairs they appear to have been grosser reparations & ought to be allowed —

Mr Mondelet — The act admits the property to be a propre —

No 1783
Masse. —
to
Brent & Durocher

Bar law — action hypothecaire —

Mr Charrier — The demand here is for arrears of rent due before the signification of the transport. so ys. he can have no right — pleads that the arrears have been offered to Pltff

Mr. Mondelet for Pltff — The plea is bad, being more to a personal action than to this action — The signification of transport shews only the right the Pltff has to demand the arrears — The undertaking alledged by Defend that he had undertaken to pay to a third person is not sufficient —

No 3.
Quesnel & al
vs
Bradford

Judgt for Pltff — Mr Justice Pyke, dissents

Wednesday 5th June

Pres.

Ch. Justice Reid.
Mr Justice Pyke.

No. 1877.
Classon
vs
Seymour

On Defendt mv. to quash Capias pour. Defect of service.—

Mr. Mondelet for Defendt The Defendt was arrested on the 11th May, & declaration left at Sheriff 21 May — which is not within the 8 days required by Law — If the writ is quashed the action must be dismissed.—

Mr. Pyke for Plff the duplicate left at Sheriff's office on the 20th May the day preceding being a Sunday

No 2225
Dawes
vs
Leduc

Action of revendication.—

Boston for Plff. Defendt seized the Plffs horse & detained him because Plff would not consent to pay a certain sum of damages—

Mr Henshaw for Defendt — when this writ was issued out the horse was not in his possession but had returned to the plffs field — That horse had been taken trespassing on Defendts land —

No. 1127 & 1464

Packdale
vs
Gardner — } action on note &

Buchanan for Defdt. There is a variance between the instrument declared & the proof —

Berthelet
&
Dumont
&
Dumont opt } On merits of Opposition —

Binder for Plff — in seizure of the usufruit of the Defendrs Seigniory, on Dec. 1822 the Defendr made a lease of this usufruit to the opposr. several months after Suit instituted — Basnage Hyp. p. 66 — in fo.

Mr. Mondelet for Opposr — there has been no enquete here — & the cause on the merits must be dismissed — it is not alledged that Defendr is insolvent, & that he has not other property to pay the Plffs demand — There is no fraud alledged of the transaction made between the parties —

No 186 & 187

Desrivieres
&
McGill, Curr

over to

№335
Dumas dup
v
Terzon
Marchand

on rule Nisi for exon on Last
Lafontaine for Pltff — 12 months after
Defendt drew the ~~Defen~~ widow renounced
to his succession — This was too late, as she
has by different acts accepted the successions —
but a renunciation made so late is of itself a
presumption of the renon —

Thursday 6th June

This being the Fête Dieu, there was no
Court held —

Friday 7th June. —
Present
Ch. Just. Reid
Mr Justice Pyke
Mr Justice Rolland. —

№1740
De Martigny
v
Dubois —

On Pltffs motion that rule be made
absolute & Thion to quit & abandon the
land granted to him, as he had not maintained
~~his~~ a line on the Seine — rule served on 4th —

over to 12th for Commn

No 1215 ~~2410~~

Pinel & Morin } action for goods sold
To be endorsed — case submitted

Beach & Dewitt } On objections to Interrogatories —
Mr Buchanan for Defendt — & moves to reject several of the Interrogatories — and also that Plff disclose the names of her witnesses
Mr Boston for Plff — considers the Interrogatories pertinents and regular

Saturday 8th June
Prest —
Chr. Justice Reid
Justices Pyke & Rolland

No 2745
Desforges & Lefevre, Curr & Donegani opt } On opposition —
Me Lafontaine — for Plff — Instr. of Defendt — for the change of wife in the moveable property of her mother — Beauzelt sued on Decln d'hypoth — & Instr. with garantie of Donegani — The opposants have claims

The

The propr of nearly $3 Vs, for indemnity of monies laid out by them in consequence of the proceedings had at them, under the transport made to them by Pltff. This transport to be considered in two points as to the action pétitoire and the action hypothecaire — The present oppos claims the rights of Pltff in the land of Defendr and in preference to Pltff — The question then is as to the hyposth. of the dower —

Walker for Oppost — The oppos have now all the rights of Pltff This transport as regards the dower must take precedence of Pltff — That the right of mortgage of Pltff for their shares of moveable property mounts only to the date of the Inventory not of the marriage Contract —

Ct. Comte 763. 4 —

Mr Lafontaine in reply — the right of Comte is a right established by the marriage Contract — LeBrun — Comté liv. 1. ch. 4. p. 42. 43 — the mortgage is established by the Marriage Contract —

—

No 2180

Lebrun & Marchesseau & Robert dup intés

Action pétitoire intés party Lafontaine for Pltff — a land was brt to the marriage of Pltff mother — there not being property to pay the debts, an application was made by Tutor to be allowed to sell this land — The property was sold in consequence — Alexander bot. at 10,600ᵗʰ —

on same day Alexr. sold to Robert, who in consequence has intervened — These acts are argued as Null, but no reasons alledged for it, nor any demand to set aside the transfer Nov. Denizt. Vo Adjudt. p. 236 — Dic. Dwct — adjudn Merlin 141 — Cout. Fr. art. 359 — Vbericourt. Nr. 26. p. 186 — Desquisses — arbat p. 8 — LaBrun. Nr 544 —

Mr Rodier for Pluff Defendr contends that the Pluff cannot maintain this action, as it is a sale made by Pluff, who had no right to make it having made the purchase of the Minors property by the intervention of a third person — This ought to have been an alienation of the minors property by Experts before allowing such a sale — The adjudication cannot be less than that — Dic. Denizt Vo Mineur — The Tutrice cannot sell to herself — as contended by the Pluff — There is an Ordn of 1672 which prohibits the purchase of Minors property by the Tutor — Dic. Denizt. Vo Vente. — 1 Denizt. p. 55 — Poth. Vente. Nr. 13 — Old Denizt Tuteur. Nr —

Lafontaine in reply — The authorities cited by him are founded on the Roman law. & have been followed in France —

Lea
Buckingham
& Contra —

No 239.

action of assumpsit —
Blakely for Pluff — action dismissed

to

to demand for wages — for about 10 months —
Plea — that Pltff's conduct was irregular and
not entitled to wages — an Incidental demand
for monies advanced —
Mr Driscoll for Defendt — the conduct of the
Pltff has been so irregular, as not entitled to
any wages —

№ 2285.

Ritchie
v.
Gilbert

} action on account —
Walker for Pltff — Pltff entitled to
recover a Dedt for £100 — The Defence
rests upon allegation on an error made by the

—

№

Robertson & al
v.
Janes & al
&
Dickenson & al

} Mr Walker for Intervenor Parker — Order the
act. ordered to be rendered & prays Dedt
Remain —
Mr Pettit for Pltff, contends that the act rendered
does not correspond with the Dedt — The names of
the Debtors of Janes are not given, as head debtors
which prevents Pltffs from shewing whether
such Debts were bad or not —

№ 752.

Rolland
v.
Ayer & al
&
Desrivieres & al
Oppts

} On opposition — over to 10th —

Monday 10th June—

Tuesday 11th do—

Enquete days.—

Wednesday 12th June.—

Pres.t

Ch. Justice Reid

Justices Pyke & Rolland.—

~~No 2410~~

~~Panet~~

~~L.~~

No 484

Fabrique de Sorel

Jones

On law—

Mr Bolton, action cannot be maint.d the Pltff calls himself the procureur du Fabrique as such cannot maintain the action— This is action for price of sale of land, but by law the Fabrique could not sell or alienate any property without lettres D'amortissement, edict of 1743. 1 Vol p. 537. Edit 2 Vol.

Mr Cherrier for Pltff— The action for arrears of rent— no question as to the power of purchas-

law

law — The plea here is general — The Corporate bodies can plead by procureur — The other plea, that the Fabrique cannot purchase, is not true — it can purchase on observing certain formalities — & to ~~avoid~~ take away objections to an alienation by the Fabrique, the cause of nullity ought to be specially pleaded, and a resiliation demanded — but if Defendt possess he must pay the rent —

when action is en garantie Body

Mr Boston in reply — considers his exception well founded —

Smith
vs
Parlier
&
Rossiter —

On motion of ~~Mr in Cause~~ Mr Rossiter for a contrainte par corps as Defendt —

Mr Cherrier for Defendt — The contrainte cannot be granted in this case, nor for the sum demanded — The bill of Costs has not been regularly taxed — by Ut. 34. Ut. 2. of ord. of 1667 — a Commandement de payer must first be made 598. Repse vo Contrainte — This demande must be made by a huissier, portant de pieces — specifying to the party the amount of taxed Costs —

No 1315
Walker
~~Nichols~~ —
Langlois

action for boards sold —

Taylor for Plff has not been able to prove the agreement for interest — but proof is made of the value & delivery of the boards in question —

Mr Cherrie for Defendt — Defendt acknowledges to owe only £10 — as he bot the boards at 10 dollars only —

No 1315
Pinel
v
Nichols

action on note —
Mr Rossiter — Variance between note declard on & proved —
Dismissed

No 2004.
Leonard
v
Ch Mooney.
&
Wm Mooney Dpt

On opposition afin d'annuller —
Mr Henshaw for Plff — opposition not founded, sole make between parties to defend Plff
Mr Grant for Oppost — no fraud proved

No 956
Papineau
v
Sanspras
&
Foullet
Gart

an action en interruption d'hypothèque

No 752
Rolland
v
Ayerdale
&
Donovan Gt

On oppost on Fr Desrivieres. eq oldest son & Cah Fr D — Question whether land is in Seigy of Plff

Mr Mondelet for Plff. it is submitted as to
the mode to be adopted to ascertain whether the
land be situated in the dist of Plff or in the
Township of Hamburgh — Submits that a
Surveyor to named for this purpose — and
a rule of reference is offered for this purpose

Douglass
&
Collis
} Judgt

Thursday 13th June. —

Pres.

Ch. Justice Reed
Justices Pyke & Rolland

No 971.
Duchemin
&
Desmarets
&
Roi & Ivers

On Pltff mo. to reject the plea & exceptions filed by the Defts
Currie for Pltff. Pleas irregular — 1st presumption — & 2d payment — 3d is a contradictory plea, as it acknowledges the debt —
Mondelet for Defts — plea regular — 1st Prescription — 2d payt — & 3d non assumpsit —

No 1056
McLaughlin
vs
Brodie
&
E contra

On report of arbitrators — on the mutual demands —
Grant for Pltff approves of report and asks for Judt. thereon —
Boston for Defendt — that Pltff ought not to be held to give up his claim as Pltff & to take up the Credits given by Pltff to his Customers, whom Defts does not know & of — whom no Statement has been given —

No

Badgerdel
~
Dewittzel

Action on bill of Exch &c

Walker for Plff. The Defendt remitted the bill of exchange to Plffs in England - Plffs with much difficulty found out the place described as residence of drawee, & the drawee answered by letter that the drawee had no funds in his hands - No notary resided near the place - given to a London Notary - who drew up a protest on the letter written by the drawee - The protest for non-payt was made in the same manner - Then protests forwarded to Montreal, but were arrived, as supposed to have been lost in the Packet Ariel that foundered at sea -

The plea here is want of diligence & notice of protest -

Mr Scott for Defendr The plea as here 1st want of diligence 2d delay given to drawee & 3rd variance between the evidence & facts alledged -

The protests here are irregular, not recognized by any laws - made at London, on a different day from that alledged - made on a letter & not on original produced, nor proof made of it - letter ~~written~~ produced by a Stranger, no party to the bill - no proof that the bill was ever presented for payt. no connection shewn between parties Chitty 216. 217 - as to protest - must be made by Notary & not by his clerk -

Chitty 217 as to mode of making protest where no Notary to be found — Chitty. 310 — protest did not bear date when made but 20 or 30 days after — 2 St. Tr. 259. & 402 — The presentment must be made by a party who can pass or discharge for the Drawer — The deposition of Paul contradicts the facts stated in the Protest — The proof of the loss of the bill is not the best — The proof adduced to prove it speaks as to secondary evidence —
2 Phil. on Ev. 31 — 1 Phil. 218 — best evidence always to be adduced —

2. Delay given to drawer — This delay presumed from the facts of the case — The Defendt. had no notice of the dishonour of the bill till May 1830 — No delay stated by Law of England for bringing action after protest — by Laws of France this different. Pardessus. No 377. & 386 — The Defendt. have suffered by 2 days as the Drawer has become insolvent since —
Baron had sight of bill on 18 Augt — protest for non accept on 1 Septr after — bill was due from the sight — viz. on 20 Septr & was presented long after it became due viz. on 4th Oct — & protest drawn long after last day of Grace —

Walker in reply — Every diligence was used by Defts that could be used under the circumstances The original letter of non acceptn must have remained in the possession of Notary as his authority

for

for drawing the protest.
~~Non~~ of protest in this case is sufficient - the character of Notary evident. Chitty 215 - 3 Kent. 63 - The mode adopted from absence of the notary public suffr - The laws established in regard of Inland bills under 9. Wm 3 - will not apply - The bill is only noted when presented. the ~~bill~~ protest may be made out at any time - The bill may be presented by the clerk of Notary. 2 Bill's Com: 215 261 - 217 - - Id. 258 -

2 bs

When drawn under at a great distance 426
Bell. 2 ba and 3, Barn: & Cress. when it seems implied that when the party resides at a great distance it is not necessary to send a Notary to make the protest. Chitty 166 - when a refusal to accept is intimated the protest may ~~must~~ be made at any time -
75. 3. Ch. Kent's Com - not necessary any specific notice - if general intimation given it is enough
Date him was an agent as well for the Defendant as for the Pltff, & his acts & declarations binding on them -
It is sufficient that the letters were put in the post office in due time - without proving the loss of the packet Ante - this is proved - 481 Stark. Ev. - as circumstantial evidence in various cases - 2 487 & 496 - 2 560 -
Bull. N. P. p. 93 Starkie Cases. no presumption pro and con - 393 Stark Ev. 2 1052. 2 1054 when written Instrument not required. Verbal or other evidence admissible -

Id. 47. 249 –
as to admissions of agents. 4 Starkie 42 –
1 Starkie 318. 319 – 5 Esp 360 – 3 91. 2. 8 –

No 986
Boardman
v
Chapman
2
Encontra

On award –
nothing said

No 368
Cheney
v
Field

On law – on Exceptions –
Day for ~~Defts~~ Plff, the Defendt has
set up the pendency in a foreign Jurisdiction
~~No~~ this plea Plff has demurred –
N. Dendy v Hypoth. p. 760 – a Lunatic
in a foreign Country cannot be
11 East. 124. 131 – 1 Camps. 63. 252 – Exempts
Abaham. Lith – H. – 2 Nelson 87. 2d
L. Raymond –
The object of the Suit must be the same
here this does not appear –

Boston for Defendt –

No 1705.
Spalding
v
Gray –

action for amount of Lost –
Bander for Plff – Defendt charged with
expenses – a writ of Exon to levy a
debt on Defendt – Defendt employed Adams the
Sheriff, who seized Effects of the debtor –

the notice of sale was made, but bailiff did not attend — the sale put off to 10th Dec^r — on that day bailiff went there but refused to receive the bids of several persons on the property — but endorsed that all the effects were to be adjudged to the wife of the Defend^r —

M^r Scott for Defend^t — If the facts proved by defend^t will not justify the defend^t — yet the action will not lie to the extent demanded. Only two of Pl^ffs witnesses are admissible

No 1740.
De Martigny
Dubois —

On rule to shew Cause —
M^r L. Bruneau appears for Defend^t and alledges that he has complied with the Judg^t. —

Friday 14th June. —

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

No 633
Leclaire
& Laroque
Frijo – appts

On law. on the appos^n —
Mr. Bruneau for Appt – The appt was sued to give up a land on an action en delr d'hyps. at the suit of — & the land being sold by Plff to Defdr he claims his recours thereon – as bound for his damages

Pelletier for Defdr – pleads just – prescription of ten years w^t title – The sale by Frijo to Defdr. is in 1818 – the sale subsequently made of land was in 1830 – 2° – There was no notice given by Frijo of the action by Nadeau en delr d'hyp^s to Plaintiff –

The appt has pleaded interruption of prescription, in consequence of his appos^n to the deed of the land, & appos^n has afterwards discontd –

Cites Both Poss^n No 16 – 1st Presumps: No 45 – Presumpn goes on dessus the saisine nulle – It may be said that Defdr had a knowledge of the charges & therefore is not de bonne foi – But when there is presumption as here, by

by the discontinuance of the oppos^n is as if the same had never been made — Poth. Procedure N° 553 — also refer to Denod — v° Desistement N° 343. Poth. Proc^re — Gr. Com^n art 113. N° 8. 19. — p. 352.

Poth. p. 503. 504. N° 109. Tr. Vente — as to the want of notification to Defend^r on the action in Garantie —

Mr Bruneau, contends that the prescription has been interrupted —

N° 484.
La Fabrique de Sorel — v Jones —

on re-hear^g —

Mr. Cherrier for Plff, says he finds no certain rule established as to the name by which the Fabrique must bring the action — refers to the authority from Louis Gouv. des paroisse. But it is sufficient that the particular Fabrique is described, as being a corporate Body —

1 Pigeau 132 — says the name & quality of the persons proposed for the governt of the corporation ought to be given, qt is different from what Louis says

Boston p 735 N. Denys v^e Com^rs d'Labotans

N° 2236.
Boucherville & Sicotte —

Ore tenus — action for Lods & Ventes

Mr Mondelet for Defend^r action founded for Lods & Ventes on 2 acts of donation —

To see how far a Lawhearing is useful before enquête —

No 471
Demarais
t
Lahaise dup

action for defamation—
Day for Defendt The action ought not to have been brot before this Court — The costs of Debt not proved —
The testimony of witnesses not regularly taken down—

No. 2175
Beardow
vs
Gamache

Pltff's. attr did not appear — cause called the Bluey for Defendt prays that action be dismissed —

No. 2211
Dupré
vs
Marotte

Action for assault —
Mr Lafontaine for Defendt This action carried on at the instigation of one of the bailiffs of this Court — The cause besides does not merit any Consideration —

No 568
Menard
vs
Guertin

action on accot on a deed of sale
Mondelet for Defendt The Pltff ought to have given credit for more than he has particularly the costs of an action en garantie — The Defendt also demands caution before he pay the balance —

№1009
Coupal dal
vs
Guertin
& al

action en delr. D'hypothèque
Defendt made no defence —

№2172
Wallace
vs
McNee
& oppost —

On divers oppositions —
Blamy for Pltff — The opposition of McNee must be dismissed — no proof, nor many of the others, is there any proof —

№1742
Samson
vs
Compton

Action of damages for obstructing the River and a public Road —

Mr Lafontaine for Defendt — the evidence does not support the action, it does not apply to the period at wt the Quay was built that the Quay here is not injurious but on the contrary is advantageous to the public & to the pltff —

Mr Mondelet for Pltff, contends that there is sufficient to maintain the action —

№577
Bisson
vs
Vallée
dal —

action for monies pd by Pltff for Defendt —

Mr Pelton for Pltff — The Defendt produces the quittance of the Widow Huppé, as a discharge of the demand —

Mr

Mr Lafontaine for Defendt has pleaded 2 pleas — a discharge & prescription — The Defendt made a retrocession of the property to Huppé — & undertook to pay the Lods & Vents on his purchase & retrocession & to pay £148 in 16 payts — The widow of Huppé gave a discharge of all the Defendt — and — & covers this demand — The oblign of the Defr contracted personally on Huppé to pay his Lods & Vents is to be his Debt to them — Mr Pelletier admits that prescription will hold for 6 mths — & that Court may reject it — But the debt here claimed is the personal debt of Defendt — as he was personally bound for his own Lods & Vents on his purchase

—

N° 2416
Panet
v
Lepröhon
&
Devers opposts

Mr Pelletier for Mr Lepröhon claims £125. w. interest in right of his mother, also his part of the dower of his mother — which last appears to be admitted — 12 Sept 1796 — Lepröhon married — Panet — obtd mar. contract 5000# were stipulated for pres — & 9 mar. 5 Children 26 Dec 1796 Mrs Lepröhon died — The latter was named tutor & made an Inventory — he afterwards made a Compte & partage w. his Children, by wh it appeared a balce in favor of Oppt — wh balce oppt appeared to

In

For the balance of this sum the present oppos[n] was made — and for which he claims a mortgage from the date of the acte de Tutelle —

In 1811 the oppt. took orders in Church & his father gave him a letter Clerical on a house in town afterwards. The father gave a discharge for the purchase of this house of £3000[tt] — and stipulated a certain sum to the oppost. in lieu thereof There was no novation here, as no new debt was created. vide Domat — Pothr. Ob. No 581. 2 Argou — vide Bourjon. p. 583. Com. 48 — to shew that there is no novation by the Constitution de rente made in lieu of the former debt Repr. Vo Novation 234 —

581. 2

Mr C. Brumeau for Mrs Lefrotton, widow, who claims by mortgage amounting to 1816 — That from 24 June 1818 the right of mortgage of the oppost. was destroyed by an act of that date by which the oppost. transferred all his rights as his father to the money pd. by Mr Moffat to the father of oppt — and on 18 Sept. 1821 Mr Lefrotton constituted a rente on the principal of 3000[tt] which Opt. now claims as mortgage up to date of his mother's marriage Contract —

No 752.
Rolland
vs
Arger
&
Desrivieres opts

Ora question between the opposts as to the right of primogeniture —

Saturday 15th June

Pres.t

Ch. Justice Ready
Justices Pyke & Rolland

No. 1959.
Johnson
vs
Beckworth

On Defend.r motion to take off the default obt. against him in consequence of circumstances of service of process — granted

No. 1095
De Beauvoir
De Longueuil
& Sol.r Gen.l Dupré
resp.ts Defend.t

Gale for Plff — action for 28 years arrears of a Rente Constituée — The late Baroness of Longueuil gave a constitution of Rente on some property, afterwards confirmed by the Baron in 1735 — The Defend.t is his daughter — This rente not was transfered in 1766 by the Plff to her Son Chas. — In 1768, Chas. died at Gorée, leaving a Son Armand Fs Chas. — who died on board of Ship — his mother inherited his rights, and as his heir brings this action — During the greater part of the time there was war between England & France — The defence to this action is, 1st a general denegation of the facts — 2d a plea of prescription — This not admissible — The Plff having died, Mde & Gen. Dupré became his heir and on his death the present party his Son came into the Cause by reprise d'instance —

Ft

To this reprise d'instance a plea has been put in denying the right of the Pltff.

Mr Griffin for Defendr — There is no proof that the Pltff resided in France — she appears to have been married in Lr Canada —

With respect to the reprise d'instance, there is only proof of the marriage of Geo. Lecomte Dupré & Mlle De Beaujeu — exhl. No 5 —

The exh. No 7 — is the baptismal of the son of a different marriage — The death of Geo. Lecomte Dupré who married Mlle. DeBeaujeu is not proved —

But even if the capacity of party be proved he is entitled only to 5 years arrears — The order of 1520 — Denys. Notorité — Poth. Rente No 133. Recueil de Bretonnier p. 303 — Dic. des arrets — vo arrerages p. 274 No 20 — Brodeau on 94 art. Cout. p. 45. — Dauty — p. 297 — 2 Lajeunesse. 395 — Instruct 252. 3 —

This law runs as. Minors — Poth. Rente. No 139. The Court cannot even grant more than 5 years arrears — Serpillon 491 —

Mr Buchanan for Defendr refers to the alleged interruption by War — Denis p. 62. The interruption will not take place when there is a possibility to act —

Mr Gale in answer — There is evident proof of the residence of the late pltff in France The Judges bound to know the times of Peace and war — The delay here can be reckoned only

only from 1815 — Repe. 327. vo Presumption —
2d. 339. — Denizt. p. 305. vo Arrears —
2 Ge. Cond. 375 — Presumption does not run
contra non Valentem agere — p. 430. —

No 1030
Cimellier
vs
Tessier
&
Beauchamps
Moreau ats

Mr Lafontaine for Moreau —
The Defendt. granted an obligt in 1827 —
In 1829 Beauchamps fd to purchase
of Cr £70 but took no subrogation
& it was agreed upon his paying the bal& he
should be subrogated in all the rights
of Pretr — But the subrogation not having
been subrogated when pays were made
could not be made afterwards — The
oppos. is founded on the subrogation only
& not on his right as a hypothecary Creditor
on any other ground —

Mr Blanchet for Beauchamps — admits
principle that a subrogation in intervalle
is not suffe but of during the pays. But
he says mention made of subrogation in
the discharge pays. will affect the whole
transaction & applys to the whole pays —
Renusson — Subn No 18. ch. 12. p. 89 —
also. ch. 4. No 19. 20. 23. 24 — Repse vo Subrogn
1. Pigeau 712

№ 2350
Langlois
v.
Lawson

Ca. cert. rendered — on Separation

Mr Grant for Pltff, during the action the Defendt alienated in fraud of his rights & during the contest the parties expect to come together & after ct the Pltff was again obliged to bring a second action in wh. wh. was granted — Pltff accepted the Community & cas. cert. was rendered by the Defendt and here Pltff has contested the cert. rendered in regard of the value of the lots of land in question

Mr Labauge for Defendt The discontinuance of the Pltff action destroys his right as to the lands. Poth. mar. № 524 — 2 Argou 65 — № 524 Poth. Comte № 527 — 12 Toullier. p. 151. № 75

Grant in answer, the renunciation here will not affect the rights of the Pltff — This was not a voluntary renunciation on the part of the wife —

№ 689
Orr
v.
Swords

on award of Arbitrators

Farrow for Pltff prays Judt. on the Award —

Mr Davy for Defendt — The Pltff's half of the debts was to be paid only when recovered & for which only Defendt was liable. The Defendt P. was to the Pltff all his share in the debts he had recovered — After 3 months Pltff was not satisfied he might recover the debts himself.

№ 1583.
Anderson
vs
Forsythe &al

on action of partage —

Mr Buchanan for Pltff — action to obtain partage — The late Mr Richardson on 18 May 1831 — The defendt pleads that the lands belonged to P.L. Richardson solely, the son of the deceased —

That according to law these lands must be divided equally — by Prov. Stat. G. 4 10 Geo. 4. ch. 77. sec. 6. — Mr Richardson died before the passing of this act — It was not in force till Proclan in Sept 1831 —

In 1793. the day month & year are inserted in the act. in England & this construed the day the act shall take effect — By 36. Geo. 3. ch. 1 — a similar provision made in this Country — By 31 Geo. 3. ch — the named bills are to have effect only from the day of proclam^n — The indorsem^t of the Clk of the Legislature formed on the Proclam^n is made part of the act & considered the day of passing the act —

This law cannot be considered as having a retroactive effect as it was made to clear up a doubt — L. Bac. 49^e aphorism — 1 Toullier. № 81. — Merlin. V^o Loi. 2^e Sec. № 5 —

Mr Gale for Defendt — 2 points — whether act of 9 & 10 Geo. 4 be in force at all — it is an absolute nullity — & even if it were, the lands here would not come within the law — That the assent of the King not having been given in two years, it can have no force whatever —

That

that this law even if in force will not apply here — The Prov^l act was passed in March 1829 the passing is different from the sanctioning the act the word passing is considered as having a definite meaning by 2 Geo. of Stat. of 1791 — also the 30^th clause —

Mr Monckton for Defend^t — the only question presented to the Court by the Pltff is the 6^th clause of 9 & 10 Geo. 4. ch. 6 — the words and passing of this act, can apply only to the time when the law came from the hands of the 2 chambers — but if it was the concurrence of three branches — the King gave his sanction only on 11 May 1831 — Mr R — was then alive. —

Mr. Pelletier for Pltff — If the passing of an act was to be reckoned to infer a law from the sanction of the King, it would be inferring a law before it could be known —

No 1887.
Stuart
v
Thompson
} Action for work done —
Libel —

No 719
Dwight
v
Warner
} Action on bill of Exch & for 2 Notes +
Driscoll for Pltff — notes only now in question
the Defend^t — pleads pay^t — offers verbal evidence,
but the notes not being considered a Commercial
matter, such evidence cannot be admitted

Mr Pelletier for Defend^t — the Pltff ought to

have

have Judgt. for only £2. 6. 8, as balance of the notes. the Defendt having paid by a mare sold to Lewis Adams on acct. of this note —
The notes here are negotiable, being payable to order —

№ 2408

Guichard
vs
Fay —
Fay — oppt.

On oppos. afm d' annuller —

Walker for oppt. 2 Judgts given agt 2 Individuals for the same debt
There was levied on the lands of Seofield a sum of £122 — pt. was on the moiety of the property originally granted — which has been found over to the Plffs — and the Defendt now produces receipts to shew that the Plffs. have received £80 more than the amount of their debt — but the Plffs. have made a distinction between the receipts, making some of them apply to the principal & some to the interest —

Buchanan for Plff — The expression in one of the receipts will not apply to the others in which no mention is made of the principal or application — The Oppor. could not legally stop the sale on a writ of Fiend. exp. — nor can receipts now be allowed to be brought forward unless they had been received since the Judgt rendered —

No 1613
Pollock
v
Jackson

action for assault & battery —
Bleury for Defendt — no right to damages
no proof —

Monday 17th June.

Prest
The Ch. Justice, & Justices Pyke & Rolland.

No 1444
Portas
v
Marcotte

On Defendts motion to have the
Pltffs enquete declared closed —

No 181.
Belair Belair
v
Guy. —

action as Defendt — as administrator
Gale for Pltff — Testator made a will
devised his property equally among
his six children — The Defdt was appointed
Admr as Exor refused to act — in 1824 Defdt
rendered an acct of his gestion — and the rights
of 5 of the heirs were ascertained, the Pltff is
the only child who did not accede to the
partage, but avails herself of the admissions
in that act to establish her claim — The
claim set up by Defendt for his trouble an
unreasonable — The plea, here is that the
sum is less than demanded — & further that

the

that the Pltff is not the person she stiles herself to be —

Cherrier for the Defendt — Came heard in April a June 1830 — The plea admits all the principal facts — The complte de guidé admits the existence of another heir — who is not now before the Court — & must be considd another heir besides the pltff. The Pltff never was a party to the complte de Lyguidation, nor to the partage — & consequently can draw no benefit from it —

The plea, that there exists another heir is material, as that heir has a right to his mothers succession, altho' excluded by the will

M Gale in reply — The acct. refers to the Pltff as having a right under the will —

No 878.

Hutchinson Armstrong & Moffat & al Intervs

On action to recover the amount of goods sold by Sprags & Hutchinson belonging to Pltff to the Defendt —

M. Hart for Intervs party — The goods were shipped by J. H. to his brother — Sprags & H sold these goods on a del. credere com. to Defendt — and then Mr. Thruby became liable to the Pltff — That for a number of years large sums of money, & is necessary for them that these monies will apply in discharge of the goods so sold to Defendt — The evidence shows

the

The manner in wh the ~~monies~~ business was carried on by Sp. & H. & the monies remitted by them — John Wood a Wit for Defend — admits by his evidence that Puff never rec. an act Count from the Sp. & H — till he came to this Country, when it was proved that the names of the parties to whom they sold the goods are not even mentioned —

The arbitration was an ex parte proceeding without communication of the Creditors of Sp. & H. — and the Creditors of Sp. & H — are alone interested to recover this debt

Mr Grant in reply — The Puff is alone entitled to recover the money — the Puff is as the proprietor of the goods, and can claim the proceeds in the hands of the Purchaser — Imp. Cons. by Rogers. p. 44. 5. 6 — art 161 Cons. — Sp & H. could not claim the price here in exclusion of the Puff — 7 Pandt. Pare. p. 210. 222. 228. 334. 6.

Paley. 324. 3. Chitty Com. Law. p. 201. — 7 T. Rep. p. 350. — 1 Cowper 251. —

Hart in reply — the authority from Com. Law — do not apply to the case, it refers only to the priority of the Vendor exercising a privilege — The general remittances from Sp & H. to Puff must be held to apply to these goods, the last purchase whereof was made some few days before the Protest Com Law — the factor alone bound in case of insolvency of the buyer —

Delorme & Doucet & Delorme opp & White opp

Appt & White for

Mr Beauborn for Oppt — opposes the prayer of the monies arising from the sale of the real Estate of Dissd — unless he obtd. security of Dower of Marie Thimber the Defendt wife & his children — The reasons of opposition, that

Mr. Mondelet for Opport. abandons the Domain Contumin & demands the Domain proper — This admitted —

No 1860

Beaudry & Benoit

action for wages —

Mondelet for Defendt — The Pltff was of a quarrelsom disposition & disobedient & Mr for Defendt discharged him — Poth. Louage. No 174 175 & No 209. Louage des Matelots. The cause of master is favorable. No 175 — when the master is sued for wages, his delaration ought to be received —

Mr Charrier for Pltff — The proof has on the part of Defdt. is not sufft and the authorities cited do not apply to case of a merchants clerk —

—

No 1632

Caine & Burn —

One cause

Action on deed of sale —

Griffin for Defendt — Pltff has no right to bring the action in his own name — as he alleges

alledges in his declaration that the property belonged to his minor Children — nor can the parent as the natural tutor of his Child bring an action on his behalf — Farrar Jurisp. p. 7 — — The Tutor could not alienate the property without the authority of the Judge p. 232 — Rep. v° Mineur p. 520 —

arrets de Granville 652.

Mart. 192

The Pltff obt. the authority, but 3 months after the sale and after this nothing was done, so that the Defend. title was never completed —

Mr Turgeon for Pltff The authority necessary to perfect the Defend. title, was obtained and produced to Defend —

No 1681 —
Caron for
Bernard
&
Lemieux
T. S

On a Saisie arret on a Judt in the Inferior Court —

Mr Morin for Defend — this Court cannot take cognizance of this case, as the proceeding here is in execution of this Judt — The Pltff by this means will obtain a privilege of selling the Defend's land under a Judt in this Court — 1830 Girard & Landreville & Landreville T. S. — where the Saisie-arret was dismissed. —

Turgeon for Pltff a great difference between Saisie arret & Saisie Exon — Rep. v° Saisie-arret Dic. Droit. v° Saisie-arret — 1 Pigeau 652 — 653 — it is an instance — 654. the 659 — 664 —

No 1232
Smith & al
vs
Buchanan

action to amount -
Buchanan for Pltff - Defend has
refund to act -

No 2349
Blanchard
&
Devoigne
Pontet sal

An question submitted to a rule
as to its pertinency -
~~Objection~~ Dismd -

~~No 758.~~
No 1040
Holbrook & al
vs
Martinant
Divas & opps

On motion to revise a Judge of
Distribution - on rule on the
persons collocated that they be held
to bring back the monies overpaid
them -

Mr Buchanan for Pltffs - The Judt has been
acquiesced in by all the parties it cannot
now been set aside - There could be no
appeal made him - All the opposants have
not been called upon to answer the rule
here, only a few of the parties have been
called upon -

Mr Walker for Evans & Gibbs - There appears
no error on the face of the Judt - & after a lapse
of 6 years the Judt cannot be altered -
Poth. No 98. Procedure. 145 Proc. Civile -

Mr Forstall for Mrs Lecheris - It would
appear

require a new writ to bring the parties before the Court—

Mr Gale for the Sheriff—admits the principle that this is no bar if there be an error on the face of it—

No 1082
Gibbs et al
Phelps
Phelps et

On oppos. a pnd. annulled
Mr Blenny for Oppt. In 1827 Pltff obt. Judgt. agt Defdt. Pltff consented to give two months delay on getting security this was given—one of Pltff sues—& a writ appointed—a new action was instituted agt the Caution, who paid the amount of the debt—and granted a subrogation to the Caution, who sued out this execution ~~in this cause~~—The Caution cannot avail himself of the Pltffs Judgt—to reimburse himself on a Judgt which was satisfied

Mr Mondelet—The Defendt has no interest to pay to the Pltff more than to the Caution—who by virtue of the subrogation has sued out the writ—

No 2169
Moses
Archambault

On action pro socio—& Report of Arbitrators

№2106
Mowat
v
Beardow

} on action by Sheriff to recover the amount of monies paid by him

Mr Taylor for Pltff. The Pltff pd the amount of goods, &c. intent — and claims to be reimbursed by Defendt —

Mr Stanley for Defendt The Pltff has not been made out his case + That can be no verbal evidence admitted in this case — being the evidence to establish the debt of a third person — moves to reject the testimony of Mr. McGill — as is the testimony sufficient + it does not prove the sale & delivery of the goods —

Fell on Saturday 7. to 13 —

Mr Taylor in reply — This a commercial transaction — goods sold to Defendt — on Pltff request — 2 Starkie on Ev. 787. — Esp. on Ev. — the party who has sold the goods may be a witness — Bells Com. 646 — 647. — 3. Tamb 157. 8 —

№740.
Fisher
v
Dillon

} action on Promissory Note —

Borden for Pltff — Defdt has pleaded presumption — he has been examined on oath contrary his answer insufficient

On Petition of
Donald Kennedy

Mr Fisher on behalf of Duncan McDonald, the step Father & Alexr McDonald the maternal uncle of the person to be delivered produces the affidavit of Sr Alexr McDonald as ground for a day over to prove that no marriage had taken place -

Tuesday 18th June

Pres.
Ch. Justice & Justices Pyke & Rolland

№1304.
Irvine. —
v.
Deseve —
&
Sullivan. T. S

On merits — by default —
Mr Bleakley for Plff — prays Judt on default of Garnishee —
Sullivan — owes entire sum from 14 March 1830 —

№1910
Robertson adl
v.
Janes —
&
Dickenson adl
ofpts

To ascertain the principle on which the dividend is to be made — and as to the payt of Costs

2361
№2245
Newbould
v.
Frosts —

action for money lent & advanced
Mr Griffin for Plff — Defts drew a bill on N. York which was accepted — to pay the amount of acceptance Bunbury borrowed 550 dollars from the Plff —
On 2 first counts Plff cannot recover — but considers the other Counts sufficient to maintain the action — That is evidence of the approval by Defendts of the agency of Bunbury on the part of the Defendts, & that approval of his borrowing the money from the Plff, and his

his promise to pay—
Poth. Mandat. № 107— all acts done before bankruptcy of Dep[t]— must be binding—
Id. № 80. 448. Long on Sales. 224. 3. Chitty. 197 on Com[n] Law—

№ 79. Poth. Obl. Evans transl[n] principal bound by act of his agent acting within his power—
3 Chitty. 197–8. assenting to what agent has done—
Long on Sales 228—

Poth. Obl. № 449. 453— Long on Sales—
545 Comyns on Contract

Mr Gale for Defend[t] authorities cited do not apply to the Case— the proof is sufficient on all the Counts— Bunbury & M. York was the agent of Defend[t] to receive & pay their bills, but never gave him any authority to borrow money— the bill of 3^{d} March was paid by Bunbury— the money borrowed by Bunbury was never put on the footing of paying this bill, but on his own acct— & he never thot of putting the loan in the shape he now does until he heard of Defend[t]s failure
The receipt given by Bunbury dated on June[t] 1831, was given after the failure of Dep[ts]— The receipt of Bunbury's clerk is not true, as the money then mentioned was borrowed to pay Dawson & Co[e] wh Bunbury had borrowed on his own acct—
There never was any assent given by Defend[t] to Bunbury's transactions—

Mr. Griffin on answer — The volume shews that B. had authority to borrow from Depts

—

№ 1386.
Rousse
~
Ranger

action on deed of Sale

Mr Pettit for Plff — the deed is stated to have been made the 31st June, a day not known — has amended his declaration, and made it as of 1st July 1828 —

Ogden, Sol.
~
Devins, Con.
&
Burton Ld.

Mr Buchanan

action founded on will of Genl Christie by which he gave a certain legacy to certain of his sons, directed it to be laid out in a certain way on interest & that interest to be applied to their Education — Gab. Plenderleath, one of legatees, attained the age of 21 years & died in Ireland intestate the action therefore is to recover the legacy of G. Plenderleath with interest —

The will of Genl Christie was deposited in Mr Papineau, it has been produced & proved G. Plenderleath appears to have been born at St Ann Martinique in 1776 & from evidence of other witnesses it appears he must have been more than 21 Years when he died the agent also in England proves his age — as to the death of G. P — see answers of Defts —

says

says he presumes G. P. is dead - a person in Ireland speaks to him - there are also letters of administration taken out in England of the Estate of G. Pendelbath, qr carries a presumption of his death -

Mr Chs Mondelet - The action cannot be maintained, it is an hypothecary action & not alledged that the property now possessed by Defdt was specially discribed, nor ascertained to have belonged to Genl Christie - The death of Gab. P- his age - & his death must be proved - but none of them are sufficiently made out, & particularly his death - Wm Corbett says he has notified in all the public papers requesting a certificate of the death of Gab. P- & offering a reward but no such certificate has been found -

Perrault dat - Nixon } action for house rent - on Verbal lease -

Mr Peltier for Plff - objects to a part of the answer to the 8th Interrogatory - as it contains a kind of Incidental demand as Plff - on a ground to which it has no reference -

Berthelet & Dumont & Dumont opt } Bruneau for Plff - contends that the act which was passed subsequent to the Deed by Defdt - is invalid & cannot operate as to his Creditors - contends also the validity of the other act executed before Dr by reason of the transaction between Defdt, the opposl & the Plff & other Creditors -

№1775
Bradbury
dal
Melzer

action on a composition for a dividend
Stanley for Defendt has tendered £30.10
as the amount of two instalments – By Exh.
№1. the amt. on pl Pltff claims a dividend
amounts to £276.3.11 – abatn but down to
June 1827. & upon bal down to Sept. 1827 – & to
different other periods, all bearing interest on
interest. 3 or 4 times every Year – Contends that
Pltff is not entitled to any interest on his demand
but allows him simple interest wh would make
a deduction of £8.12.7, this is also to be deducted
Pltff proved amt. on Defendt several Journ
Jnrs proved by receipts filed –

Grant for Pltff contends he has made
out his demand as stated –

№2107
Mills
v
Fullerton

Pltff moves for Judt by default
Mr Day for Defdt says there are no
exhibits filed. –

№1696
Andrews
v
Hanton

action for Land submitted to the arbitrs –
Mr Grant, moves for to enter a retraxit for
£58. abated by Defendt on another count, and
moves for Judt. w Costs

Mr

Mr Day for Defendt — the Pltff cannot recover
even allowing this rehearsal —

No 781
Duplanty
to
Bienvenu

Action for work done — upon reference to Exr
their report argued in —

No 2203.
Dawes
M'Eachern
& M'Vean Extrs

Action to recover damages for wrongful
detention of a house belonging to Pltff —
Borton was heard for Pltff — states that the
Interruption has been illegally made, as
the Lease had

Rule discharged

No 2169
Moses
Archambault

On Report of Arbitrators —
Mondelet for Pltff — This report must be
confirmed, there being no objections — & with
costs as above £30 —

Wednesday 19th June.—

Present

The Chief Justice.—
Justices Pyke & Rolland

No 171.
Ex parte Gibson — on Petn in confirmn and Cicot & Bachand opp^{ts} & Demers. Gast — Judgt—

No 2625
Moncur. — v Wilkie — Judgt

No 2201
Leslie & al v Deshautels — Dismissed

No 2187.
Fisher. — v Griffin — Judgt admitting sufficiency of tender—

No 1428.
Rasco v Desrivieres — Judgt— rejects part of Defendt answers on former decision—

Rules of Police of Corporation of Montreal — Confirmed—

No. 1149.

Smith — vs. Brown — Divrs. opps.

Opposition of Mr Gale dismissed, and the title of Mr Perry the adjudicataire confirmed —

La Fabrique de Sorel — vs. Jones. —

Plff allowed to amend —

No. 188. —

Smith vs. Porlier & Rossiter Intis

Rule obtained by Mr Rossiter for the Contrainte discharged —

No. 368.

Cheney vs. Field —

Plea of litis pendence, maintained

Thursday 20 June 1833 —

Pres.
Ch. Justice Reid
Justices Pyke & Rolland

No 752.
Rolland & Ayers & al & Desrivieres op

The Opposants exception claiming under his right of primogeniture dismissed —

No 81.
Mc Gill & al vs Burton & Desrivieres & al — opp

Similar Judgt

Anderson & al vs Forsyth, Con

Similar Judgt —

No 2406,
Mowat — vs Beardow

Judgt for Plff — on J. Pyke's note —

No 1681
Caron vs Hamault — Con

Saisie-arret on Judgt obtained in the Inferior Court dismissed —
Diss. Mr Ch. J. —

№ 2292.—

Fournier & ux vs Bowsteads — Action by apothecary for £7. 10— for arrears of a rent viagere maintained—

№ 1416

Nelson val Beaufils — Judgt

№ 320

Boston vs Duff — Judgt

№ 2664

Boston vs Gray — Judgt

October Term 1833.

Tuesday 1st October.—

Pres.t
Ch. Justice Reid
Mr Justice Rolland

Mr Justice Pyke was unable to attend from indisposition — and Mr Justice Uniacke was absent from the Province.—

No. 2437.
Ex parte — on Petition of Jos. Comeau

On Petition read on Thos Bedouin a Notary public should not be held to give the original rolls deposited with him — Party appd & petn dismissed answer

No 1183.
Masse
—
Brien

On Dep.t mo. to be heard on objection to the testimony of Jos. E. Mignault.—

Objection for a Deposition contends that the Wit.s is competent to answer to questions proposed, as to the avowal made by Depn.t
Moved for Depn. obj. O. Demers v.s Notaire
The Notary cannot speak to any thing that passed

passed at the time he signified the non pleas
at the instance of the pltf.—

Wednesday 2d October.—

Prest.

The Ch. Justice & Mr Justice Rolland

Bourgeois
v.
Parent

Depr mo. to open the Enquête—
rejected —

No 2297.
Roi
v.
Bissola

Ac action to expell Defend— prove the
loan he holds.—

Gale for Defr— The law does not apply
to cases in term — as the rules of the Court will
apply as in other Causes —

The proprietr has 3 grounds to expell his
Tenant— 1. want of furniture — 2. waste committed —
3d — holding over, after expiration of lease —

No 2083.
Fowler
v.
Fry —

Action for wages — mo. that fait and art. be held admitted.

Walker for Defr The Pltfs mo. to have the
Interrogs declared as admitted, cannot be granted
as they are not of a nature to support the demand.

not

not being shewn in a way to carry a conviction of the Lunacy —

Thursday 3d. October. —

Prest.

The Ch. Justice & Mr Justice Rolland. —

Blanchard
Smith & Lindsay } on trial by Jury —

Abner Bass — 120 parties — & particularly Pluff from his youth — was Clerk to Bs 5 or 6 years ago. left him in 1828 — considered him of good character — assisted him to get into business — has a recpt. of his purchase from Dyde — In Jan. 1829 — Lindsay offered some hats for sale to Bs — looked at them considered them too high in price — took hats the Pluff afterwards purchased & gave 10 or 12 ℔ cent more than Bs. offered — the terms of payt. were 4 & 6 months — the amt. was about £350. — considered the credit given nothing extraordinary at that season — was not pleased wt. Pluff's conduct in having purchased the hats gt. Bs had bargained for — Pluff offered a part of hats to Bs — he took the half of them — & gave his notes on Pluff & Dudley a debt of £78.3. gt. Pluff owed Wait & Bass —

173

The whole amount of purchase of Wz was £173.– The notes given by Brother of Wz were made payable at same time of Pfff's notes to Defde – Thinks this advantageous to Pfff, as a retail dealer the purchase being too large for him –

Thinks he was consulted in December 1829 if a sale proposed to him by Bridge of his stock in trade –

In Jany. or end Dec. Pfff disposed of his stock in trade to Mr Bridge – Pfff d. his object was to go into the whole sale business – Sale took effect – Not it advantageous for Pfff as getting quit of his old stock payable on good security – Bridge was then in good credit –

In Jany 1830. Pfff's credit had suffered from debts he owed –

Then was nothing in the sale by Pfff to Bridge was apparently honest & not wt a view to leave the Province – d. he wanted to raise money to send a bill to England to get other goods from France – wanted to know how he should remit –

Thinks Defde wd have been p. the first note, perhaps the 2d. if they had not arrested Mr Pfff –

Thinks Pfff has suffered very materially from the arrest – & particularly in consequence of the failure of Bridge – & this brot on necessarily Pfff's failure – Bridge failed 8 or 10 months after the sale to him –

X

The debt Pfff owed to Bagg & Wait was contracted

in Spring 1829 — he opened a Store near the Defts Store — Thinks Pluff was rather a Stranger to Defts at time of his purchase —

Wr called twice to see the hats in order to purchase —

Saw met Pluff at Defts store by chance, & there exam[d]. some of the hats together — but had no conv. that Pluff had any intention to purchase does not know what other business Pluff had there but to ex. Straw hats —

Thinks that he had told Pluff before his purchase his offer he had made of Curry for this & that for his & that Defts had refused his offer —

That Pluff purchased the hats at 10 a 15 p[r] Cent more than Wr had offered —

It must have been after he met Pluff at Defts Store that he had told Pluff of his offer to Defts —

Pluffs purchase was made about end of Nov 1829 — & bot about 10 a 15 days after Wr spoke to Pluff about taking one half of the hats — The Sale of Pluff to Bordge was made 3 or 4 days after —

Pluffs Stock before his purchase from Defts was small — not above £300 —

Recollects that Mr Lindsay called at Store of Wr in Nov or Dec 1829 — but not that he enquired of character of Pluff —

It might have been an inducement to Wr to buy the half the hats to get pay of Pluffs Debt —

Is not positive that the notes given by his
brother corresponded wt. date of payt. of Pluff's
purchase, but it was a condition of the bargain.

Thinks that he stated in his evidence on a former trial
that Bagg & Wade had requested of him to press
Pluff for his note — That he had more than once
asked Pluff for the debt, & that he knew Pluff owed
other persons —

That the delay given to Pluff by Defts showed
them to be liberal merchts — & pltf. would not
given Pluff such credit — might have given
him some credit for a small amount —

Understands Pluff intended to import from England
such hats as he had bot. from Defts — does not
think he could have imported them cheaper
than what he pd to Defts —

Pluff & he that to get out his goods in time from
England to meet the last note due to Defts
Pluff was indebted to a House in England in £170 Stg
& it wd have required a sum of £220 Cy. in Montreal
to discharge that debt —

In January Pluff & he was seeking to buy bill
on England wh Bridges's notes, but people wd
not take them notes —

Bridges notes were payable in £, 6. & 9 & 12
months after date —

Does not think that notes at 6. 9. & 12 months
could be taken for bills of exchange —

Arrest on 29 Jany 1830 — Pluff had purchased
no

no bill of Exchange – bills sent from Montreal in June may reach England from 40 to 45 days. many vessels leave England for Canada about end of March & beginning of April –

W. used to send his orders with the last ships from this Country – but now it is usual to send such orders about the end of Dec by the way of New York –

Thinks that if Pluff goods had arrived in June, he would have been rather late in the market –

That Bridge had little capital, but people had a good opinion of him –

The profit on retail of hats of 20 to 25 ℔ Cent is the usual comm & commend good –

Morrogh – facts admitted of arrest, & dismissal of Defts action at Pluff –

Walter Field – merch. in Montreal – for Pluff several years – Rs he was engaged in 1826 & early part of 1824 in tolerably good business – W. proposed entering into partnership with him in Autumn 1826 – & W intended to invest what capital he had in business w Pluff – from the kind of business he appeared to carry on –
was surprised when he heard of Pluff arrest –

Pluff

Pluff shewed Wr a letter shewing he had established a credit wt a house in England — which W considered as advantageous to Pluff — & Pluff intimated his intention in consequence of his extending his business —

Thinks Pluff was injured by the arrest — & his credit must have been affected by it in England —

Thinks that Pluff could have pd the Deft's had he not been arrested — by means of his own credit & Bridge's note —

Bridge failed in fall 1830 —

X^d.

When Blanchard commenced business he had but small means — in 1828 —

Saw letters in Pluff possession that he had a credit in England. this was in Jany 1829 —

Saw Pluff at Deft's times in Jany 1830 — did not suspect he was going to leave the Country — he S. he was looking for a store — did not know of any apparent property Pluff then had — was induced to become partner wt Pluff from the kind of business he was carrying on —

Stanley Bagg. Has known Pluff for a number of years was in employ of Wr brother — he is a native of Canada — his character is that of a steady young man — In Jany 1828 the Pluff began business in the hat way — In March 1828 — Pluff purchased hats to amt of £327 — from Wr — payable by instalments

In Autumn 1829 Pluff had pd this sum to about £80— There was a running acct— w. Pluff besides this transaction— The whole was closed in fall 1829— the balce due to Wm was £78.

a part of the hats purchased by Pluff came into hands of LeRoi & Co— by agency of his brother— The half to amt of about £175— This was settled by deduction of Pluffs debt & the balce payable by two Notes in 3 & 6 months—

Wm was one of Pluffs bail after his arrest— thinks that Pluff has suffered damage by the arrest— and thinks if he had been in the situation of Defendt he would have recovered the Debt, particularly if Bridge had fulfilled his engagements—

In Decr 1829— Bridge was in good credit & Wm sold him goods after that period— he became bankrupt about 8 a 10 months after the transaction w. Pluff—

Always thot Pluffs conduct honorable— Considers the transfer by Pluff of a part of his purchase to Wm— as an ordinary transaction particularly when a retail dealer makes too great a purchase— & then Pluff was induced to do so as brother of Wm had expressed some feelings about Pluffs having taken that bargain from him—

Thinks the sale by Pluff a very fair transaction

7

The Puff intered into business in Jan^y 1828. on his own^s account the employ of his brother —

Bass & Wait sold goods to Puff to amt. of £327. out of the remains of Stock of as they were then breaking up this branch of business they were then carrying on —

Bridge had been in employ of Bass & Wait, and began business in 1828 — after Puff had purchased the goods from Bass & Wait — They made a small advance of hats to Bridge — & he also bot some of the stock at public Sale —

Has heard that Bridge's credit was getting low in Summer 1830 — but he kept his ground w^ch ^s —

Does not consider the debt Puff owed him in Dec 1829 to be in jeopardy —

Understood that funds had been placed in some persons hands to screen persons who became bail for Puff — and he thought such security was a prudent measure —

Mathew Campbell k^s Puff & knew him in 1829 — knows that Puff sold hats to Stanley Bass in Dec^r 1829 to amt of £175 — Puff then owed a bal^ce to Bass & Wait, & deducting this, Bass gave his note for balance at 3 & 6 months —

Puff spoke to W^m in Autumn 1829 of an offer made to him by Bridge — of his whole Stock — and asked the opinion of W^m who s^d he thought it was advantageous — Then was no concealment used about the matter — Bridge's credit stood

stood fair at the time —
believes that Defendt would have been
pd their debt, had they not arrested the
Pltff.

The Pltff. & his intention in selling off his
Stock was to enter on the whole Sale business.

Consulted Wr about the amount of money
he could raise to procure a bill of exchange
Thinks he could then have raised about
£200 —

Hears see a correspondence wh Pltff from a
House in England of a credit he had there
which was favorable to him — and if
he had made a remittance, he could have
obtained a further supply —

Saw some of Bundy's notes to Pltff. some
of them indorsed, which could have been
negotiated —

That soon after sale to Bundy. he saw his
name on the Shutter —

Thinks the arrest has injured the Pltff
& he has done no good since — is now a
Clerk to Mr Fenton —

x[2]

Wr has been several years wh Bagg & last
at time when Pltff was a Clerk there — he
has been intimately acquainted wh Pltff

When

When Pluff commenced business in 1828 he had little means — the chief part consisted of what Bass & Wait sold him in March 1828 —

After the sale to Bridge, under Bridge, Pluff had outstanding debts due to him —

That one Mills told him that Pluff had made application for exchange on England —

That in May 1830 Bridge's credit was good & he made considerable purchases, from Ritchie Sheldon & Robie. — Does not know what his means then were. —

Thinks that Pluff had sufficient means to pay ~~Pluff~~ ~~Dft~~ in Bass's note. Bridge's note & outstanding debts —

We made out a statement of Pluff's means & his debts a short time before the arrest & he found a small balance in his favor under which he exported his goods from England — Pluff owed Defendt £350 — also to Fisher & Co & to some others —

Bridge failed in Oct or Nov 1830 —

Thos Sorrow Brown — Is Pluff — about 6 years — In 1829 Pluff was a bailee — heard of his sale to Bridge — heard that Pluff had been arrested, & Pluff applied to him to become bail for him — after Pluff had been in prison We became bail & 3 notes of £50 — each & other notes of £45 —

mr

in cash, the whole amount being £345 — & upwards — one of notes was a bon for borrowed money —

Shortly after Pluff's brother brot. his books after the arrest — & from what appeared by them Pluff had sufficient to pay all he owed —

It is advantageous almost at all times for a merch.t to dispose of his old stock —

Tho. with the funds in the hands of Pluff he could have procured up to £200 & have paid. also the just balance due to Defdt —

X —

There were 3 notes of £50 each & afterwards two more of same amount & other notes to amount of £345 — The last four notes of Bondy's were not paid —

Pluff did not get up stamps —

Peter Teulon, to Pluff — heard of sale by Defds to Pluff — heard also of sale by Pluff to Bondy as Pluff then owed him & called on him to know how he had disposed of it so as to pay the debt he owed — Pluff s.d that Bondy had given him several notes endorsed, & the others were to be endorsed — That he had applied for cash or both of Epsh. for them to the

amt

amt. of £200 or £300 he owed in England — England how he meant to pay Defts he said w.th the remainder of the Notes he would be able to meet their demand — asked how he meant to pay the other debts — he s.d there were a number of debts due to him & with these he meant to pay them debts — he ment.d the debt due to him by one Barnard of Niagara of £40 — gt he expected — ~~stated if~~

Obj.n — to this testimony — admitted —

That from the information he rec.d he was satisfied that debt of Ws was safe —

That next day he had some conversation w.th Defts previous to the arrest — and the day after the sale to Bondy as he thinks Mr Smith asked W if he did not owe him money, he s.d yes a note — what he that of the sale to Bondy, if it was honest — W s.d that at first he that it a very ~~sus~~ suspicious ~~sus~~ sent had gone to Pluff for information — & he was satisfied the transaction was an honest one. W. told Mr Smith, That Pluff had rec.d Notes from Bondy, but of a Date that he could not see them — That Pluff was about buying debts of Ws & to pay a debt on England — Smith s.d. if Pluff did shew him Bondy's Notes, he might take them himself for his pay — requested W to see Pluff on subject, but did not see

him

Smith told him how the circumstances of the sale — that Puff had purchased the goods for retailing them — asked W. if he did not think that Puff had sold his goods in order to leave the province — the W. s^d that the only way he had to pay his debt was to sell all his old stock — S. asked if he w^d not be justified in arresting Puff — W. s^d he could arrest him only on his having purchased the goods on false pretences as he had purchased the goods on pretence of retailing them — W. s^d or Puff could not on the note when he afterwards sold them in lump
him he could not on them else where — & did not think he meant to leave the Province — This was 2 a 3 days before the arrest — Something was said about Mr Vaughan, that Mr Smith a his clerk s^d he had given some information of the sale —

When Smith asked W. if he that he could arrest the Puff, W. s^d if he did, he would expose himself to an action — if he arrested him it could be for obtaining goods under false pretences —

Debt due by Puff to W. was £28. 9 — has never been paid. —

Knows that a Debt was due to Puff in Cornwall of £40 — by a man in Niagara —

Knows that Pluff has a note of a person in the Towns Ships, & the debtor has promised to pay —

Pluff offered to shew W. the papers he had of the sale to Bridge — he did not seek to conceal any part of it. —

He generally sends his orders to England in January for hats — it would take between 2 & 3 months before the return of the goods as it would depend on the winds. —

Was surprised when he heard Pluff had been arrested, the more so from what had passed between him & Smith —

x2

Has been P. his note since the arrest out of Pluff's ways —

That it was a few days before the arrest of Pluff, that he heard of the sale by Pluff to Bridge when he first heard of sale — he was anxious to secure was debt — as it appeared at first suspicious — but was afterwards satisfied the sale was advantageous — Did not tell Smith that he thot the Pluff was about to leave the Province — told Smith that if Pluff would not use the notes here when the parties were known he could less do it when parties were not known — That Bills of Exch. may be had at Newfle as well as here —

Smith appeared very much dissatisfied with the information he had received — & he would be wrong to prosecute him —

That Smith proposed to take Bridge's note to amount of their claim which he considered as advantageous for both parties —

Duff proposed to use the earliest note to the purchase of a bill of exchange —

Sperry vessels sail generally from Liverpool about 6th April. —

That Mr Slater was present during a part of the conversation he had with Mr Smith —

If Duff had not purchased the goods from the Defts he would not have got exchange but from his other means — & the sale of goods are seldom convertable into money in six months, unless they are of a very saleable nature —

Thought that Duff might owe about £700 about the time of the sale to Bridge —

Knows not what other means the Duff had to pay his bonds & outstanding debts, some small debts he rec'd., Mr Bridge's note & Mr Bates's note —

John Dougall — In the year 1830 he knew the Bridge — not necessary in purchasing bills of Ex. to have paper of first hand, but bills of Ex. may be bot. for any kind

A

of paper— That it would depend upon circumstances whether Notes of 3 6 & 9 mnths ~~could~~ of exchange could be procured, that by giving a little money & the paper was good, such Exch. might be procured.—

That he has not kn. that such exch. has ever been procured, but thinks it might— That Exch. is high in winter—

James R. ~~Abbott~~ Orr— is acquainted with a House of Medley & Wilkinson of Colne hat furnishers— extensive manufacturers— has corresponded with them— and he believes the signature to the letters now produced ~~tho~~ to be of that firm— he holds a power of attn from them—

Has carried on business in Montreal for 3 years— it must depend on the number of workmen for that house to prepare hats & amt. of work in ten days— he generally sends home his orders by the fall vessels & early in January—

Wm Thompson— merchr— in 1830 knew Bridge heard nothing of his standing in Summer 1830— he endorsed one Note for him of— was pd. has lent him small sums in August— of was paid—

The note he indorsed was for about £40 payable in 3 months — The small sums he lent were repaid —

Wm Clarke Vs. Mr Smith. Defdt met him in Jany 1830 had a conversation wt him about the arrest, Mr Jones came into the room & Defendt to speak about the arrest the Pltff — Jones advised strongly Smith to arrest Pltff on the information he had received — Mr Smith at first seemed doing so, & he would sleep upon it before he took the step as it was a delicate affair — and after Jones went out Mr Smith made the same observations — The Defts Sd that according to the information he had rec'd were true he was right to arrest the Pltff — but the thing appears in a different light to the Defts now —

That Mr S. said it was the first time he had been called upon to arrest any person, & that he would sleep upon it —

Sam[l] M[c]Clure – 12[o]. Puff – for many years – considers him of honest & industrious habits –

Here the Court stopped the trial on account of the lateness of the hour, and committed the Jury to the charge of the Sheriff till to morrow morning at 9 o'Clock. to which hour the Court adjourned

Friday 4[th] October.

Pres[t]

Ch. Justice & M[r] Justice Rolland –

The Court being met, the Jury appeared and were called over –

William Spencer – ex can[e] on Vacation, knows the partnership of Midgley & Wilkinson in Colme & proves the handwriting of [&c] & parts to the different exhibits spoken to – They are merch[ts] & deal in making hats & hat trimmings –

Jeremiah Blanchard – brother of Puff – objected to as an incompetent wit –
says he was clerk w[th] Puff in June 1828 – he sold his stock to Bridge in Dec[r] 1829 – the Puff sold in detail as well as in whole sale – he

he kept books of acct in gt Brit. of Pluff
also made entries —
When he sold to Bridge the Pluff was solvent
there was due to Pluff £883. 13. 7. this composes
the amount of sale to Bridge, there were
besides some small debts due to him —
That Simpson. & others were persons wt. whom he
dealt, who lived in the Country —
That after all his debts paid, there might be
a balance in his favor of £20 or £30 — but he
cannot speak positively —
Knows that his brother received letters from
a House in England — Pluff was engaged in
preparing an order to forward to England
on a Monday, & was arrested on a tuesday

£.

The note now ~~given~~ in his hands was delivd
to him by Mr Brown — The last time he
saw the books was when he left the employment
of Pluff, at the time of the sale to Bridge —
When the Pluff was arrested, Wits did not know
what means he had to procure bills of Exchange
but he was told by Pluff that he had made
arrangements ~~for~~ with Mr Wills for bills of Exchange —
The Pluffs books were regularly kept — and the
debts & credits of Pluff were entered in them — The
debt the Pluff owed to Dyonde was entered in
these books —

Louis Dyo Salanove, merchr. — Knows Pluff — for 9 years past
saw Pluff frequently after sale to Bridge
he

he was often w^th Pluff — Has a knowledge that 2 or 3 weeks before the arrest, saw his uncle w^th the Pluff who was writing out orders for the Pluff to send to England for goods — W^m saw these orders 2 or 3 times — the amount might be about £1000 to £1200 — ~~The Pluff applied to~~

Thinks that bills of exch^ge may be procured for notes of 6 or 9 months on their being deposited as a Collateral security & a note given for a short time to run —

Thinks that there was a good deal of exchange in market in Dec^r 1829 & Jany 1830 —

The character of Pluff is that of an honest man & not likely to be concerned in any fraudulent transaction —

Pluff proposed to put some money into the hands of Pluff to purchase furs — ~~had~~ would have advanced to the amount of £250 — had the arrangement been carried into effect. —

Pluff did not seek to conceal the sale to the Bridge, he mentioned to him before it took place & advised him to it, as the stock was old —

Was surprised when he heard of Pluff's arrest. That the name of Bridge was over the door long after the sale —

X^e —

Never obt^d bills of exchange on ~~bills~~ Notes of 6 & nine months — nor otherwise — but the thing occurs frequently —

The rate of exchange determines the quantity of Exchange —

believes that in June 1830 – the exchange was 12 pr ℔ Cr. and high,
That had the Pfaff succeeded in getting bills of Exchange, the proposed arrangement might have taken effect –

Henri Hebert – In 1829 he was in service of Pfaff as foreman in his shop – knows that Pfaff had a manufacturing shop in the Country – The wife was in the shop in town – was present at the purchase of the hats by Pfaff & Depuy – That Pfaff observed to Mr Lindsay that the hats were dear –
The Pfaff sold hats by whole sale & that prepared hats to be sent to the Country –
The Pfaff appeared to be doing good business –
Saw Mr Lindsay at Pfaff's shop speaking about hats – this was before the hats arrived & saw them afterwards in the shop –

Augustin St Denis – Knew D. Bridge knows that he dealt w[ith] Mr Young, auctioneer, & purchased small sums from him on credit – Mr Bridge paid punctually until lately, when an amount remained unpaid – on act of his failure
Sworn – Bridge over at his shop door –

Letters filed in the Cause –
The transfer from Pfaff to Bridge –

Daniel Bridge. a Wit. exd. on Com. Rogatoire executed at New York.

4. In Nov. & Dec. 1829 was a Hatter.—
5. In Dec. 1829 he purchased hats &c. amounting to £460
6. Pluff was then a wholesale & retail dealer in hats—
7. The amt. of purchase was £460 & included the whole
8. Stock in trade of Pluff — partly old & new hats —
9. Part of hats new — & purchased by Pluff from Defendt.
10. Gave same prices as Pluff had paid —
11. a great of the stock was old & less saleable than new
12. This increased the value of stock —
13. might have bot the old stock alone at a reduced price
14. Granted 9 Notes for the hats —
15. Value of stock was what Wm pd for it —
16. Does not know Pluffs motives to sell his stock, except what Pluff s. that he wanted to enter into the whole sale business.
17. Had no reason that Pluff intended to abscond
18. Pluff was solvent, as appears from Pluffs documents & papers he shewed —
20. Knows Vaughan —
23. Did not tell Vaughan that Pluff had told him not to mention the sale made to Bridge
24. Never requested Vaughan not to mention the transaction
25. Never gave it to be understood that the sale was in any way fraudulent —

Here the evidence for the Pluff was closed

Defence —

Lumen Vaughan ex. on Com^n Rogue —

6^th Inter. Heard that paper of Puff had been dishonoured. & he would not have trusted him — before sale to Bridge refused to give him credit — was surprised when he heard of sale & from the manner it was made he believed it clandestine — informed Smith of the sale & that he was of opinion he would never be paid — he also advised Mr Hough of the sale & Bridge was the first who told him of the sale — & the mode of pay^t by notes of hand —

7 at time of this sale Puff lived & had his shop in St Paul Street —

8 Believes Puffs principal business was in retail — & he never had means to carry on whole sale —

10 The months of Dec^r, Jan^y, Feb^y & March were not favorable for the retail sale of hats —

12 Knew Bridge at time & before — a retailer of hats —

13. Made several sales to Bridge & has lent him some small sums of money — but not occasion to examine thoroughly into his business —

14 It was told by Bridge of the sale to him — & expressed his intention of communicating the fact to Defend^s — which Bridge ~~requested him~~ apprehending serious that he should not do — there was no other request that he should keep the matter concealed —

15 Soon after, he called on Defd^s & told Smith of the conversation wt Bridge & that he believed that he would not be paid, & sincerely believed

that

that Pluff was immediately about to leave the Province. Smith appeared astonished at this information, being the first time he heard of it

16 He intimated to Smith that he ~~told that~~ believed the Pluff was about to leave the Province, founded on the information of Bridge —

17 He also told Same things to Hough & advised him to obtain one of Bridge's notes to pay his debt, & to pay the difference to Pluff in money —

18 Told Hough that he had been with Deputy to approve them of the fact — & it is probable he told all that passed — & advised him to get his debt secured

19 Has heard that Hough did in consequence secure himself —

20 It was the conviction on his mind that it was the intention of the Pluff to abscond to defraud his creditors & believes he impressed that belief on the minds of the Defendts Hough & Smith appeared surprised at the information —

21

1. Was not on terms of intimacy with Pluff at time mentd in the 6th Interrs — & has no other knowledge beyond what he has answered to that Interrs
2. Had had no business with Pluff at the time or shortly before —
3. Had no means to judge of Pluff's trade but by appearance & general report —
4. Was not in Shop of Pluff before sale to Bridge —

5 Had no conversn wt. Pltff on Dec 25 & Jany 30 on the subject of the sale to Bridge

6 Has no recollection of speaking wt Bridge on the subject of the sale but may have done so

7 Has no recollection that Bridge told him that he suspected the Pltff was going to leave the Province

8 It was from conversation wt Dr. Bridge & the state of Pltff's debt at the time that he formed an opinion the Pltff was about to leave the Province

9 There were no other circumstances — than as above stated —

10 Thinks he has conversed several times wt the Defdt. Smith on the subject of their demand agt the Pltff & his proceedings. —

11 He did not assert as a fact that the Pltff was about to depart the Province, but gave it as his opinion to Mr Smith from the facts & circumstances that it was his opinion that Pltff was about to leave the Province —

12 Refers to answers already made

13 refers to answers to 6th & 15th Interrogs. on Exam

14 His suspicions were expressed to Smith & the circumstances on wh they were founded at same time —

15 Never was on terms of close intimacy with any of Defdts —

Horatio Gates knows Lemuel Vaughan whose testimony has been read - now ab New York - he is a Merchant w^h whom he has had many transactions & has as much confidence in him as in any Merchant in town -

Would place confidence in any communication Mr Vaughan might give him -

Bot & Sold Exchange in 1829 & 1830 - He has no means of knowing ch Bridge's means - & not being having an extensive trade, he would not be disposed to give him much credit -

That no exchange except of a very doubtful character could be procured, upon such Notes as Note of Bridge to Pluff - such exchange would not be received here -

Orders sent from this Country to England for goods to arrive in this Country must be sent on or before the first of January -

If the goods were to be manufactured it would be last date, to order hats to amount £1000 or £1500 on first February -

Knows Defendt, never heard any complaint ag^t him as liberal in their transactions - has had extensive dealings w^t them -

If a retail dealer should sell out his stock without knowledge of his Creditor without paying the debts of his creditor it would excite his suspicion - but if to pay the debts it might be allowed -

It would require good paper payable

Exchange is generally scarce in Jany & Febry but has known times when it was not so — The higher Exchange is, the better the prospect would require to be — since the establishment of Banks Exch. is but for ready money —

D

Vaughan was a broker — and imported goods from the States — Silk goods, French & fancy goods — cannot say what the general character of the business carried on ~~smuggling~~ by Vaughan, has heard it surmised that he smuggled goods — his opinion was so, not from any thing certain, but from his coming into the Province by a different road from that commonly used —

Hears no sen. of his private character has [illegible] of him is from the business he had with him —

The passage from N. York to Liverpool in Jany & Febry may take from 30 to 45 days — They have been made in 20 days —

In sending orders in end of Jany or beg. of Febry the goods were all ready & packed. They might arrive here in June — [illegible]

John Frothingham — Mr Vaughan for some time past his character stands fair, & he could place confidence in him — W imports goods from England — generally sends his orders in Nov & Dec for goods arriving in early Spring

Jan

does not think that an order sent from this early in Feb'y the goods could arrive here by the early vessels unless the goods were all ready packed — if a bill was drawn for the goods was sent at that time for the goods, it would require some more time to execute the order — The early Spring Vessels leave Liverpool for this Country about the first of April —

The notes now exhibited to him of Bridge to Pfff. he can say nothing of not knows the parties —

It is not a common case for retailers to sell out their stock without kn. of their creditor — it would excite his suspicion, if the goods were bot for retail & sold afterwards without kn. of C

& Knows very little of Vaughan — knows letter of his hands, has heard it said he smuggled, but knows nothing of it — It has often happened that orders are sent for goods in Lond'n for early vessels. If a retailer sold off his stock advantageously he would not attach suspicion to it —

A vessel leaving Liverpool on first April may arrive here about middle of May — It may require about 30 days to transmit an order from this to London for goods —

William Haugh, lives in St Paul Street — in fall 1829 he Pfff occupied a store nearly opposite — Pfff purchased goods to amt of $10. or $12 that fall from him — Mr Vaughan called on him on Jan'y 1830, he s'd he had just left the Country House of Dep'ts & had

had informed them of the sale to Bridge of his stock for mortgage notes, & that he that they would recover their debt, and that he was getting money for the Notes. & that he that Puff was going to leave the Province on this W. mentd that he had a small demand ag[st] Puff — Vaughan told W. he would better get one of Bridge's Notes & pay him the difference — he applied in consequence to Puff got one of these Notes of Bridge for £25. & the difference to Puff — which he would not have done had it not been to get his debt paid — this note was payable 3 or 4 months after date —

This was the first information he had of the sale by Bridge — the Puffs kept still remained over the door — & he thot. that Puff carried on his business as usual until Mr Vaughan told him[t] the above transaction —

Communicated this circumstance to Mr Smith after the first trial —

George Proctor, Merch[t] — was employed by Dep[ts] as Clerk in a confidential situation in 1829 — knew Puff slightly — boarded at same house kept a retail hat shop — on a limited scale. saw Puff several times at Depends. in order to purchase the hats in question — he seemed desirous to take the whole 10 or 12 Cases

although

altho' the Defendt would have sold a part
for prompt at the agreement for the purchase.
Puff urged for a longer credit than Defendts
were accustomed to give - saying, that hats
were not saleable at that time & not be
till Spring - that he did not possess much
Capital, he would wish to have time to sell
the hats in order to pay them & did not
wish to disappoint Defdt. The Defendts
were induced on this acct to grant the
delay required - Puff distinctly stated that
he had no other means to pay the hats but
as he did not expect to sell them before the
Spring, as he wanted them for his retail
trade - does not think Defendts would
have otherwise given the hats, but Puff appeared
very candid in saying he had no capital
& could pay them only from sale of the hats -
Does not think Puff would have got them
otherwise - Puffs shop was in this neighbourhood
& Defendts had no other security, but that
circumstance & the Puffs honesty -

Puff he believes was a stranger to Defendts
& it appeared a liberal conduct in them to
Puff -

Remembers that Vaughan called on Defdts
in end of Jany 1830 - until then the name

of

Puff was still on his shop — Wm passed
then almost every day 2 or 3 times — and
sometimes looked into the shop on passing
and saw business going on as usual —
When Vaughan came in he asked if Puff
was indebted to him, he said he was — he
then asked if Mr L was aware that
he had sold his stock to one Boodge
L. & he was not — Vaughan & he was
glad he was not a creditor, as he wd
not have given him credit for 6 months
past — and in substance he said that
Puff was going to leave the Province
Vaughan & the sale was made for
unobtainable paper — had known Vaughan,
and placed confidence in what he said
on that occasion — Vaughan had no
other business w Mr Lyons but called
as possibly to acquaint Mr L w the above
Mr Lyons had had only one transaction
w Vaughan before this —

~~Bob. obtained~~ This communication
had the effect to create on his mind the
belief that the Puff was about to leave
the Province & appeared to him the same
effect on Mr Smith —

Continued

Considered the purchase made by Puff to be advantageous as the hats were sold were sold at 20 ℔ Cent under the known price — and thinks Puff ought to have realized 40 ℔ Ct at least — Considered that Puff was bound to retail them as agreed on — it excited the astonishment & his suspicions when he heard that Puff had sold the hats to Bridge and if he refused to give the notes he got for the hats, he would have that it a breach of contract — Thinks that Vaughan said those hats had been sold w^th the old stock.

That it was with abundance Smith said out the Capias upon Puff —

That Puff called afterwards but Smith was not in —

Knows no instance but this in which the Defend^ts have arrested their Debtors — if they had he would have known it —

x^d

Was something more than a year in employ of Puff Defd^s —

Thinks he gave his evidence in Spring in the Suit of Defts against Puff — was required to give all he knew on that occasion touching the matter which he thinks he did, and in substance what he has said to day — Thinks that he said then that Vaughan had said he w^d not have

sworn

grain credit for six months before — also that Vaughan had said that Duff had sold out his stock in trade — That he said that the insinuations ~~were~~ he grew out of Vaughan ~~that~~ limited to the belief that Duff was going to leave the Province — does not recollect the words he used, but that ~~they were~~ they were ~~to~~ to that effect —

Duff urged strongly to have the hats for his retail trade in the Spring & that he must realize from the goods before he could pay them ~~goods~~, he urged this as a reason for getting the goods and the delay to pay them —

Does not think that Vaughan used the word, that it was his opinion but that he was going to leave the Province

Had Duff so? he would still the whole the Defts would have had a right to controul the sale, or would not have let Duff have the goods —

The Court directed the further hearing of the Case to stand over till to-morrow at nine O'Clock in the forenoon, to which hour the Court adjourned, & committed the Jury to the charge of the Sheriff —

Saturday 5th October.

Prest

The Ch. Justice & Mr Justice Rolland

The Jury being brought into Court were called over & appeared

William Suter — was a clerk in the employ of Defds in 1829 & 1830 — Defendrs in fact had a quantity of hats on consignment of a London House Borradale Sons & Rundell. Defendrs were to recvd 5 ℔ Cent — There is also a guarantee Comn of 2½ more — but the Defendrs did not guarantee the sales of these hats — Recollects the sale of hats to Pluff in 1829. The Pluff called several times on Mr Bagg to look at the hats — on one occasion they came together to examine the hats — knew Pluff slightly at this time, seeing him occasionally only at his shop door — The Pluff purchased to amount of about £350 — on a credit of 4 & 6 months — The usual credit Defds give is three months — The Pluff insisted on 4 & 6 m. credit, that he might have an oppr to retail the hats, as he had no other means to pay them, & in that season of the year he could not retail them

Was

was surprised Mr Lindsay gave so long
delay, but heard it was at the instance of Mr
Bass — The business of Pluff was then
limited — The months of Dec & Jan are
not favorable for retail of hats — At that
time he did not know what means Pluff had —
Gave note to Defdt at 4 & 6 months — he
never paid for the hats — Had it not been
for the repres[entation] of Pluff as to the means of
retailing the hats does not think Defdt
would have given the time demanded —
Pluff was a stranger to Defdt at time
W used to pass daily the shop of Pluff,
during all months of Dec & Jan the name
of Pluff was over the door, Def supposed
he still owned the shop — never heard from
Pluff that he owed to Bass — or that any part
of the hats had been transferred to Bass for
the debt — That Pluff never said a word
about a wholesale business — does not
think it cd have been reasonable for him
to enter into such wholesale — Pluff never
intimated that he had any other view of disposing
of the hats but by retail, nor cd he have
obtd the credit from Defdt if Pluff had
intimated an intention of disposing of the hats
otherwise than by retail — This was the only
security the Defdt had — Observed the Pluffs

slate

Shop to be in usual state — The hats were beaver hats — After the information given by Vaughan to the Defendt visits the Defts debt in jeopardy — went to Puffs store but was told the Puff was not there & that the Store & Stock belonged to Bridge. — The opinion of the Wit was from what he heard, that the Puff was going to leave the province, & thinks he so told Mr Smith — and knows that Mr Smith had great reluctance in suing out the Capias Puff — & thinks that if Defts had any former transactions w. Puff he w.d not have done so — Wit. made enquiries into the character & credit of Puff & was not informed w. a favorable opinion, but the contrary — he afterwards called at Mr. McNiders, to enquire about the conduct of Puff — whereby he saw Blackstock the clerk of McNider, who is now in the States — Has seen the Invoice of the hats sent to Defts from London, & considers them reasonable, & Defendt w.d have been justifiable in demanding 50 p.cent on that Invoice — These hats were sold on favorable terms to purchasers as Mr Lindsay was about going to England — & on the cash the hats were sold low to Puff — and thinks Puff might have realized 35 p.Cent —

Before the information given by Vaughan, never rec.d any information from Puff, of his sale either to Bass or Bridge —

~~That very doubtful Note~~ ~~Note by certain~~
Depts have dealt in Exchange – it is considered a Cash article or by good paper at 3 months – never heard of exchange given on note of 6. 9 2/12 months even of good paper – doubts if Puff could have obtd exchange on renewed note of Mr Brodie –

The usual time for sending orders to England for goods by early Spring Vessels is on Dec or by 8th Jany – never heard of an order sent from this place on 1st Febr. the goods could not leave in England before the end of April – For a merchant who was desirous of getting his goods early, he ought send off his orders in Nov or early in Dec –
– Never heard of such a sale by a Retail merchant of his stock in trade as that made by Puff – it excited his suspicions – The sale of such stock must be made at a sacrifice, –

I saw Mr Fenton – at Depts store, when he mentd having a Note of Puffs which was due for some time –

Vaughan was a man on whose confidence might be reposed see Mr Smiths place he wd have given credit to what he said

F

Puff now in business for himself – a confidential Clerk of Depts –

Never said to any person that the reason why Vaughan was not brot up as a witness on the first trial, that the Defendt had no confidence in what he would say.—

Richd Robertson— Carpenter & Joiner— was called in Oct 1829 by Pfff to fit up a work shop behind his store— it was for making hats— the bill for this was about £10 or £15— found great difficulty in obtaining part of this money— he at last was glad to get any thing— he did not know of the sale to Bridge until he sent for a hat for one of his men, when he learned that Mr Bridge had the store was his— but Pfff came forward and sold him a hat—

That in the fall or winter before the arrest. he learned from Lalanne when Pfff boarded that he was about going away, which he understood to be, to leave the Province— this was told him by old Lalanne— now dead.—

X

Never called up before as a witness in this Case—

James R. Orr— is one of firm of Orr & Blackadder imports goods from England— Deals in hats in whole sale & retail— that in this business when hats are imported in an unfinished state the articles such as mentioned in the statement now shewn— & all dealers in hats in general use articles of that description—

Was

Had a power of attr from Wolfley Watkinson
to c[ollect] Lands debt due to them by Pfff

John G. McKenzie, Importer of goods — knew Pfff in
1829. who had a retail Shop in town — Thr
W. at that time would not have trusted the
Pfff —

£.

Had no means of knowing the particular
circumstances of Pfff. but knowing he had
no Capital, he would not trust him. —

Joseph Shuter — Importer of goods — has imported
hats — sends home his orders generally in
December — It requires time to get up an
order in England — Thinks it would be
rather late to send home an order early in
Jan[uar]y to get them out early in Spring — &
hats are saleable only early in Spring —

Thinks that the names to the Pfff's
acct[s] in the exhibit now shewn to
not proceed 6 m[onth]s — That good notes
at 6 & 9 months could not obtain such
debt at great sacrifice. —

~~Never heard~~

X

Feels an interest in the event of this Cause
as he wants Justice to take place —

Joel Bradbury - Merchᵗ — on a sale made by Wm Bradbury & Co of cloth to Pfff in May 1829 — Pfff enquired for cloth to make up Capes — he bot a yard, & he pd. it — he came back for 4 yards more - this was to be pd for in Cash — it was £3 — but has never yet been pd notwithstanding repeated demands — Credit was refused to him & he promised to pay in Cash —

Alexr Thompson - was in House of Millar Fisher & Co in 1829 - they imported hats — send home their orders generally by first of January —
Knew Pfff in 1829 - sold him 3 Cases of hats in June — he gave his note at 3 months £54 — it was not pd — he pd £20 — on acct and his note for £34 — when this note became due it was protested — and finally he funded all Bonaparte's notes, & offered him the choice of them — wished us to take one for a large sum & pay him the balce of the refused — We also refused a £50 — Pfff then went away & brot back a note of Bonaparte's for the exact amount — Thinks that such paper would not be taken for Exchange,

George Dixon Imports goods into this Province — sends home his orders in November — when the goods are to be manufactured after the order is

Jos. T. Barret — Imports goods — sends his orders in Dec for goods by Spring vessels — if an order be sent early in Feb he would not export his goods by those vessels —

Kno. Vaughan my reputation never heard his character impeached

Exchange rather more scarce in Dec & Jan than at other times — it ranged about 1829/30 it was from 11 to 12 ℔ Cent —

Exch. is consd a Cash article — or for good notes of 3 months — not knowing the means of Blanchard & Bishop he would not have taken their notes at 3 months for exchange New knew notes at 6 & 9 months taken for bills of Exch.

Defence closed.

Alex Boudreau. ex on part of Plff

Knows Lumen Vaughan — did business at Montreal — he imported silks from N. York French silks — he was generally reputed to be a smuggler — he was a rattling fellow. — He wd not have given credit to what he said. ~~on oath as to~~ on oath as to mercantile Matters —

L.

Has had difficulty with Vaughan about sale of some ribbons —

R. Morrogh — Scotch. produces the testimony of Geo. Procter given in the Case of Defend. agt Plff. in 1830 —

Alexr Shaw Witness produced by Defts Knew Lumsden Vaughan, who was merely Lessee —

The Evidence being finally closed the Jury ~~being~~ charged by the Ch. Justice ~~retired~~ retired, and after deliberating about an hour, came into Court, and delivered a Verdict in favor of the Pltff for £200 damages. —

Monday 7th October

Prest.

The Ch. Justice & Mr Justice Rolland

Enquete day

Tuesday 8th October. —

Prest.

The Ch. Justice & Mr Justice Rolland

Enquête Day. —

Wednesday 9th October.—

Pres.t
The Ch. Justice & Mr Justice Rolland

—

№ 2582
Delorme.
& Doucet.
& Opposts—

over to 10th—

№ 1604.
Starnes
& Desforges
& Girardin
Opt

on Plffs. mo. to dismiss oppos.n
from want of Action of domicile
Lafontaine for Plff. says the 360 art.
of Custom is positive — Resps.ts Opp.n 435.
C. Dimt. 522 Fo Opp.n—
Mr. Taylor for Appt— The election of
domicile not necessary in this case, refers
to case in Inferior Court—

№ 1114
Millar & al
& Taylor—

mo. to dismiss. for want of delivery
Walker for Plff— Books of Act. in
Court of Appeals— The Exhibits in Defends
hands—

№ 856
Desautels
& Lussier
& contra

On Defend.rs mo. to amend entry in the
Enquête books—
Lafontaine for Plff — no delivery —

№ 1793
Trudelle
v
Welbrenner

action for defamation
Mondelet for Pltff – refers to the testimony adduced in Cause as sufficient to maintain the action –

Mr Bleury for Defendt – considers the fact not to be proved – The Pltff was remained in the service of Defendt long after the theft –

—

№ 2024
Howard
v
McKenzie

action on bail Bond – on Issue
Scott for Defendt – The proceedings here taken by Pltff are irregular – The Stat. Ord. 85. Geo. 4. c. 5. 5 Geo. 4 – The Pltff could not legally sue out the Capias ad Debtor – Judt. on 19 April 33. & Ca. Sa. on 6th May, whereas the Sheriff could not arrest the Debtor – The bail here given by Defendts was that Debtor should not leave the Province, & this was not apparent until the Pltff could be entitled to sue out Ca. Sa – which he could not have under Stat. 5. Geo. 4 – The Pltff should have first discussed the Debtors property and effects –

Judgt. 19 Apr. 1833.
Ca. Sa. 6 May. "

Mondelet for Pltff – The first exception of Defdt is in any Case bad – because if Defendts were entitled to surrender the Debtor, they ought to have done so – The Pltff is entitled to sue out his Ca. Sa. in 17 days after Judt – without issuing out any writ of goods

or

a lands — The Defendt. were bound by their bond to surrender Debtr within one month after Judgt. — they have not done so — the Stat. 5. Geo. 4 is inapplicable here — is controuled by the ordre which admits the issuing out the Ca. Sa. —

On the 2d Exception Pltff ought to be admitted to prove the Debtor had left the Province

No 1750
Berthelet
vs
St Marie
&
St Marie Apptt

On merits of Apposn

Bleury for Appt — entitled to Costs from trouble by demand made for Seigneurial dues on the land sold by Pltff to Defendt for £132 —

Mr Bender for Pltff — The Defendt was informed that the Lods & Ventes were due on the purchase of his estate when he purchased & upon Judgt was given against him & therefore he is now too late — the land was not sold fraudulently. —

ord. 1832

No 1079
McNider
vs
Loney —

On Law —

Hart for Defendt Defendt not indebted in the sum of £10 — no right to Ca. ad respondendum a plea of litispendence — Case more favorable than that of Goyet & Bromley —

Mr. Mondelet for Pltff – when the party is about to lose his remedy, he is entitled as in this Case to a Ca. ne just mitteam – whether the demand consists of Costs in another cause is of no moment, if it constitutes a part of a debt –

Mr Hart has not admitted that Pltff, did sue in the Inferior Court, & that the costs on that action not due, not a debt –

Thursday 10th October

Pres.

Ch. Justice & Justices Pyke & Rolland

No 2441
Lacroix
vs
Lacroix

} on Pltffs motion to reject plea – as the Atts filing it has no known domicile & that the matters pleaded – an irregular –

No 1954
Dorions
vs
Bazin

} On mo. that enquete be declared closed as the issue depends on written Documents filed in cause

Walker for Defendt – defendt is entitled to volume according to the practice of the Court & there may be evidence adduced in the Cause

No. 1464
Desforges
vs
Picard

action for cattle sold to Defendants
Exception for Defend. the sale was made to the Defend. & one L. Picard as partners & not to Defend. alone —

No. 2175.
Beardow
vs
Gamache

~~vs~~ Debate — to hear Plff on his

No. 700
Quintal
vs
Charron

action for getting Plff's child under promise of marriage —

Bleury for Defend. contends that this is a snare laid for Defend. to draw him into acknowledging the fault of another —
Moves to reject the testimony of relations of Plff, as the facts proved by them might have been proved by other individuals. —

No. 225
Ex parte
John Redpath
&
Divers Opp.

Mr Mondelet for his Pommainville claims a mortgage on the premises under a deed of sale of the premises —
Mr. Beaubien for Mr. Lacroix — The lot of land was sold to father of Opport — on condition payable in goods —

N. 2178.
Bourassa
vs
Vandale

Ord Law — action en bornage —
Bruneau for Defend — has pleaded
litis pendance — question before the Superm
Court. & has declared itself incompetent. —

Mr Lafontaine for Plff. The question
of litispendance depends upon the Judgt rendered
in the Superior Court — vide p. 136. vo Incompetence
Reports —

N. 1434
Masse. —
vs
Larocque dit

action on obligation —

Mr Bourret for Plff — action of Deft
as having accepted the community with the
first husband of Defd — The Court admitted
Plff to make proof that defend — intermeddled
with property of first community. —

Grant for Defd — The Plffs have not
made proof of the facts alleged by them
vide to 237 — art. of the Custom

N. 252.
Gordon
vs
Perry —

action for defamation —

Grant for Plff — Defend presented a petition
to the Court complaining of the illegal conduct
of Plff, & was dismissed. —

Bodon

Boston for Defendt — only two of the Signatures of the Defts to the petition in question, who have made default — and as to all the others the action must be dismissed. —

Civ. Dareau. p. 20 — 244. —

Friday 11th October. —

Prest.

Ch. Justice, & Justices Pyke & Rolland. —

No. 856.
Deshautels
&
Lussier
&
E contra

action on promy Notes —
Lafontaine, for Pltff, admits that the note of £70 — should be admitted —

No. 1673
Guertin
&
Guertin

action for goods sold —
Charrier & Pltff — alledged by Deft has not received the effects — no proof — the Incidental demand is extinguished by compensation of another debt —
Bleury for Deft — no proof of the Pltffs demand — Defendt shews the articles were

not

not delivered — nor the legacy paid —

№1132.
Conway
vs
Cuvillier

On the evidence adduced in the Cause
aforesaid for Pltff. Mrs C. was not
legally separated from her husband — she has
not pleaded — her husband has pleaded — &
it is in proof that husband continued to
manage & conduct the affairs of the Community
after the Decd of Sepn which was never
executed. — The Renunciation of the wife could
not operate a dissolution of the Community.

Mr Peltier for Defendt — That the execution
of the Deed here is not material as the Pltff was
not a Creditor of Cuvillier — he did not intervene
in this act but to authorize his wife to contract.

№752.
Rolland
&
Ayers —
&
D'Estrivieres

Interlocutory Decd ordering Survey.

Saturday 12th. October.—

Prest.

The Ch. Justice & Justices Pyke & Rolland

No. 1926.
Hoe. —
Duvernay } On mo. for a power of attorney to bring the action —

No. 2450
Duvernay
vs
Vanfelt } On Pltffs mo. to reject plea — Pinsault for Pltff — plea concludes to the country — action not between

No. 2482. & No. 391. —
Delorme
Doucet
& Delormedal
opposts } On Mr Grants mo. for Defendt to enter appearance for him & to unite this cause with another between the same parties —

Bruneau for Pltff the parties in this & other cause are different — the property sold is different — the causes are not in the same state of forwardness — the cause No. 2482 is already in a great measure adjudged upon —

No. 2591.
Lamb
vs
Bussolez
et al. — On Mr Lafontaine's motion for removal of the Master of the Rolls —

Mr Gale for Bussolez contends that there is no regular demand nor by any Defendt — appearance

another Defendt — for a garantie for which there is no Intervention nor demand — nor can the party by this Summary course be cut out of his defence —

Mr Lafontaine for Defendt — a Summons has not necessary — parties before the Court —

No 1381

Gagnon & Perkins & 2 contra

action for rent of farm & price of Cattle. Merits

Bender for Plff — action on lease for balance of rent & for cattle given to him £29.3. for balance of rents & £70 — a third Plff Defdt retains the Cattle

Rossiter for Defendt — admits the balance of rent — But as to the Cattle, there is neither proof of sale nor of the delivery — The notary cannot speak to the signature as was not present when the act was made —

No proof of Individual demand

No 1413

Douglass & Bullis

On report of Experts —

Taylor for Plff — admits that the amount of the rent be deducted from the amount of the demand & reduced on it. —

Boston for Defendt — the only question here is the right of the possessor to have indemnity for the improvements made by him as proprietor

these improvements are to be calculated from the year 1807 when Defendt became purchaser — and what Defendt has already paid & is liable to pay, must be first reimbursed before he quit the farm —

Blodgett &c vs Woodsworth

action for goods sold & other objects Boston for Plff — The act consists of a variety of articles, some of which however have not been proved — ~~but Defdt has given credit~~ The Plffs have given credit to Defendt for all the objects he had any right to claim — The notes set up by Defendt cannot be set off as Plff's demand — one of them dated No 2 — no evidence — the other for £12.10 — This note not indorsed, nor does it appear how it came into the possession of the Defendt —

Taylor for Defendt — There is no evidence to support the demand — As to the hundred demand — it consists of the work done for Plff, and the note payable to same

No 2168 Bastien vs Grant

action to obtain possession of the land sold by Defendt & conveyed to Plff —

M Grant for Defendt — The plea here is a plea of fraud — Mr Tait represented to

Defr —

Defendt. The necessity of giving the land as a Collateral security for a debt the Defendt owed — but the deed is drawn up in a different manner — The Pltff obtd a Writ of Sequestration for Debt & Costs — under this Writ this land was ~~sold~~ seized as the property of Tait — Defendt made his oppositn and by the Direction of the Court the opposn was maintained If Tait was acting as agent of the Trustees he could not purchase the property in his own name — this appears by a letter from Mr Richardson one of the assignees —

Mr Mondelet for Pltff — How Tait purchased for himself subject to pay the debt due to the N.H. Bk — Proved & reject the evidence as to the value of the land —

No. 795

Johnson
vs
Dampier

Debt on deed of Sale —

Driscoll for Pltff. avows that he ought to have Judt for only £16. 10 — as he has failed on the other part of his demand as to Defendt being about to leave the Province this has been proved & the question now as to costs —

№676
Molson.
vs
Flaherty

On report of Experts —
Plffs demands homologa — & Deft
Defends makes fonds —
Grant for Defendt — There is an error
in the report as to the words of the Plffs
power of — report & on this Variant from
the first report —

№

Monday 14th October. —

Prest —
Ch. Justice & Justices Taylor & Rolland. —

№1664
Lauziere
&
Lacroix

On Plffs motion to reject the plea filed
by one Lacroix stated to be an advocate
of this Court, but who has no domicile
in this town —

№2100.
Archambault
&
Brien &
Durocher —

On Plffs mov. for experts to estimate the
amount of Plffs fee for certain acts
made by him as Notary —

~~No 62~~
~~De Boucherville~~
No 1961.
Pagniolo
vs
Gagnon

An action for Salaire as Gardien
Mr Mondelet for Defendr contends that
there is no proof of the demand
Mr Green upon to ~~hear~~ bills of Costs filed —

No. 1728
Corbit
vs
Bowker

Action
Buchanan for Defendr — The sum of £125
was stipulated only as a penalty & cannot be sued
for as damages without special allegation of damages
having been suffered to that amount — The action
here should have been to compel the Defendr to surrender
the property or on default to pay damages — refer to
Pothr. Obl. No. 349. — The penalty does not rest
in the first instance —
344
Hart for Pltff — The chief obligation here
was to pay to the Pltff £125 — for which the
action is brought — This sum is not stipulated
as a peine Commination —

No 1053.
Archambault
vs
Monjean

Action Hypothecaire —
Mr Lafontaine for ~~Pltff~~ Defdt Rob this action
Defendr has pleaded prescription of 10 years with

wth — To this it was alledged that the prescription had been interrupted by a letter written by the Defendt to the Pltff of 20 Feb 1828 —

The bonne foi of Defendt — here is evident Poth. No 157. 2. 3. Prescrips & the action only can interrupt the prescription — an action begun & not continued, does not interrupt the Prescrpn p. 493. Duplessis tit. prescrips — This is an interruption extrajudiciaire — which is too vague & does not interrupt the prescription — vers to opinion of Charondas cited by Duplessis Poth. prop. No 357. art 313. Cout. Paris — If there was any promise here on part of the Defendt it was never accepted by the Pltff Mr Greene for Pltff. Good faith is necessary to prescribe in 10 years — and an interruption Civile will interrupt it. Duplessis 578 — bonne foi required in the libération, as well as in the detention of the property — Jd. 2d Vol. 229 — Rep. prescrips p. 315. — 3 Denizt 565. No 32. 2d Interruption an indirect acknowledgt interrupts prescription — Poth. Bail a rente No 202 — Lacombe p. 510 — 1 Duplessis. tit de prescrips — 792 to No 6.

Mr Lafontaine in reply — some cases cited apply to a personal debt acknowledged by a debtor — the case of Tiers Detenteur is more favorable —

Tuesday 15th. October. —

Pres.t
Ch. Justice, & Justices Pyke & Rolland

№ 2441
Lavoie
v.
Lavoie

Turgeon moves that Plea of compensation be rejected as irrelevant —

Mr Lacoste for Defendt. The pleading is regular & the composition is regular —

№ 2677
Cutler
v.
Reynolds

On Defendt mo. that Defendt be discharged from prison, on default of sufficient proof that he was about to leave the province

№ 1009
Coupal
v.
Quertier
& Menard
Intervs

On mo. of the Interv.g party to open the debate & to be heard, as he never received regular notice of the Plffs proceedings — no foreclosure of the party —

№ 62
De Bonneville
v.
De Blemy

action by the Seignior Feodal against Defendt his Vassal, to acknowledge & pay. of his rights, & foi & hommage —

Cherrier for Plff — The evidence consists of the fact of possession by the Plff of the Fief-Dominant

the Pltff has proved that he holds that part of the Seigy de Bonchemille, of which the Fief Labervois holds — refers to acts filed Poth. Fief. p. 41 — Pondrom. p. 174. 2 Herve 37. 8

p. 50 —

Beaubien for Defdt — Action not founded in law — The Pltffs right is not ascertained by his deeds but by the titles he has filed with the Replication —

1st title. Concession of Fief Labervois in 1697 — by one de Bonchemille — 4 arps. sur 2 lieues — on 1 augt. 1708 — De Bonchemille & Jeanne Leroux his wife made their last wills with intention to guard all difficulties about their succession among their children, & to make an equal division of their property among them — To pre de B — the eldest son was given the droit de renoir en droit de fief & 40 arpens en superficie sur 2 lieues —

The ~~Pltffs~~ children had their respective parts & portions allotted to them in the succession — The children of de Lozanne Bouchemille had ~~had~~ a fief of Labervois. 42 arps. in front with right of lods & ventes & other Seigr rights as a Coseigneur with the other, only the eldest son had the larger share of 40 arps in front — In the latter part of the will it is said that the children should hold their several parts & shares in perfect equality —

+ which are mentioned as being in the title de Joseph.

It is said that the eldest should have the foi thom. des arrieres fiefs; but this applies

to

to certain fiefs heretofore granted & not to those
then granted to each child — each child who
had the separate droit de prêtre — had it not
been the intention to preserve this equality, the
Testators would have reserved particularly the
rights they meant to divest to the elder son —
In 1718 Dr. de Bourbon made a ratification of
these different grants, & confirmed the whole —
It is pretended that by an act of Jeanne Crevier that
the Defendt fief was changed — but this not correct —
Exh. No 12 filed by Plff — of 28 août 1726. being
acte of Dismembrement — made by Jeanne Crevier
widow of Dr. de Boucherville, shews this fief of
Defendt to be un fief at that time — but this fief
became dependent only on the death of Jeanne
Crevier & by her will —

By act of 21 March 1741. acte de partage — made
by the sons of him who had ratified the will
of his father, by which it appears he claimed
no rights of seigneurie over the fief Labrevois
altho' it is reserved as to other portions —

The possession of the Plff amounts only to ce
qui a été jugé, 1826 —

Pothier Coutume No. 711 — partages ne sont pas considérés
comme titres de propriété — The acte of partage
made by Plff with his Cohers can bind those only
who were parties to it —

The consent of certain of proprietors that they has
rights over the arrière fiefs of they transferred to

the

the Pltff on his giving up 1/4 of the rights to them. — such acts can never raise even a presumption of right of Usufruct over the fief de Labrevois —

29. Mar 1779 — Jac. Lafointe purchased a part of the fief Labrevois from the grandfather of the Defts — Thos Lafointe did the foi & hommage to the ancestor of Pltff — but this act cannot prejudice the rights of the proprs of Labrevois, —

8 Inddit. Poth. obl. 705 — all these no proof

Moves to reject of 21 exhibits filed by Pltff at the Enquete — these papers were improperly brot forward, & ought to have been filed wt the pleadings & make no proof in the cause —

There is no proof of the Pltff being the legitimate representative of the late Pr de Bonchenille, or that he is his eldest son — This applies to one Babbin & Tessier who purchased in the fief Labrevois & paid the rights & dues to the father of Pltff — but these acts can bind only those who were parties to them —

Mr Charrin for Pltff. The Pltff being proprietor of that part of the Seigniory of Bonchenille on which the fief Labrevois

Depends

depends, is entitled to the seigneurial rights as Seigneur dominant of that Fief.—

There is nothing in the will argued to, that changes the nature of this Fief.— It would have required some very special clause in the will to change the nature of this Fief.— This will could not change the nature of the enfeoffation granted to another person, over which the Testator had no power.— The power given to the proprietors of the arrière fiefs to receive the cens & rentes & seigneurial rights on lands granted within the limits of their fiefs, was in no manner changing the nature & obligations of those arrière fiefs.— The grant by a father of portions of his seigniory to his children does not make such portions Fiefs.— On the contrary it is stated in that will, that the devisees shall take and receive all the rights and dues on the arrière Fiefs.—

The acte of Denombrement of 1724 by which it appears that the Fief Sabrevois is an arrière Fief depending on the Seigniory of Boucherville as the aveu & denombrement emphatically it was made by Jean Boucher who was then the proprietor of the Fief Sabrevois.— sup. p. 25, All that the will did was to augment the ~~Fief~~ Fief Sabrevois by 2 acres in front, which should follow the same principle as the original Fief.— This will is a kind of partage among the children the subsequent partage in 1741 determined nothing

as

to the infeodation & rights inherent in this Fief —

The transfer made in 1819 to the Defendt of this Fief by his parents, convey it as depending on the Seigniory of Beauharnois — On 9 Feby 1828. makes a declaration by which she says it was by error, that it was declared that this Fief depended on the Seigy of Bn & that it held of the Crown — This declaration can be of no avail, & is rather to be considered as the pretentions set up by defendt — Defendt produces no act of foi & hom. to the King —

The action is brot by Plff as Seignr in possn of the feodal rights, & it was unnecessary to produce any titles more ancient than that he has produced the act of partage by which the quality and rights of the Plff and his predecessors have always been acknowledged — The Seignr possessoire has the right to the action —

No 1885
Sevier
Gilbert

action to recover balance due on sale of land. —

Nye for Plff — contends that he should be allowed to close the deposition of one of his witnesses which had been omitted — This was objected to by Mr Walker —

The Court discharged the inscription of the Cause that Plff might do diligence to close the above deposition. —

No 639
Lamazdelaine
v
Sauvageau

Action en séparation de biens —

No 870
Morrison
vs
Snowdon

action for ~~wages~~ ~~wages~~ of apprentice & £4 £21 Puff
Greene for Defendt — The receipt filed by Puff proves nothing in favor of Puff, to shew that the money had not already been paid amounts for to Mr Gardner —
Burton for Puff — The onus probandi lies on the Defendt to shew that he had already accounted for the money he rect —

No 1153
Kimber
vs
Bedard
&
Larose

action for medical attendance —
Mr Bruneau for Defendts submits the case — considers the evidence not sufficient for all the objects demanded
Mr Cherrier for Pltff. The Defendt was in default which is a presumption of law

No 1260
Herbert esqr
vs
L. Carter

action for a legacy due by the Grand father of Defendt on law —
Mr Lafontaine for Defendt The legacy given to Defendt was burthened with an

annuity

annuity of £30— The action being brot
agt Defendr. solidairement must be
dismissed, as there is no solidité—
The 6th clause of the testament is agreed
to, but the Testatr has not expressed any
solidité in regard of this legacy—
Poth. obl. Nos 263. 25— 269.— Don. Tests
p. 373.— The legacy was but one half to
each, one could not been held to discharge
the whole land on an action'
Rep. vo Legataire. p 63. 4. 276—
6 Toullier. ch. p. 750. No 520
5 do ——— ch. 5. p 517. No 554 & suiv
2 Despeisses 228.—
D Denizt vo Legataire. p 88. art. 3.—
Idt —— vo Solidité p 373
Domat. tit. 1. Sec. 4. 210. p. 430— des Testaments
Transport of debt signified — no right to debt
That cedant has no further right after signifn of
transport—

No 1261
C. Cartier
&
Cartier—

Lafontaine for Defdr— The Plffs
separation not having been executed
she cannot prosecute alone — art. 224—
nor has she renounced to the Communauté
That the legacy of £500 is not due till
after death of Mde Hubert—
That Mde Hubert is entitled to her
legacy

Legacy, but the Children are not.

Brennan for Pltff. The Defendts are bound solidairement as the property is charged with the legacy. Denizt. vo Legataire 88 Rep. vo Solidité p. 345 — Denizt. vo Legataire. p. 117.

Mrs Hubert having renounced to the Comty has done all in her power to ascertain her rights without effect — & therefore entitled to her legacy — & to sue in her own name —

The legacy of £300 is due at the majority of the youngest of the two legatees — & is due —

The Cessionnaire is entitled to sue in the name of the Cedant —

The three Children had a right each to their part in the legacy demanded —

Lafontaine — cites Poth. Don. Test. 407. as to droit D'accroissement —

Wednesday 16th October.—

Present

Ch. Justice & the Justices Rolland.—

No. 2677
Cutter
vs
Reynolds

On Defts motion that Defts be enlarged from Gaol as the Pltffs affidavit is not sufficient—

Mr Scott for Pltff. The motion is made too late, as by rules of practice requires it should be made on day of taking off the default—

Mr Beaubien contends that the motion is made in time —

No 492
Monjeau
&
Charron
&
Debartzch
Appts—

On appts motion that Pltff be held to bring back the monies due to him under an order of this Court, &c— was made without the knowledge of the appts—

Bleury for Pltff— Then shd have been notice of this motion given to Pltff in person— The Court cannot revise the Regt. The appeal was never before the Court—

№1514
Griffin
vs
Andrews
& contra

On law — on exception to the Incidental demand
M. Rosser for Plff — action for slander — Defendt has set up an Incidental demand for slander & on hearing Plff at a different period — 1 Pigeau 336 — 2 Dareau, p. 339. —
M. Grant for Defendt — the Incidental demand for defamation

№ 942
Dumouchel
&
Prouty

On law —
M. Rolland — action for transport — the principal is transfered, but not the interest — & alledges tender of what is due —
M. Laberge for Plff

—

№ 1055
Lindsay
&
Cuvillier
&
Pedder. T.S.

On merits —
Walker for Plff — Case of Saisie-arret on Instrs — The Defendt has pleaded an agreement w. his Creditors to accept a Composition of 10/. in the £ — for the debt. This agreement was made 6 Feby. 1828 — but conditionally that this dividend should be paid in one year. only 8 Notes only in Statement — the 9th note was note included Lucas just in time in Feby 1828

13 Feby 1826

This note was payable on ~~12~~ Feby 1827 & action returnable in Feby 1828 — In Feby 1829 — Mr Leslie's note offered for £200 was accepted, deducting the interest up to day of payt of note on ant. & the bon of the Clerk for the balance payable in June 1829 — but Carrithers would not recognize the power of his Clerk to sign any note on his ant — & in consequence another action was brot on another of the notes on which Judt was obtained in Feby 1832 — On this Deft came forward made a protest in April 1832 in which he recognized the principle of the first settlement & his liability for the note & costs of suit which he had formerly contested — Now claims bal on the same Notes & Judgts — admits that the note due in Feby 1827 was paid to Mr M'Neider — claims ~~balance of~~ amt of Judt which comprehend 9 Notes — deducting the sums of £155 — pd by Deft £200 by Leslie — & £100 to M'Neider —

825 less
155 —
200
100 & Costs

Mr Beaubien for Defendt — The Defendt acknowledged the balance stated in the settlement proposed of £752 — as the note in the hand of M'Neider was really paid — Deft offered 12/6 on this settlement — but Pltff here refused to accept this payt & insist on payt of the 9th note, as was really paid —

The payt of this note is now admitted, & must go in discharge of the Judt & Deft

Lus

has besides proved the payt of this note —
The balle due was £34 5 — & pltff had
amplied note — the balle was offerd before
the suing out the attachment & during the
proceedings —

Repr Commination — Id. vs Bains —
Id Peirce Contradicelle & 4. Inst —

—

No 883
M'Pherson
Dewoskin

On Petition of Defend to be discharged
from Gaol —

Mr Gale for Defendt Defendt a resident
in U. States made a surrender of his property
under the laws of the States & was discharged
from an arrest of his person — The Pltff was
a resident in the State of N. York & the debt
was there contracted — The pltff obtaind a
Judgt against Defendt here, upon wch he sued
out a Writ of Ca. Sa for the same debt —
This Defendt was arrested & committed to
Gaol, in the Case of Caird vs Astor — such
arrest held illegal —

The Pltff has pleaded to this petition that
the laws of N. York did not apply her — but
this has been determined — It is then objected
that the Defendt has committed a fraud
in the Statement he gave in of his effects

to

The evidence under the Com. Rogs cannot be received in this case, there are many suspicious circumstances attending the execution of the Commission — one of the Commissioners has become Clerk — Some of the witnesses could not write, and it does not appear that their depositions were read over to them — There are great many numbers of erasures and interlineations are made in the depositions, without being afterwards verified — The answers of the witnesses not regularly taken down to each question before ~~taking down~~ proposing a second question — the rules of practice require this. — That one of the Commissioners is both a witness & a Commissioner, and signs his deposition in both capacities — The certificate of Taylor the Clerk has no seal to it. — The answer of Bela Upton to the 12th Interrogs is inconsistent with it — There is nothing to shew any fraud in the transaction —

Walker for the Plff refers to the 2d & 3d Sections of the Law under wch the Defendt was discharged from personal arrest — The 5th Sec. provides in case of any fraud the Debtor shall be deprived of the benefit

of

of the two bonds being liable to punishment.
The property declared by the Defendant was
of a very small description —

The Commission Rogatoire was executed in a
sufficient manner — There is no instruction
to the Commissioners to read over the depositions
to such witness as cannot read. — The
answer of witness Carlton producing the schedule
referred to is suffr —

The Ruff is stated in the Defendt's Schedule
as a Creditor for only 7 dollars - whereas he owed
about £250 —

Refers to answers of one Jos. Mercia - and
to the fraud committed by the Defendt

Thursday 17th October.—

Prest.

Ch. Justice, and Mr Justice Rolland

No 964.

Poirrier & Prudhomme & Garand —

On motion of Garand to amend —

No 178

McVicar v Davies

action to obtain a title to a lot of land sold by Defendr to Plff

Sweeny for Plff. There is a commencement de preuve par ecrit to let in Verbal evidence to consist of a plan & designation of the lot and two letters written by Defendr to Plff, in which he declares that he wants from his agreement he made with Plff — The plan is well drawn & described — refers to Verbal evidence as very full — conclude to damages & for a title —

Mr Boston for Defendr There is a variance between the contract alleged & that proved — The plan referred to was never delivered to the Plff by Defendr — There is no Com. de preuve par ecrit can

be

be admitted to pass real property — But the whole of the case depends upon what two witnesses say they heard the Defendant declare — There is no necessity in the contract nothing to bind the Pltff — 1 Bourg. 407. —
There was a stipulation that there should be a deed executed before a Notary — an acte of sale must not be an event to prevent one of the parties getting it into his possession
2 Carpon p. 236 — Poth. Obl. N° 801 —
There was a misunderstanding between the parties as to the extent of the property sold — the sale was never contemplated by Defendt to fall within the sale —
Poquet ⁊ Livonia 5 26. 6 Toullier. p 208. N° 196. 139. '35 —
The letters produced show that there was no contract ever completed between the parties, but on the contrary a misunderstanding —

Mr Sweeny in reply — contends that the evidence is complete, not made by the acknowledgment of the Defendt but by acts done — an acte sous privé will convey the property — 6. Low. D' andr. p. 207. ⁊ 213 —
8 Cochin. p. 122. n 8° — Poth. N° 33. Vente —

6 Mte 1535

N° 682
Larriquedor
to
Dupuis
to
Garants

action for Lesion d'outre —
a statement signed by the parties —

№ 1219
Spalding
vs
McLaughlin
et al

action for rent of a farm and for damages —

Bolton for Pltff — Defendt has done great damages on the farm —

Grant for Defdt. Defdt was prosecuted — no damages — with S to show liability on the persons sued as Sheriffs — bond insufficient at all events only from 1 May 1831 —

№ 1031
Gibson —
vs
Demers et al

action of damages for having been deprived of a right of passage due to him by Defendr

Lafontaine for Defdr on the confirmr of title, two objections raised were in regard of Bachant & Cicot — another point is that the passage has been shut up by Cicot — But there is a preliminary as to the litis pendens which Defendt has alledged, which must be first determined —

172

The Pltff does not allege that the right of passage does not exist, but only that Cicot had shut up the passage — this not sufficient it may have been wrongfully shut up the existence of the right should be brought forward —

Mr Rossiter for Pltff — the only question now to be determined is as to the litis pendens There is no litis pendence of the question raised by this action, nor any proof put in the answer en garantie of Pltff but the

reasons

reserve his right of action for damages —

—

№ 1405
Demers
Gibson

action for part of price on Sale of land
Lafontaine for Plff — the only objections
raised in this case is the appreciations of Local
Bachant — But there is no incidental demand for damages
for the Avulsion of the road, yet the Plff has
offered to name Experts to estimate the damages
for the want of the road —
Rossiter for Defendr — There can be no Issue
on the merits — the hearing being on law
the exceptions pleaded by Defendr are sufficient

—

№ 2203
Dawes
vs
McEachern
&
McVicar
Intervs

action for damages for detention of Plffs
land —
Bastien for Plff — The first
question is as to the sufficiency of the
Intervention made by McVicar — This
Intervention cannot be admitted, for even if the
party succeeds in his action, the Intervenor is
without right — he cannot have his action & his
Intervention also — The Plff is entitled to his
damages & that Intervention be dismissed —
Beaubien for Defendr The Plff has suffered
no damages — none of articles claimed are proved
the arbitration irregular & opinion of arbitrators
not admissible. —

Mr Borden in reply — There are certain facts from which damages must necessarily arise the privation of the possession of the property here, is equal to the interest of the money & agreed to be the value of the property —

No. 1975
Roi
&
Bechard

action for damages — on demurrer
Grant for Pltff — question whether the Pltff had a right to sue out an execution for more than was due — This was an illegal act, & the damages consequent thereon must be paid by Defendt —

Mondelet for Defendt There was not sold of Pltff's goods more than was sufficient to pay the instalment that was due — & when the first instalment is due the Creditor has a right to demand the whole debt. —

Drouin
&
Labrosse

action of Damages for having refused to execute a title to Pltff of a land to be
Labrosse for Pltff. The matters were submitted to decision of Experts to estimate the damages Contends that their report is informal & irregular. The Experts have not complied

with

with the terms of the ~~Lease~~ Intervention — the Witnesses ex amie — are relations of the parties —

Rollin for Defendt — The report ascertains that the plff not having fulfilled his obligations, has suffered no damage —

The pertinence of the report is not ascertained

Friday 18th October.

Pres.
The Ch. Justice & Justices Pyke & Rolland

No 228. B: Hart. v Jones & al.	action dismissed
No 845 Boston v Boardman & Squires	Action dismissed -
No 665. Miner v Hall. - & contra	Judgt for Pltff
No The King v Burton.	Judgt for Pltff
No Newbolt v Frost & al	action dismissed

Nº Gibb vs Phelps. Phelps opt	Opposition dismissed.
Nº 1750. Berthelet & Marie & Marie opt	Opposition dismissed —
Nº 1089. McNider vs Corey	Action dismissed
Nº 1434. Masse vs Lavoque	Action dismissed
Nº 250. Gordon vs Perrycal	Action dismissed
Nº 1132. Conefroy vs Cuvillier mise en cause	Judgt. agt. Mad: Cuvillier, but action dismissed as to Mr Cuvillier
Nº 1053. Archambault vs Montjean	Action dismissed —

Saturday 19th October.—

Pres.

The ch. Justice & Justices Pyke & Rolland

No 2081. Berthelot v. Gauthier	Action dismissed & demand of £10.—
No. 181. Belair v. Guy —	Judgt for Deft. on giving Security.—
No 413. Douglass & Ogilvie	Judgt
No 2437. Exparte — Petition of Jos. Comte	Rule discharged —



JUILLET.

Le ☉ entre au ♌ le 22 à 11h. 2[illegible]

☉ le 1 à 7h 38m Sr. | ☾ le 17 à 2h 28m
☾ le 9 à 11h 1[illegible]m Sr. | ☽ le 23 à 4h 40m

u..	Cl.	MOIS.	Sems.	FETES.	
4.					
7	b	1	Lundi	Oct. de s. Jean Baptiste. *incipit.*	
6	b	2	Mardi	Visitation de la ste. Vierge.	2M
5	r†	3	Mercre	De l'Octave des Apôtres.	
4	r†	4	Jeudi	De l'Octave.	
5	r†	5	Vendre	De l'Octave.	
44	r	6	Samedi	Octave des Apôtres.	
44	vr	7	DIM.	6e.	
43	b†	8	Lundi	ste. Elizabeth, Reine.	
43	vr†	9	Mardi		
42	r†	10	Mercre	7 Frères, Martyrs.	
41	r†	11	Jeudi	s. Pie, pape, mart.	
40	b	12	Vendre	s. Jean Gualbert, Abbé.	M
39	r†	13	Samedi	s. Anaclet, pape, mart.	
39	b	14	DIM.	7e DÉDICACE.	M
38	b†	15	Lundi	s. Henri II, Emp. M. *inc.* 3 *req*	
37	b	16	Mardi	N. D. du Mont-Carmel.	M
36	b†	17	Mercre	s. Alexis.	M
35	b	18	Jeudi	s. Camille de Lellis.	2M
34	b	19	Vendre	s. Vincent de Paul.	M
33	b	20	Samedi	s. Jérôme Emilien.	2M
32	r	21	DIM.	8e. Oct de la Dédicace.	2M-
31	b	22	Lundi	ste. Magdeleine, [sol. s. Jaq. ap	
30	r	23	Mardi	s. Appollinaire, év. mart.	M
29	b	24	Mercre	s. Bonaventure évêq. doct.	2M
28	r	25	Jeudi	s. Jacques, Apôtre.	M [14 ju
27	b	26	Vendre	ste. Anne.	
26	b†	27	Samedi	De la ste Vierge.	
24	b	28	DIM.	e. *Sol.* de ste. Anne.	
23	b†	29	Lundi	ste. Marthe, v.	M
22	r	30	Mardi	ss. Nazaire, &c. m.	M (28 ju
21	b	31	Mercre	s. Ignace de Loyola.	

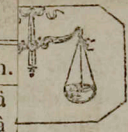


AOUT.

Le ☉ entre à la ♍ le 23 à 6h.

☾ le 8 à 1h 2m Soir. | ☽ le 22 à
☉ le 15 à 9h 41m Mat. | ☉ le 30 à

u.	Cl.	MOIS.	Sems.	FETES.	
M.					
20	b	1	Jeudi	s. Pierre aux Liens.	
19	r†	2	Vendre	s. Etienne, pape, mart.	
18	r†	3	Samedi	Invention de s. Etienne.	
17	b	4	DIM.	10e. 1 d'août. s. Dominique.	
15	b	5	Lundi	N. D. des Neiges.	
14	b	6	Mardi	Transfiguration de N. S.	
13	b	7	Mercre	s. Cajétan,	
12	r†	8	Jeudi	ss. Cyriac, &c., mart.	
10	vl†	9	Vendre	De la Vigile.	
9	r	10	Samedi	s. Laurent, mart. *Jeûne.*	
8	r	11	DIM.	sol. s. Laurent, 2 M. 2 Dim. d'Ao	
6	b	12	Lundi	ste. Claire, v. m.	
5	r†	13	Mardi	De l'Octave.	
3	vl†	14	Mercre	De l'Octave.	2
2	b	15	Jeudi	ASSOMPTION de la ste. Vierg	
0	b	16	Vendre	s. Hyacinthe.	2
59	r	17	Samedi	*Jeûne*, Octave de s. Laurent.	
57	b	18	DIM.	12e. s. Joachim, sol. Assomp. 3	
56	b†	19	Lundi	De l'Octave. [3 dim. d'ao	
54	b	20	Mardi	s. Bernard, doct.	
53	b	21	Mercre	ste. Jeanne de Chantal,	
52	b	22	Jeudi	Octave de l'Assomption.	
50	b	23	Vendre	s. Phil. de Beniti.	
49	r	24	Samedi	s. Barthélemi, Apôtre.	
47	b	25	DIM.	1[illegible]e s. Louis, Roi. M 4 d'Ao	
46	r†	26	Lundi	s. Zéphirin, pape, mart.	
44	b	27	Mardi	s. Joseph de Calasantz.	
43	b	28	Mercre	s. Augustin, év. doct.	
41	r	29	Jeudi	Décolation de s. Jean Bte.	
40	b	30	Vendre	ste. Rose de Lima, Vierge.	
38	b	31	Samedi	s. Raymond, *Nonnat.*	



SEPTEMBRE.

Le ☉ entre à la ♎ le 23 à 2h. 45m

☾ le 7 à 1h 1m Matin. | ☽ le 20 à 2h
☉ le 13 à 5h 2[illegible]m Soir. | ☉ le 29 à 1h

u.	Cl.	MOIS.	Sems.	FETES.	
M.					
37	vr	1	DIM.	14e. 1 Dim. Sept.	2M
35	b†	2	Lundi	s. Etienne, Roi.	
34	vr	3	Mardi		
32	vr	4	Mercre		
31	b†	5	Jeudi	s. Laurent Justinien.	
29	vr	6	Vendre		
28	b†	7	Samedi	D[illegible] la Ste Vierge.	
26	b	8	DIM.	15e Nativité de la B.V. M.	2M
25	b	9	Lundi	De l'Octave.	M
23	b	10	Mardi	s. Nicolas Tolentin.	M
22	b	11	Mercre	De l'Octave.	M
20	b†	12	Jeudi	[illegible]e l'Octave.	
18	b†	13	Vendre	[illegible]e l'Octave.	
17	r	14	Samedi	Exaltation de la ste. Croix.	M
15	b	15	DIM.	16e. St. Nom de Marie.	2M
13	r†	16	Lundi	ss. Corneille, &c., mart.	M
12	b	17	Mardi	Stigmates de s. François.	
10	b	18	Mercre	4 *T*[illegible]. s Joseph d Cupertin.	M
9	r	19	Jeudi	ss. Janvier, &c. mart.	
7	r	20	Vendre	4 *Ts.* ss. Eustache, &c., mart.	M
5	r	21	Samedi	4 *Ts.* s. Mathieu, ap.	M
4	r	22	DIM.	s. Thomas de Vill. [v. 2M sol--	
2	r†	23	Lundi	17e. s. Lin, pap. m [s. Mathieu	
0	b	24	Mardi	N. D. de la Merci.	
59	vr	25	Mercre		
57	r†	26	Jeudi	ss. Cyprien et Justine, mart.	
56	r†	27	Vendre	ss. Côme et Damien, mart.	
54	r†	28	Samedi	s. Vinceslas, duc et mart.	
53	b	29	DIM.	18e. s. Michel Arch. 1r Oct.	M
51	b	30	Lundi	s Jérôme, prêtre, doct.	



OCTOBRE.

Le ☉ entre au ♏ le 25 à 11h. 0m.

☾ le 6 à 11h 15m Mat. | ☽ le 20 à 7h
☉ le 13 à 2h 13m Mat. | ☉ le 28 à 10

u.	Cl.	MOIS.	Sems.	FETES.	
M.					
0	b	1	Mardi	s. Rémi, év. (*incip. esther*)	
8	b	2	Mercre	ss. Anges Gardiens.	
7	vr†	3	Jeudi		
5	b	4	Vendre	s. François d'Assise.	
4	b†	5	Samedi	De la ste. Vierge.	M
2	b	6	DIM.	19e. Sol. Rosaire, M 2 dim. d'oct	
1	b	7	Lundi	s. Bruno. (hier.)	2M
9	b	8	Mardi	ste. Brigite, veuve.	
7	r†	9	Mercre	ss. Denis, &c., mart.	
6	b†	10	Jeudi	s. François de Borgia.	
4	vr†	11	Vendre		
3	b†	12	Samedi	De la ste Vierge.	
1	vr*	13	DIM.	20e. et 3e Dim d'Octobre.	
0	r	14	Lundi	s. Callixte. pap. mart.	
8	b	15	Mardi	ste. Thérèse, vierge.	
7	b†	16	Mercre	s. Edouard, Roi. (13 Octobre)	
5	b†	17	Jeudi	ste. Hedwidge, veuve.	
3	r	18	Vendre	s. Luc, Evangéliste.	
1	b	19	Samedi	s. Pierre d'Alcantara.	
	b	20	DIM.	21e N D. de la Vict. M 4e dim	
	b	21	Lundi	s. Jean de Canti (hier) 2M [d'Oct	
0	vr†	22	Mardi		
0	vr†	23	Mercre		
8	vr†	24	Jeudi		
	r†	25	Vendre	ss. Chrysanthe et Darie, mart.	
	vl†	26	Samedi	Jeune de la Vigile	M
	r	27	DIM.	22e. sol. ss Simon et Jude, ap. 5e	
	r	28	Lundi	ss. Simon et Jude, ap. [dim. d'Oc	
	vr†	29	Mardi		
	vr†	30	Mercre		
	vl†	31	Jeudi	*Jeûne* de la Vigile.	



NOVEMBRE.

Le ☉ entre au ♐ le 22 à 7h. 28m

☾ le 4 à 7h 56m Matin | ☽ le 19 à
☉ le 11 à 1h 0m Soir. | ☉ le 27 à

u.	Cl.	MOIS.	Sems.	FETES.	
M.					
2	b	1	Vendre	TOUSSAINT, *d'Ob.*	
1	n	2	Samedi	Trépassés. [et Vêpres du Pat.	2M
9		3	DIM.	23. dans l'Oct. 1 dim. Nov. Messe	
8	b	4	Lundi	s. Charles Borromée,	2M
6	b†	5	Mardi	De l'Octave.	
5	b†	6	Mercre	De l'Octave. } Semi-doubles.	
3	b†	7	Jeudi	De l'Octave.	
2	b	8	Vendre	Octave de la Toussaint.	M
0	b	9	Samedi	Dédic. Basiliq. du Sauv.	M
9	b	10	DIM.	24e. s. André Avellin. (2e.)	2M
8	b	11	Lundi	s. Martin, év.	M
6	r†	12	Mardi	s. Martin, pap. mart.	
5	b	13	Mercre	s. Didace.	
4	vr†	14	Jeudi		
3	b	15	Vendre	ste. Gertrude, vierge.	
2	b†	16	Samedi	De la [illegible]te Vierge.	
1	vr*	17	DIM.	[illegible]5e ap la [illegible]ent. 3e. dim. Nov.	
0	b	18	Lundi	Déd. des Bas. ss. Pierre et Paul	
9	b	19	Mardi	ste. Elizabeth, veuve.	M
7	b	20	Mercre	s. Felix de Valois.	
6	b	21	Jeudi	Présentation de la B. V.	
5	r	22	Vendre	ste. Cécile, vierge, mart.	
4	r	23	Samedi	s. Clément, pap. mt. M *Jeûne*	
3	r	24	DIM.	26 s. Jean de la Cr. sol. s. And. 4 dim.	
2	r	25	Lundi	ste Catherine, vierge mart.	
1	b†	26	Mardi	s. Grégoire Thaumaturge, év. M.	
0	vr†	27	Mercre	[17 Nov.	
29	vr†	28	Jeudi		
29	vl†	29	Vendre	De la Vigile.	M
28	r	30	Samedi	s. André, ap. *Cessant suffragia*	



DECEMBRE.

Le ☉ entre au ♑ le 21 à 8h. 0m.

☾ le 4 à 3h 36m Mat[illegible] | ☽ 9[illegible]
☉ le 11 à 9h 17m Mat[illegible] | ☉ le 26 à

Cl.	MOIS.	Sems.	FETES.	
vl	1	DIM.	1. de l'Av. sol. s. Frs.-Xavier.	
r†	2	Lundi	ste. Bibianne, v. m.	M
b	3	Mardi	s. François-Xavier.	M
b	4	Mercre	s. Pierre Chrysologue, év.	2M
vl†	5	Jeudi		M
b	6	Vendre	s. Nicolas, év.	M
b	7	Samedi	s. Ambroise, év. doct.	M
b	8	DIM.	CONCEPTION.	M
b†	9	Lundi	De l'Octave.	M
b†	10	Mardi	De l'Octave.	M
b†	11	Mercre	s. Damase, pape.	2M
b†	12	Jeudi	De l'Octave.	M
r	13	Vendre	ste. Lucie, vierge et mart.	2M
b†	14	Samedi	Octave de la Conception.	M
vl	15	DIM.	3 De l'Avent.	M
r†	16	Lundi	s. Eusèbe, év. mt.	M
vl†	17	Mardi	Ant. O.	
vl†	18	Mercre	*Jeûne*, 4 *Temps.*	
vl†	19	Jeudi		
vl†	20	Vendre	*Jeûne*, 4 *Temps.*	
r	21	Samedi	*Jeûne*, 4 *Ts.* s. Thomas. ap.	
vl	22	DIM.	4 de l'Av. Sol. s. Thomas.	M
vl†	23	Lundi		
vl	24	Mardi	*Jeûne* de la Vigile.	
b	25	Mercre	NOEL, (*Fête d'Obligation.*)	
r	26	Jeudi	s. Etienne, 1 mart. (de dév.)	M
b	27	Vendre	s. Jean, ap évang (de dév.)	2M
vl	28	Samedi	ss. Innocents, mart.	3M
b	29	DIM.	Du Dim. dans l'Octave.	4M
r†	30	Lundi	s. Thomas, év. mart.	4M
b	31	Mardi	s. Sylvestre, pape.	4M