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PROCEEDINGS

OF THE

HOUSE OF ASSEMBLY

OF

NEW BRUNSWICK

1880

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PROCEEDINGS  
IN THE  
HOUSE OF ASSEMBLY  
OF  
LOWER-CANADA,

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ON THE IMPEACHMENT

AGAINST

THE HONORABLE *LOUIS CHARLES FOUCHER*, ESQUIRE, ONE OF  
THE JUSTICES OF HIS MAJESTY'S COURT OF KING'S BENCH  
FOR THE DISTRICT OF MONTREAL.

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PRINTED BY ORDER OF THE HOUSE.

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# PROVINCE OF LOWER-CANADA.

HOUSE OF ASSEMBLY,

Saturday, 25th January, 1817.

**MR. CUVILLIER** in his place impeached **LOUIS CHARLES FOUCHER**, one of the Puisné Judges of His Majesty's Court of King's Bench for the District of Montreal for divers High Crimes and Misdemeanours and presented to the House Heads of Impeachment against the said **LOUIS CHARLES FOUCHER**, Esquire, and which said Heads of Impeachment were delivered in at the Clerks Table and are as followeth, that is to say :

Articles of Accusation and Impeachment exhibited against *Louis Charles Foucher*, Esquire, one of the Justices of His Majesty's Court of King's Bench for the District of Montreal.

## FIRST CHARGE.

**T**HAT the said *Louis Charles Foucher*, being a Judge of His Majesty's Court of King's Bench for the District of Montreal, in the Province of Lower-Canada, and also a Judge of His Majesty's Court of King's Bench for the District of Three Rivers, in the same Province hath disregarded the duties of those high and important Offices, and contrary to his oath, hath perverted the course of Justice in the said Courts, and rendered his judicial power subservient to the views of individuals whose interests he has been desirous of promoting.



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 SECOND CHARGE.
 

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That the said *Louis Charles Foucher*, being as aforesaid, a Judge of His Majesty's Court of King's Bench for the District of Montreal, and also a Judge of His Majesty's Court of King's Bench for the said District of Three Rivers, hath degraded those high Offices, and hath disqualified himself from discharging with impartiality the duties imposed on him by those offices, by giving counsel to individuals respecting their supposed rights to be prosecuted and defended before the said Courts of which he was and is a Judge as aforesaid, and by preparing pleadings and papers for them in the prosecution and defence of such supposed rights and hath afterwards awarded judgment or concurred in awarding judgment in favour of the persons to whom such advice and assistance was given, upon and in respect of such supposed rights.

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 THIRD CHARGE.
 

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That the said *Louis Charles Foucher*, being such Judge of His Majesty's Court of King's Bench for the said District of Montreal, did in or about the month of January, in the year of our Lord, One Thousand Eight Hundred and Fourteen, counsel and advise one *Pierre Ignace Daillebout*, an intimate friend of the said *Louis Charles Foucher*, upon and in respect of a certain action to be brought in His Majesty's said Court of King's Bench for the District of Montreal, by the said *Pierre Ignace Daillebout* against one *Etienne Duchesnois*, and did draw and prepare the Declaration to be used by the said *Pierre Ignace Daillebout* in the said action, which declaration so drawn and prepared by him, he the said *Louis Charles Foucher* put or caused to be put into the hands of an Attorney, related to and intimately connected with him, to be used in the said action, which was afterwards brought in the Term of the said Court holden in February in the year aforesaid, and the said *Louis Charles Foucher* did exercise judicial power and sit in Judgment in the action



so brought as aforesaid, respecting which he had given counsel and assistance as aforesaid, and did himself prepare and cause to be entered in the said action, an interlocutory Judgment, whereby certain exceptions made and filed by the said *Etienne Duchesnois* to the said action, were over-ruled, and did afterwards though he had been absent at the hearing of the cause send for and procure to be sent to him the record papers and proceedings in the said action, and did thereupon draw up the final judgement to be entered in the said action, in favour of the said *Pierre Ignace Daillebout* and caused and procured the said final Judgment to be entered in the said action, in favor of the said *Pierre Ignace Daillebout*, without having heard the parties in the said action, to the manifest perversion of Law and Justice, and in gross violation of the duties of the said *Louis Charles Foucher*, as such Judge as aforesaid.

#### FOURTH CHARGE.

That the said *Louis Charles Foucher*, being such Judge as aforesaid, hath, in violation of his duty advised one *Jean B. Normand*, upon and in respect of enforcing a Judgment recovered in His Majesty's said Court of King's Bench for the District of Montreal, by the said *Jean B. Normand*, against *Austin Cuvillier*, and hath given assurances to the said *Jean B. Normand* of the support to be afforded to him by the said *Louis Charles Foucher*, as such Judge as aforesaid, in the prosecution of the said means, and of the success with which he would cause them to be attended.

#### FIFTH CHARGE.

That the said *Louis Charles Foucher*, being such Judge as aforesaid, hath acted in a manner disgraceful to the said office, and hath been guilty of conduct destructive of the public confidence in the adminis-

tration



tration of Justice, by counselling, advising and affording assistance to persons engaged in differences which had become, or were about to become, the subjects of judicial investigation and determination by him as such Judge as aforesaid, and by assuring them of his favour, and of the success which he would cause them to obtain.

### SIXTH CHARGE.

That the said Louis Charles Foucher, being such Judge as aforesaid, hath been guilty of partiality and gross misconduct in the discharge of his judicial functions and hath brought discredit on the administration of justice.

On motion of Mr. Ogden, seconded by Mr. Sherwood,—

**RESOLVED**, That the Articles of Accusation and Impeachment against LOUIS CHARLES FOUCHER, Esquire, one of the Puisné Judges of the Court of King's Bench of the District of Montreal be referred to a Committee of seven Members, to examine the matter thereof and Evidence thereon, and to report with all convenient speed, with power to send for Persons, Papers and Records.

**ORDERED**, That Mr. Ogden, Mr. A. Stuart, Mr. Borgia, Mr. Vezi-  
na, Mr. Taschereau, Mr. Sherwood and Mr. Panet do com-  
pose the Committee.

~~FIFTH CHARGE~~  
Monday 3d February, 1817.

**ORDERED**, That Mr. Cord, Mr. Guy and Mr. Languedoc be added  
to the said Committee.

Friday



*Friday, 7th February, 1817.*

**ORDERED,** That four Members of the Committee upon the Impeachment of LOUIS CHARLES FOUCHER, Esquire, be a *quorum*, and competent to act and report notwithstanding that three Members have been added to the said Committee.

*Friday, 14th February 1817.*

On Motion of Mr. OGDEN, seconded by Mr. TASCHEREAU.

**ORDERED,** That One Hundred copies of the proceedings and the report of the Committee to which were referred, the accusations against the Hon. LOUIS CHARLES FOUCHER Esq. be printed for the use of the Members of the Legislature, and that the same be printed under the direction of the Speaker of this House, and that no other person do presume to print the same but such person as he shall appoint.

**ORDERED,** That the said Committee have power to report from time to time.



Friday, 14th February 1817.

Ordered, That four Members of the Committee upon the Impeachment of Louis Charles Foucher, Esquire, be a quorum, and competent to act and report notwithstanding that three Members have been added to the said Committee.

Friday, 14th February 1817.

On Motion of Mr. O'Connell, seconded by Mr. F. Robinson.

Ordered, That One Hundred copies of the proceedings and the report of the Committee to which were referred the accusations against the Hon. Louis Charles Foucher Esq. be printed for the use of the Members of the Legislature and that the same be printed under the direction of the Speaker of the House, and that no other person do presume to print the same but such person as he shall appoint.

Ordered, That the said Committee have power to report from time to time.



## HOUSE OF ASSEMBLY.

COMMITTEE ROOM.

Monday, 27th January, 1817.

**I**N Committee on the Articles of Impeachment against Louis Charles Foucher, Esquire, one of the Justices of the Court of King's Bench for the District of Montreal,

Present Messieurs Ogden, Taschereau, Panet and Sherwood,

Mr. Ogden called to the Chair.

Read the Order of reference.

Read also the Articles of Impeachment against the said Louis Charles Foucher, Esquire.

Mr. Cuvillier submitted to the Committee the names of several persons whom he desired to have examined in support of the said accusations.

**ORDERED,** That the Chairman do summon before the Committee the persons mentioned in the list given by Mr. Cuvillier.

—  
Saturday, 1st February, 1817.

The Committee being informed that several of the witnesses, were waiting in the Wardrobe, Jean Baptiste Normand, Carpenter residing in the parish of St. Anne de la Mascouche du Page, was called and answered to the questions put to him as follows:

**Q.**—Did you at any time recover judgment against Austin Cuvillier, Esquire, in the Court of King's Bench of the District of Montreal.

**B**

**Yes**



A.—Yes next April will be three years, I had instituted the action in the month of February 1813, for £40.

Q.—Did you cause the judgment to be executed?

A.—One year after the date of that judgment, my Advocate Mr. O'Sullivan not having proceeded, I made a motion personally in Court to revive the judgment, and delivered this motion to Mr. Justice FOUCHER, who was then on the Bench. The latter handed it to Mr. Justice Reid who gave it to Mr. Monk, a Prothonotary. The Court was of opinion that the judgment ought to be revived, I then took out a Rule, and after it was served the judgment was revived, I then sent a Bailiff with an Execution to Mr. Cuvillier, and Madame Cuvillier then said, that the personal property and effects intended to be seized did not belong to Mr. Cuvillier. I then assigned this Judgment to Mr. Lacroix one of the Advocates of Montreal, whom I accidentally met in the Street, for the consideration of one hundred and twenty Dollars, he then paid me that sum and I gave him a Power of Attorney to levy the amount of the judgment on Mr. Cuvillier, with costs of Execution which might amount to about two Pounds Currency.

Q.—Had you then or at any other time, and in what place any conversation upon this subject with Mr. Justice FOUCHER?

A.—The only conversation I have had with Mr. Justice FOUCHER upon this subject was when he was in Court upon the Bench when he gave my motion for reviving the judgment to the Prothonotary saying to me “Normand you will appear yourself.”

Q.—Do you recollect whether Mr. Cuvillier was at your House on the 9th January last, or at Mr. Montigny's House in your neighbourhood?

A.—Yes.

Do



**Q.**—Do you recollect that Antoine Perrault with Mr. Cuvillier's Servant went to Mr. Montignys.

**A.**—Yes. I know that Mr. Cuvillier and Antoine Perrault came to Mr. Montignys: I believe that Perrault had been sent to my house as a spy. Perrault asked me if I had been well paid by Mr. Cuvillier, I answered that I had not been so by the latter but by Mr. Lacroix, Perrault then asked me if I had been advised by Mr. Justice FOUCHER, I said "yes," he asked me besides what Mr. Justice FOUCHER had said to me, I answered "How Perrault you have been "an Officer of the Court and you ask me that? one must not declare the advice one receives from Judges." I made these answers to Perrault to make game of him. He was in liquor at the time.

**Q.**—Did you declare in presence of Perrault and of Mr. Cuvillier's servant that you had been advised by Mr. Justice Foucher and that he had said to you that he should be on the Bench and would give his assistance in the affair, and also that he enjoined you secrecy about it?

**A.**—Yes, I told Perrault that Judge Foucher had advised me. But I never told him that Mr. Justice Foucher had said he should be on the Bench, and that he enjoined me secrecy about it.

**Q.**—Have you met Mr. Lacroix the Advocate since the 9th of January last?

**A.**—I saw him on the 17th of January last upon the new market place at Montreal?

**Q.**—When you then saw Mr. Lacroix did you say to him that Mr. Cuvillier had been at your House as a spy?

**A.**—Yes.



Q.—Did not Mr. La Croix then tell you not to be uneasy if you should be brought before the House of Assembly, and that you should be paid?

A.—Yes, and I asked Mr. La Croix whether any harm could arise from the conversation I had jestingly had with Perrault, he first said if I had so spoken jestingly no harm could happen, that if Mr. Cuvillier should attack me in Court or elsewhere, my time would be well paid for. I thought at the time that I should be paid at the expence of the person who should attack me.

The examination of Jean Baptiste Normand was then continued to the third instant.

3d. February, 1817.

Present, Messrs. Ogden, Taschereau, Panet, and Sherwood.

Mr. Ogden called to the Chair.

The Committee proceeded to the continuation of the examination of Jean Baptiste Normand; as follows.

Q.—Have you seen Mr. Justice Foucher from the time of your receiving the order to appear before this Committee?

A.—No.

Q.—Have you seen Mr. La Croix since that time?

A.—Yes, I saw him on Thursday the 30th of January last the day of my departure to attend your Committee.

What



Q.—What conversation had you with him?

A.—I told him that I was about to depart. That I knew nothing of what they intended to ask me. He said “go however, the orders of the House must be obeyed.”

Q.—Was any thing else mentioned?

A.—I told him it was a painful thing to me, being poor, to make such a journey, He said “go however, I am going down to Quebec and on speaking to the Committee, I shall find means to get you paid.”

Q.—Did you not in the course of the last year, declare to Julien Perrault, to Delorme, to Bélair and to several other persons that if you had succeeded in procuring payment from Mr. Cuvillier, it would have been to be attributed to the advice of Mr. Justice FOUCHER?

A.—No, never at any time; I am certain of it.

Q.—Have you not had frequent communications in the course of the last winter and spring with Julien Perrault and others respecting the Judgment you recovered against Mr. Cuvillier?

A.—Last autumn I met Belair and Julien Perrault we spoke of the Judgment but Judge FOUCHER was not mentioned, except by their then saying to me “Judge FOUCHER protects you” I answered them “he protects me as he does others.”

Q.—In this conversation or at some other time did you not declare to Julien Perrault, to Belair or to others, that you had been put on the track or in the right way to succeed in your suit against Mr. Cuvillier?

Yes



A.—Yes, I have declared so to the persons herein before named, and to many others.

Q.—Did you not thus express yourself while the Advocates at the bar in Montreal, seceded from practice at that bar?

A.—Yes, it was during that time.

Q.—Of whom do you mean to speak, in saying that you had been put on the track or in the right way?

A.—I meant Mr. Delorme, Mr. Cadieux and many others but not Judge FOUCHER.

Q.—Did Mr. Justice FOUCHER at any time tell you to apply to Mr. Viger, or to Mr. Lacroix?

A.—No.

The Committee then adjourned.

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*Wednesday, 5th February, 1817.*

The Committee met.

**P**RESENT, Messrs. Ogden, Sherwood, M'Cord, Languedoc, Taschereau, Gury and Panet.

Mr. Ogden in the Chair.

The Committee then examined Antoine Louis Levesque of Montreal Esquire as follows:

Are



**Q.**—Are you not one of the Prothonotaries of the Court of King's Bench for the District of Montreal?

**A.**—I am one of the Prothonotaries of that Court and in that capacity I am one of the Keepers of the Records of the said Court.

**Q.**—Are you in possession of the Record of the said Court in the cause of Pierre Ignace Daillebout, Plaintiff against Etienne Duchesnois Defendant, and Etienne Duchesnois, Plaintiff en garantie against Thomas Coffin Defendant en garantie?

**A.**—Yes, and I produce the same before the Committee with a certified copy of the interlocutory Judgments rendered in this cause, marked A, I leave this copy for the use of the Committee. I also produce the Draughts of the said interlocutory Judgments, having received an order of the Committee to lay before it the Record in the aforesaid cause or a certified copy thereof within a delay too short for the preparing of copies of all the papers composing the Record, in obedience to the said order, I have taken the Record from the Archives of the Court of King's Bench of Montreal, to lay the same before this Committee.

**Q.**—Are there not on that Record interlocutory Judgments written in the hand of Mr. Justice FOUCHER, of the Court of King's Bench of Montreal, and if there be, produce the same?

**A.**—On the Record I produce, there are three Draughts of interlocutory Judgments rendered in the aforesaid cause and those Draughts are in the handwriting of Mr. Justice FOUCHER one of the Justices of the said Court.

**Q.**—Has there been pronounced in that cause a final and definitive Judgment—and when?

Yes



A.—Yes, and that final Judgment rendered in that cause is of the 20th of October, 1814. I cannot say whether it was pronounced *Sedente Curia* on that day, but it was entered and bears date in the register of the said Court the 20th of October, 1814. I produce and leave before the Committee a copy of the said final Judgment, which is contained in the paper marked A.

Q.—Have you seen the Draught of that final or definitive Judgment?

A.—Yes, I think I have seen it.

Q.—Was it in the hand writing of Judge FOUCHER?

A.—I have not a perfect recollection of the hand writing in which the said Draught of a final Judgment is, because that Draught as well as those of all the definitive Judgments rendered in the term of October 1814, were transmitted, as is usual, to the Hon. the Chief Justice Monk, in vacation, after the entering of the said definitive Judgments. It is now a little more than two years since that time.

Q.—Have you any remembrance whatever of this fact?

A.—There are only three Judges of the Court of King's Bench of the District of Montreal, who write the Draughts of the Judgments when they do not order the Prothonotary to do it. I cannot recollect which of the three Judges wrote the said Draught of Judgment, but I am sure it was not drawn by me.

Q.—Is there not in the Record a consent rule signed by the Advocates of the parties dated the last day of term consenting to the rendering of Judgment in vacation?

A.—Yes, and I produce a certified copy thereof marked B.

Q.—Did Mr. Justice FOUCHER sit when this cause was pleaded on the merits?

No.



A.—No.

Q.—Did he sit often in the term of October 1814.

A.—Mr. Justice FOUCHER sat only on the two or three first days of that term.

Q.—What was the reason of that ?

A.—Sickness.

Q.—Do you recollect that in the vacation of October 1814. Judge FOUCHER sent to the office of the Prothonotaries for the Records in question ?

A.—No.

Q.—Do you recollect that the Record was sent to the House of any of the Judges during that vacation ?

A.—No.

Q.—Have you lately had any conversation with Judge FOUCHER respecting the Record in Question ? and when ?

A.—I cannot name the day and I cannot even call it conversation: some days ago the Hon. Mr Justice FOUCHER came into my office and saw the Record in question upon one of the office tables, he examined it in my presence and in that of some gentlemen of the bar. Having seen the Draughts of the three interlocutory Judgments in his own hand writing and now produced he said "It is surprising, for it was Judge REID who rendered this Judgment" or



other equivalent words: I informed Mr. Justice FOUCHER that I should go down to Quebec in obedience to the order of the House.

Q.—Did not Judge FOUCHER find you to blame in leaving the Draughts of the Judgments in the files of the causes, saying that it shewed what Judge had pronounced Judgment ?

A.—One day the Hon. Mr. Justice FOUCHER asked me (which I believe was in January last) how it happened that the Draughts of the Judgments were in the Records, and that every one might take communication of them: this question was put to me in presence of Mr. Justice REID. I answered that it was usual and that I thought it had always been usual to leave the Draughts of interlocutory Judgments in the Records themselves, but that the Draughts of definitive Judgments were always transmitted to the Chief Justice after being entered, that communication might be taken of the said Records and Draughts and that it was my duty to communicate them.

Q.—Who transmitted the draught of the definitive Judgment in the said cause to the Chief Justice ?

A.—I think I did so myself, together with the other draught of definitive Judgment rendered in the said Term.

Q.—Who entered the said definitive Judgment ?

A.—I believe (but am not certain) that it was done by one of my Clerks, named Bibaud.

Q.—How happened it that the Record lay upon one of the Tables, in the Office ?

A.



A.—Some days before Judge FOUCHER saw it upon that Table, I had sent for it, to examine it.

Q.—Did Mr. Duchesnois, the Defendant in the principal cause, file exceptions? And what was the fate of those exceptions?

A.—Yes: they were dismissed.

Q.—In whose favour was the definitive Judgment pronounced?

A.—In favour of the Plaintiff, Pierre Ignace Daillebout.

Q.—Did not Mr. Duchesnois bring an action *en garantie* against Thomas Coffin, Esquire, and what was the fate of that action?

A.—Yes, and that action was likewise dismissed.

Q.—Have not the Judges, as well as the Advocates, access to the Vaults in which are deposited the Records of the Court?

A.—When the Judges require of me communication of any Records, it is my duty to give it to them: and I must also give communication to the Advocates, when they ask it, of the Records of the causes in which they have been concerned, when those causes are not *en délibéré*.

Q.—Do you know that Mr. Justice Foucher has drawn any Pleadings for any Advocate at the Bar?

A.—No, I have no knowledge of that.

Q.—Is it not usual in the Court of King's Bench at Montreal, for the Judges to prepare the draughts of interlocutory Judgments in contested causes?



**A.**—That is not always the case, but it often happens.

**Q.**—When those draughts of Judgments are given to the Prothonotaries to enter, are they not read in open Court?

**A.**—Yes, generally.

**Q.**—Have not the said three draughts of interlocutory Judgments, rendered in this cause, and written by Mr. Justice Foucher, been read in open Court, and entered as being the Judgment of the Court?

**A.**—As the interlocutory Judgments are almost always read in open Court, I believe the said three draughts have been read in open Court like the others, but I do not particularly recollect. They were entered as being the Judgments of the Court.

**Q.**—Do the other Judges more frequently prepare the draughts of Judgments than Judge FOUCHER does, or has Judge FOUCHER, as the junior of the four Judges, that task to perform?

**A.**—I do not know that it is the task of the junior of the Puisné Judges. Mr. Justice REID, and Mr. Justice FOUCHER, are those who the most frequently write the interlocutory Judgments, in the shape of draughts, when they do not order one of the Prothonotaries to prepare them. I am unable to say which of these two Judges writes most of these draughts of Judgments.

**Q.**—Is it usual for the Judges of the District of Montreal, in Term or in Vacation, to take the Records home with them, and to meet at the house of one of them to deliberate upon and prepare the Judgments in those causes?

**A.**—During the Superior Terms, the Judges take home with them, or

cause



cause to be carried thither, Records for examination. In vacation it sometimes happens that the Judges require the Records, but that rarely happens. I do not know whether the other Judges meet to deliberate at the house of the Judge who has the Records.

**Q.**—Do you know that in that cause of Daillebout vs. Duchesnois, the Judges met at the house of one of them to deliberate?

**A.**—No.

The Committee then adjourned.

6th February, 1817.

**P**RESENT, Messieurs Ogden, Sherwood, M'Cord, Tasche-  
reau, Panet and Gogy..

Mr. OGDEN called to the Chair.

The Committee proceeded on the continuation of the enquête as follows :

Examination of Janvier Domptail La Croix, of the city of Montreal, Esquire.

**Q.**—Are you not one of the Advocates practising at the bar of Montreal?

**A.**—Yes, I am.

Are



Q.—Are you not a Nephew of the Hon. *Louis Charles Foucher* one of the Justices of the Court of King's Bench of the District of Montreal?

A.—Yes, by affinity,—having married his niece.

Q.—Have you had a knowledge of a certain cause instituted in the superior term of the Court of King's Bench at Montreal in February 1814, in which *Pierre Ignace Daillebout* Esquire was Plaintiff against *Etienne Duchesnois* Defendant, and *Etienne Duchesnois* Plaintiff *en garantie* against *Thomas Coffin* Defendant *en garantie*?

A.—Yes, I have a knowledge of it, I was the Advocate of the Plaintiff *Pierre Ignace Daillebout*. This action was returnable on the 10th February, 1814.

Q.—Who in the first instance instructed you to institute that action?

A.—Mr. *Daillebout* himself, by a power of Attorney dated “Three Rivers 13th March, 1813.”

Q.—Have you the letter which accompanied that power of Attorney?

A.—No.

Q.—Do you recollect the contents of that letter?

A.—To the best of my knowledge the letter corresponded with

the



the power of Attorney which was sent to me.

Q.—Do you recollect that the name of Judge *Foucher* was mentioned in that letter?

A.—No, I am sure the name of Judge *Foucher* was not mentioned in that letter.

Q.—Did you see Mr. *Daillebout* before instituting that action, and where?

A.—Yes, at my house in Montreal.

Q.—Did not Mr. *Daillebout* then tell you that he had instructed Mr. *Coffin* of Three Rivers to draw for him his money from Mr. *Duchesnois*?

A.—Mr. *Daillebout* then said to me “I have settled my affairs with Mr. *Coffin*” without saying any thing more.

Q.—Are you positive that Mr. *Daillebout* did not then tell you that he had given Mr. *Coffin* a power of Attorney?

A.—To the best of my knowledge I am positive that he said no more to me relative to this, than I have stated in my last answer.

Q.—When Mr. *Daillebout* mentioned Mr. *Coffin*'s name, did you not understand that he had in fact given a power of Attorney to Mr. *Coffin* to draw rents from Mr. *Duchesnois*?

ANS.—Q

I did



A.—I did not understand so at the time, but a few days afterwards I was informed that Mr. Coffin had in fact been charged with a power of Attorney by Mr. *Daillebout* to draw his monies from Mr. *Duchesnois*,

Q.—Upon what subject did Mr. *Daillebout* mention to you Mr. *Coffin's* name?

A.—That question is answered by my answers to the foregoing questions.

Q.—Did not Mr. *Daillebout* then say to you that he was at a loss to know against whom he ought to bring his action whether against Mr. *Coffin* or Mr. *Duchesnois*?

A.—He did not at all evince uneasiness upon this subject.

Q.—Did not Mr. *Daillebout* then or at some time before or after that conversation, tell you that Mr. Justice *Foucher* had advised him to institute that action?

A.—He never mentioned to me, the name of Mr. *Foucher* relatively to the suit he had charged me to bring against Mr. *Duchesnois*.

Q.—Did Mr. Justice *Foucher* at any time either before or after the institution of that action, or during the suit or after the Judgment mention this affair to you?

A.—Never at any time whatever.

Q.—Did



Q.—Did not Judge FOUCHER prepare the draught of the declaration in this action?

A.—Not to my knowledge. I prepared the draught, the original and the copy, myself.

Q.—Who drew the declaration in this cause?

A.—It was I.

Q.—Did not Judge FOUCHER deliver to you a draught of a declaration concerning this cause, or any other cause?

A.—No, except for an action at his suit, against Toussaint Pothier, Esquire, and returnable in the Term of February of this year, also *Défenses* and *Exceptions* in another cause, in which Mr. Pothier is Plaintiff, and Mr. Justice FOUCHER, and others, are Defendants, and I am the Advocate upon record in these two causes.

Q.—Did Mr. Justice FOUCHER, either verbally or in writing, counsel or advise you relatively to the action brought by you for Mr. Daillebout, against Mr. Duchesnois?

A.—No, never.

Q.—Do you understand Latin?

A.—I understand only the Latin phrases daily used at the Bar, and of which we have the interpretation in French in our Law Books.



Q.—What is meant by *actio negotiorum gestorum* ?

A.—It means the action which is given to compel to the rendering of an account, persons who have stood charged with the administration or *gestion* of the affairs of others.

Q.—Have you not had in your possession, before, during or after the said action, a draught of a declaration in the cause of Daillebout against Duchesnois, upon the back of which was written the title of the cause, with the Latin inscription which is descriptive of the nature of the cause, and on which those words *actio negotiorum gestorum* were written in Red Ink, in the hand writing of Judge FOUCHER ?

A.—I never had any draught of a declaration drawn by Judge FOUCHER ; I received by Mr. Daillebout his papers, enclosed in a blank paper, containing, to the best of my recollection, the following indorsement: Daillebout *vs.* Duchesnois, with the words *actio negotiorum gestorum*, in the hand writing of Judge FOUCHER ; but I do not recollect whether the Latin words were in Red or in Black Ink.

Q.—What papers were enclosed in that blank paper or docket ?

A.—Instructions, and one or two titles belonging to Mr. Daillebout ; the instructions were in Mr. Daillebout's hand.

Q.—Have you in your possession the draught of the declaration in the said cause ?

A.—Yes ; and I produce the same before the Committee.

Did



Q.—Did you prepare the declaration used in the cause, from this very draught?

A.—Yes.

Q.—Have you in your Law Books forms of declarations in actions of this nature, *verbatim* such as this draught?

A.—Not word for word, but the conclusions are the same. This kind of action is not unknown, being very often brought in the Courts of Justice, and I think I may have brought forty or fifty of them in the course of my practice at the Bar of Montreal, both in the Superior and Inferior Terms.

Q.—As the indorsement of this draught appears to be written in the same ink, and with the same pen, was it possible to anticipate the days for the pleadings, as they are minuted on the back of the said draught, and to put them on the back of the said draught, at the same instant?

A.—The five different dates were written by me on the back of the said draught, in the same ink after the first part of the indorsement, in order to correspond with my memorandum of causes, and were all written on the same day, to save me the trouble of searching for the dates, and that to the best of my knowledge since the rendering of the judgment.

Q.—Are you disposed to leave the draught of the declaration before the Committee?

A.—No.



Q.—Will you permit the Chairman of the Committee to *paraphé* it?

A.—No, I cannot do so, if you have not a right to retain it.

Q.—In the action last mentioned, were not exceptions filed, and what was the fate of those exceptions?

A.—To the best of my knowledge, exceptions and *défenses* were filed and pleaded by Mr. Louis Michel Viger, on the part of the Defendant, Etienne Duchesnois, which were dismissed.

Q.—Was the cause pleaded on the merits, and finally adjudged upon?

A.—After an Interlocutory Judgment dismissing the exceptions, there were filed *Débats de Compte*; the cause was then pleaded on the merits, and final Judgment given in the vacation of the Term of October, 1814, by consent of parties, signed by the three Advocates on Record.

Q.—Is it not usual when an account is rendered by one of the parties, for the other party to file his *Débats* to that account?

A.—That is as the Advocate of the Plaintiff deems necessary; in that cause no *Débats* were filed, because Mr. Louis Michel Viger, Advocate of the Accountant, (the time fixed by the Rules of Practice of the Court of Montreal, for filing them, having expired,) objected to their being filed.

Q.—When the cause was heard on the exceptions, did not Mr.  
Justice



Justice FOUCHER, then sitting, send you a note written by himself?

A.—On the 12th of April, 1814, this cause was to be pleaded *en droit*, and there was a continuance to the 16th of the same month, when the four Judges were on the Bench. I do not at all recollect that Judge FOUCHER sent to me any Billet or Note, as I have already mentioned in my foregoing answers. Judge FOUCHER never sent me any instruction whatever. Judge FOUCHER, being on the Bench, has often sent me notes, but never concerning affairs pending in Court; and I have often received notes from the other Judges.

Q.—In whose favour was the final Judgment rendered?

A.—In favour of Pierre Ignace Daillebout, the Plaintiff.

Q.—Was Judge FOUCHER on the Bench when the cause was pleaded on the merits, on the 18th of October, 1814?

A.—I do not recollect; but according to the notes I took from the Register of the Court, or from the Minutes, (*Plumitif*), before leaving Montreal to attend before this Committee, it appears that the four Judges were present. I took those notes according to information I received from Mr. Levesque, that an abstract of the proceedings in that cause was wanted.

Q.—Have you seen the draught of the final Judgment rendered in that cause?

A.—Never.

Have



Q.—Have you any knowledge that Judge FOUCHER himself prepared the draught of that Judgment?

A.—None whatever.

Q.—Have you any knowledge of a cause instituted by Jean Baptiste Normand against Austin Cuvillier, Esquire, in the Cours of King's Bench at Montreal, and at what time?

A.—Yes, I have a knowledge of that action; it was instituted in the Winter of the year 1813, and I recollect that the said Normand obtained judgment against the said Austin Cuvillier, upon verdict for £40 and costs.

Q.—Do you know that Normand recovered under this Judgment?

A.—He received no part of the principal of the Judgment from Mr. Cuvillier, to my knowledge, but he assigned to me the Judgment and the costs of the Rule *nisi causa*.

The following Questions were then put to Mr. Lacroix :

Q.—For what consideration was that Judgment assigned to you?

Q.—Do you not sue as Advocate upon the said Judgment, in the name of Jean Baptiste Normand?

The Committee objected to the putting of these questions to the Witness,

Q.—Is it not in consequence of the advice and counsel of Judge FOUCHER, that you accepted the assignment of that Judgment?

I never



**A.**—I never at any time received any advice from Judge FOUCHER concerning the affair of Normand, directly or indirectly, and I never spoke to him or advised him about it, directly or indirectly.

**Q.**—Did you ever receive from any other client than Mr. Daillebout, any papers or instructions, with the title of the cause, in the hand writing of Mr. Justice FOUCHER ?

**A.**—Never.

**Q.**—Were you surprised at the circumstance of seeing upon the papers which you received from Mr. Daillebout, the title of the cause in the hand writing of Judge FOUCHER ?

**A.**—By no means ; it made no impression on me. I exposed it publicly in Court.

**Q.**—What occasioned the circumstance that the papers of Mr. Daillebout were enclosed in a paper having the title of the cause in the hand writing of Mr. Justice FOUCHER ?

**A.**—I cannot say, having publicly exposed that circumstance, as I have said in my foregoing answer, and not having been at all solicitous about the said paper.

And the Committee adjourned.

The examination of Mr. Lacroix was then continued until tomorrow.

7th February, 1817.

**P**RESENT, Messieurs Ogden, M'Cord, Sherwood, Languedoc, Borgia, Gury, Taschereau, Stuart, and Panet.

The examination of Mr. Lacroix was continued as follows :

When



Q.—When you saw Mr. Daillebout for the first time relative to this affair did you then tell him that he must prosecute, and what kind of action did you tell him must be instituted ?

A.—To the best of my knowledge and recollection Mr. Daillebout told me that Mr. Duchesnois having collected his Rents he intended to sue him. But I do not recollect whether I then told him what kind of action must be instituted. I wrote to Mr. Duchesnois that I was instructed to sue him to compel him to render an account.

Q.—Did that conversation with Mr. Daillebout occur before you had received the papers from Mr. Daillebout with the title of the cause written upon the envelope of blank paper as well as the latin words above mentioned ?

A.—To the best of my knowledge and memory I received the papers mentioned in the preceding question after that conversation and even after my writing one or two letters to Mr. Duchesnois.

Q.—Did Mr. Duchesnois appeal from the interlocutory Judgment dismissing his exceptions ?

A.—Not to my knowledge having paid after the rendering of the final Judgment from which there has been no appeal.

Q.—Is Mr. Duchesnois a man in circumstances to enable him to procure sureties for the institution of an appeal ?

A.—Knowing Mr. Duchesnois for twenty years, and that he is a merchant resident at Varennes and very rich, considering what the fortunes in this country are, he might have appealed from all the proceedings in the cause in question and have furnished the necessary sureties for an appeal by applying to any citizen either of Montreal or its environs.

Have



Q.—Have you any objection to day to give to the Committee the Draught of the declaration and the paper intituled “*Débats de Compte*” which you refused to give yesterday?

A.—I have no objection to leave this Draught of a declaration to this Committee according to its desire. If I did not leave it yesterday that was not until after the Committee had decided that it had no right to oblige me to leave it. But I offered it, and it was only from a personal discussion with the gentleman who proposed the question to me, that I put the paper into my pocket, I therefore leave the paper in the possession of the Committee.\* With respect to the paper intituled “*Débats de Compte*” I have no objection to leave it also with the Committee remarking that this paper was written when I was in Court and sitting in my place, and that it was intended to serve as Draught and as original, and that it is the same paper which Mr. Viger refused to receive in communication as the delay for filing it was expired. †

Q.—With what ink did you write those “*Débats de Compte*”?

A.—With the ink which is furnished us in Court by the Cryer of the Court.

Q.—Is it usual among the Advocates at the bar at Montreal to keep the Draughts of the pleadings or Declarations which they file in Court?

A.—My Custom is to keep them.

Q.—You have then in your possession the envelope or blank paper which enclosed the papers transmitted to you by Mr. Daillebout and upon which was written the title of the cause of Daillebout vs. Duchesnois in the hand of Judge FOUCHER as well as the latin words *Actio negotiorumgestorum*?

\* For this Paper see note C at the end of this report.

† For this Paper see note D at the end of this report.



A.—Mr. Coffin was punctual in his remittances, but I revoked the power in 1813, because I was going to live at Montreal.

Q.—Did you speak to Mr. Duchesnois before instituting your action against him?

A.—Yes, I saw him at Varennes he then admitted his being my debtor, and said that he should forthwith go to Montreal to pay to Mr. La Croix my Advocate.

Q.—Were you not very intimately acquainted with Mr. Justice FOUCHER, when you went to Three-Rivers, and did you not stay at his House on those occasions?

A.—Yes.

Q.—When you went to Montreal, did you not stay at Judge FOUCHER's House, and in what year did that happen?

A.—I left Nicolet in May, 1813, and went to live at Mr. Justice FOUCHER's.

Q.—You were then very intimate with him?

A.—Yes; and I had been perfectly acquainted with him for many years.

Q.—Who induced you to put your papers in the hands of Mr. La-croix, Advocate, before knowing whether Mr. Duchesnois refused to satisfy you?

A.—It was because he had not paid me for three years, and that the fourth year was proceeding.

Q.—During your residence with Mr. Justice FOUCHER, did you not

often



often speak to him about your affairs with Mr. Coffin and Mr. Duchesnois ?

A.—I once spoke of them to him ; I told him that I had charged Mr. Lacroix, Advocate, to sue Mr. Duchesnois for the reimbursement of what he owed me.

Q.—What did Mr. Justice FOUCHER answer to that ?

A.—He made no answer.

Q.—Did you transmit to Mr. Lacroix, Advocate, any papers concerning the suit to be commenced against Mr. Duchesnois, and when ?

A.—Yes, some time in May, 1813, and before the commencement of my suit against Mr. Duchesnois.

Q.—What papers were those ?

A.—It was a little roll of papers, containing a note of the name of all of my debtors, and written by myself. I had put this note in Judge FOUCHER's hands ; he made a little roll of it, and said to me, " Mr. Daillebout, do me the favour to give that *en passant* to Mr. Lacroix."

Q.—Did the roll which you so handed to Mr. Lacroix, contain other papers than that note of your debtors ?

A.—I do not know.

Q.—Was not the roll of papers in question, of a size to give you ground to believe that there were other papers than the note in question ?

A.—Yes.

The Committee then adjourned.

Saturday



Saturday 8th February, 1817.

**P**RESENT, Messieurs Ogden, Sherwood, Taschereau, M'Cord and Panet.

The Committee proceeded on the continuation of Mr. Daillibout's examination as follows :

**Q.**—Was there any thing written upon the cover of the Roll of Papers which you so handed to Mr. La Croix?

**A.**—My memory now enables me to recollect that when I yesterday said "a Roll of Papers" I intended a file of papers. I do not know whether there was any writing upon that file.

**Q.**—If there had been any writing there, should you have perceived it?

**A.**—Inevitably.

**Q.**—Was the paper upon which you had written the note of your debtors contained in that file?

**A.**—Yes.

**Q.**—When Mr. Justice FOUCHER told you to hand that file of papers to Mr. La Croix, did he tell you that that file contained every thing necessary to your action against Mr. Duchesnois?

**A.**—I do not know. It is out of my knowledge: at my age my ideas have failed very much.

**Q.**—When you gave that file of papers to Mr. La Croix did you tell him it came from Judge FOUCHER, and that the file contained all the papers necessary for your cause against Mr. Duchesnois?

I told



A.—I told him, it came from Judge FOUCHER, that I did not know what the file contained, but I knew it contained the note of my debtors in my handwriting.

Q.—Did you give Mr. La Croix a power of Attorney in writing to prosecute the said action?

A.—I know I gave him charge of my affairs, but I do not recollect whether it was by a power of Attorney in writing, or not.

Q.—Where did you write that note which contained the name of your debtors to serve as instructions to Mr. La Croix?

A.—In my room at Mr. FOUCHER's where I then lived.

Q.—How did Judge FOUCHER come into possession of that note?

A.—I suppose I gave it to him.

Q.—Did Mr. Justice FOUCHER ever advise or counsel you to sue Mr. Etienne Duchesnois.

A.—Mr. Justice FOUCHER never conversed with me on that business: once however while my cause with Mr. Duchesnois, was *en délibéré*. I said to him "tell me Mr. Justice FOUCHER will my affair continue much longer?" he said "Mr. Daillebout as you are in my house I will not meddle with it."

Q.—Do you recollect that when Mr. FOUCHER was Provincial Judge at Three-Rivers, a suit was brought against you on the part of the Crown?

A.—Yes, it was about the affair of Madame De Montarville.



Q.—In what capacity were you sued?

A.—As Testamentary Executor of the late *Grand Vicair* de St. Onge.

Q.—In that affair were you counselled or advised by Mr. Justice FOUCHER?

A.—No.

Q.—When you received the declaration or information in this affair did you shew it to Mr. Justice FOUCHER?

A.—I do not recollect.

Q.—Did you employ an Advocate in that affair?

A.—No.

Q.—Do you recollect that on that occasion Mr. Justice FOUCHER, on the Bench, in the Office, or at home, drew a pleading for you, setting forth that you relied on justice?

A.—I do not recollect.

Q.—Did you in that cause sign your name to any paper written in the hand of Uriah Judah, or of any other person?

A.—I do not think so.

Q.—During that affair were you living at Judge FOUCHER's?

A.—I have been there.

Q.—Were the same papers which Mr. Justice FOUCHER told you to give



give to Mr. Lacroix, and which you gave him, returned to you by Mr. Lacroix, after the termination of the suit against Mr. Duchesnois ?

A.—Mr. Lacroix returned to me the papers which concerned my affair with Mr. Duchesnois, as well as some Contracts of *Constitut*, but I do not recollect whether Mr. La Croix returned to me that note of the name of my debtors, which I had before given to Mr Justice FOUCHER, and which was with the file of papers which he told me to carry to Mr. Lacroix.

Q.—Do you now perfectly recollect that you gave to Mr. Justice FOUCHER that note containing the name of your debtors ?

A.—Yes, I remember it.

Q.—Why did you give it to Mr. Justice FOUCHER ?

A.—I cannot say why, nor for what reason.

Q.—What did Mr. Justice FOUCHER say to you when you gave him that paper ?

A.—I do not remember.

Q.—What did you then say to Mr. Justice FOUCHER ?

A.—I do not recollect.

Q.—Since the event of the suit with Mr. Duchesnois, have you suffered any sickness, which may have contributed to occasion you to lose your memory ?

A.—I suffered much all last year from an attack of Jaundice, and I do so still.



Q.—Of the papers returned to you by Mr. La Croix was one or more in the handwriting of Mr. Justice FOUCHER?

A.—I have no knowledge of it.

Q.—If Mr. La Croix had returned you any such, should you have known it?

A.—Yes, I should have known it, but I did not see any.

Q.—When you gave Mr. Justice FOUCHER the note of the names of your debtors did you tell him that you intended to sue those persons?

A.—No.

Q.—Why then did you return or give it to him?

A.—I do not recollect why.

Q.—Did you on your way to Quebec meet Mr. La Croix at Three-Rivers?

A.—Yes, I saw him.

Q.—Did you speak to him of the affair which was bringing you both to Quebec?

A.—I told him I was going to Quebec upon Mr. FOUCHER's affair.

Q.—Were you not for an hour alone together and in conversation upon this subject?

A.—No.

Q.—Had you any conversation with him after your arrival at Quebec?

He



A.—He called to see me at Mr. Duchesnay's, but we had not any conversation upon this subject.

The examination of Mr. Daillebout was then adjourned.

Examination of Joseph Bedard, Esquire.

Q.—Are you not one of the Advocates practising at the Bar of Montreal?

A.—Yes, I have practised at the Bar of Montreal for twenty years ending in July last.

Q.—Have you a knowledge of a cause instituted in the Court of King's Bench at Montreal between Pierre Ignace Daillebout, Plaintiff against Etienne Duchesnois Defendant, and Etienne Duchesnois Plaintiff, *en garantie* against Thomas Coffin Defendant *en garantie*, and at what time?

A.—Yes, that cause was pending in the year 1814.

Q.—Who were the Advocates concerned in that cause?

A.—M. La Croix was the Advocate of Mr. Daillebout, Mr. Louis Michel Viger that of Mr. Duchesnois, and to the best of my memory Mr. Beaubien was Advocate of Mr. Coffin.

Q.—Is not the seat you occupy at the Bar of Montreal next to that of Mr. La Croix Advocate?

A.—The seat I have occupied for many years is next to and on the right of that which Mr. La Croix has also occupied for many years.



Q.—As you are thus next to Mr. La Croix, have you not frequently an opportunity of seeing his papers which lie on the table?

A.—Yes.

Q.—Did you not see in Court and in the possession of Mr. La Croix a paper marked “Daillebout vs. Duchesnois” and the words “*Actio negotiorum gestorum*” in the handwriting of Judge FOUCHER and when?

A.—While that cause was pending in Court and before the argument on the merits, I saw several times on Mr. La Croix's table a paper folded in the form of a Declaration. The indorsement of this paper was in the handwriting of Judge FOUCHER, and when I saw that paper I supposed it to be the Draught of a declaration in the cause of Daillebout vs. Duchesnois: on the back of that paper there were the words “*Actio negotiorum gestorum*” also in the handwriting of Mr. Justice FOUCHER.

Q.—Was it the paper now shewn to you marked C?

A.—No.

Q.—When you saw that paper which you supposed to be a Draught of the declaration in the said cause in Mr. La Croix's possession, did it not excite your surprise?

A.—I was a little surprised to see that paper in Mr. La Croix's possession.

Q.—Was not your surprise by so much the greater as Mr. Foucher had already sat in that cause and had even pronounced some interlocutory judgments to your knowledge?

I was



**A**—I was surprised to see that Mr. Justice FOUCHER sat in that cause because I supposed that he had prepared the Draught of the declaration on seeing the indorsement of the paper I have mentioned above. I cannot remember whether Mr. Justice FOUCHER, were on the Bench, when interlocutory Judgments were pronounced in that cause?

**Q**—Were not the gentlemen of the Bar alike surprised on seeing that paper in the handwriting of Mr. Justice FOUCHER in the possession of Mr. La Croix, and have not those gentlemen often expressed to you their surprise on this account?

**A**—Several gentlemen of the Bar appeared to me surprised that Mr. La Croix should have that paper in his possession, then mentioning to me their having seen it in Mr. La Croix's possession.

**Q**—Do you recollect that cause having being pleaded on the merits?

**A**—To the best of my knowledge it was pleaded on the merits in the term of October 1814.

**Q**—Was Judge FOUCHER present at the pleading of that cause or the merits?

**A**—Mr. Justice FOUCHER sat on the three first days only of that term.—He was not sitting when that cause was pleaded on the merits.

**Q**—In the vacation after that term were you not present with

Mr.



Mr. Louis Micher Viger at the King's Bench office at Montreal, one day when Mr. Justice FOUCHER sent for the Record in the cause beforementioned?

A.—A few days after the term of October 1814, I was at the office when a person whom I do not recollect, called to ask on the part of Mr. Justice FOUCHER for the record in the cause of Daillebout vs. Duchesnois. I cannot recollect whether Mr. Louis M. Viger was then in the office.

Q.—Did not that conversation also excite your surprise, Mr. Justice FOUCHER not having assisted at the pleading of the merits of the cause?

A.—Yes.

Q.—To the best of your knowledge, were the words "*Projet de Declaration*," written on the folded paper which you saw in the possession of Mr. Lacroix?

A.—My memory does not enable me to say whether those words were thereon.

Q.—Was there a number upon that folded paper?

A.—I do not recollect.

Q.—Was the amount of the demand indorsed on that paper?

A.—I do not recollect.

Q.—Was the folded paper which you so saw in the hands of

Mr.



Mr. Lacroix, of a red colour, as that now shewn to you, marked C, is ?

A.—To the best of my knowledge, that paper was white.

Q.—Did that folded paper appear to enclose other papers ?

H.—Yes, it so appeared to me.

Q.—Has that paper appeared frequently in Court ?

A.—Yes, I have seen it there several times.

Q.—Why did you suppose that folded paper to be the draught of the declaration in that cause ?

A.—I cannot say whether that paper were really the draught of the declaration in the cause, never having seen the inside of it ; that is a mere supposition of mine, which was occasioned by the indorsement.

Q.—During your long practice at the Bar, is that the only instance you have known of a Judge having sent to the Office for Records ?

A.—It has often happened to my knowledge, that the Judges have sent for the Records in causes which had been pleaded, and were *en délibéré*.

Q.—Had the cause been pleaded on the merits, when the Record in the cause had been sent for, for Mr. FOUCHER ?

A.—Yes, to the best of my knowledge,

The



The Committee then adjourned.

Monday, 10th February, 1817.

The Committee met.

**P**RESENT: Messieurs Ogden, Taschereau, Sherwood, and M'Cord.

Mr. Ogden in the Chair.

The Committee proceeded to examine the following Witnesses, who answered to the questions put to them as follows.

EXAMINATION of Jean Roch Rolland, Esquire.

Q.—Are you not one of the Advocates practising at the Bar of Montreal?

A.—Yes.

Q.—Have you had a knowledge of a cause instituted in the Court of King's Bench at Montreal, between Pierre Ignace Daillebout, Plaintiff, and Etienne Duchesnois, Defendant, and Etienne Duchesnois, Plaintiff, *en garantie*, against Thomas Coffin, Defendant *en garantie*, and at what time?

A.—Yes, but I cannot exactly say in what Term; I believe it is about two or three years since.

Q.—Who were the Advocates concerned in that cause?

A.—Mr. Janvier Domptail Lacroix, was the Plaintiff's Advoca-

cate,



create, and Mr. Louis Michel Viger, that of the Defendant, and Mr. Benjamin Beaubien, Advocate of Mr. Coffin, Defendant *en garantie*.

Q.—Is not the place you occupy at the Bar at Montreal, near that of Mr. La Croix, Advocate?

A.—It is in the second Form behind him.

Q.—Being so situated, have you not frequently an opportunity of seeing the papers which lie before Mr. Lacroix?

A.—Yes.

Q.—Have you not seen in Court, and in the possession of Mr. La Croix, a paper marked Daillebout *vs.* Duchesnois, and the words “*actio negotiorum gestorum*,” in Judge FOUCHER’s hand writing, and at what time?

A.—I have seen before Mr. La Croix, in Court and in his possession, (I believe upon the day on which the cause before mentioned was pleaded, *en droit*,) a paper marked with the names Daillebout *vs.* Duchesnois, with the Latin words “*actio negotiorum gestorum*,” and what was so written, appeared to me to be the hand writing of Mr. Justice FOUCHER.

Q.—Was not that paper folded as a declaration?

A.—Yes.

Q.—Were there not upon the said paper the words “*Projet de Déclaration*?”



A.—As well as I can recollect, the word “*déclaration*,” was there; I do not remember whether the word “*projet*” was there.

Q.—Was it the paper now shewn to you, marked C?

A.—No.

Q.—When you saw that paper in the possession of Mr. La Croix, did it not excite your surprise?

A.—Yes, for at the moment I thought it might be a draught of a declaration.

Q.—Did you hear any expression of surprise or censure from some Gentlemen of the Bar, or any of them, respecting the foregoing circumstance?

A.—Upon the day on which I saw the paper before mentioned, several other Gentlemen of the Bar looked at it at the same time as I did, and those Gentlemen expressed their surprise; and I think I recollect that some of them appeared to pass some censure on that occasion. I have since heard the same fact spoken of by several of my *confrères*, who expressed the same sentiments; but I believe that on all those occasions, their observations were founded on the supposition of the paper in question being a draught of a declaration, written by Judge FOUCHER; I cannot affirm that any of those Gentlemen appeared certain of this fact.

Did



Q.—Did you not at any time observe to Mr. La Croix, that the draught of the declaration in that cause, which he had in his possession, was written by Mr. Justice FOUCHER, or other words to that effect?

A.—I do not recollect.

Q.—Has not Mr. La Croix at any time acknowledged that the draught of the declaration in the cause in question, was in the hand writing of Judge FOUCHER?

A.—No.

Q.—Do you recollect that that cause was pleaded on the merits, and when?

A.—I think I recollect its being pleaded on the merits, and finally adjudged, but I cannot say at what time.

Q.—Have you seen the inside of that paper?

A.—No.

Q.—Was there a sum mentioned on the back of that paper?

A.—I cannot affirm it, but the paper then appeared to me to be in all things like the docket of a declaration, and I think I recollect that such was the impression of the moment.

Q.—Did that paper appear to contain or enclose other papers?

A.—As well as I can recollect, it appeared to me to be isolated



when I read it in Court before Mr. La Croix, with many other papers of the same cause, and I believe that at that moment the cause had just been pleaded.

EXAMINATION of *Frédéric Auguste Quesnel*, Esquire.

Q.—Are you not one of the Advocates practising at the Bar of Montreal?

A.—Yes.

Q.—Have you had a knowledge of a cause instituted in the Court of King's Bench at Montreal, of Pierre Ignace Daillebout, Plaintiff, *vs.* Etienne Duchesnois, Defendant, and of Etienne Duchesnois, Plaintiff *en garantie*, against Thomas Coffin, Defendant *en garantie*, and at what time?

A.—I recollect that such a cause was pending in Court at Montreal, but not being concerned in it, I am not acquainted with its detail.

Q.—Who were the Advocates concerned?

A.—Mr. Lacroix was Advocate for the Plaintiff, Mr. Louis Michel Viger for the Defendant, and Mr. Beaubien for the *Ga-*  
*rant.*

Q.—Is not the place you occupy at the Bar at Montreal, near that of Mr. Lacroix?

A.—It is not far from it; I occupy a place on the seat which is behind his.

Being



Q.—Being so situated, near Mr. La Croix, have you sometimes had an opportunity of seeing his papers?

A.—My eyes are naturally directed to the papers immediately before me, but I am not accustomed to turn them to the papers of Mr. La Croix in particular.

Q.—Have you not seen in Court, and in the possession of Mr. La Croix, a paper marked *Daillebout vs. Duchesnois*, and the words “*actio negotiorum gestorum*,” written in Judge FOUCHER’s hand, and at what time?

A.—I one day saw, but I do not recollect when, among Mr. Lacroix’ papers, which were scattered upon his table, a paper marked in that manner; to the best of my knowledge, and which, from the place I occupy as aforesaid, appeared to me to be in the hand writing of Mr. Justice FOUCHER.

Q.—Was not that paper folded in the shape of a declaration?

A.—I am not sure of it, but such was the impression I then received.

Q.—Were there not upon the said paper the words “*Projet de Déclaration.*?”

A.—I do not recollect.

Q.—Was it the paper now shewn to you?

A.—No, for the paper I remember having seen, was white, and that produced to me is red.

When



Q.---When you saw that paper in Mr. La Croix' possession, did it not excite your surprise?

A.---To the best of my knowledge, the thing made a certain impression upon me.

Q.---What was that impression?

A.---That of seeing the writing of a Judge upon a paper of that nature, in the hands of an Advocate.

Q.---Did you hear expressions of surprise or censure from some of the Gentlemen of the Bar, or any of them, relative to the foregoing circumstance?

A.---I think I then remarked some signs, which appeared to me to be occasioned by the astonishment produced by seeing such a paper.

Q.---Have you not at any time observed to Mr. La Croix, that the draught of the declaration in that cause, which he had in his possession, was in the hand writing of Mr. Justice FOUCHER, or other words to that effect?

A.---The only conversation I ever had with Mr. La Croix, on the subject of the paper in question, occurred lately at Quebec; I then told him I had seen the said paper in his hands, as I have already said, and he then acknowledged the fact.

Q.---Did not that acknowledgment of Mr. La Croix, tend to lead you to believe that he acknowledged the paper in question to be in truth the draught of the declaration in the said cause?

From



A.---From the terms of his answer, I was led to believe that he merely alluded to the indorsement of the paper in question; for having remarked to him that I had seen a paper indorsed in such and such a manner, he answered, "Well, it is true."

Q.---Do you recollect that cause having been pleaded on the merits, and when?

A.---I know it was so, but at what time I do not recollect.

Q.---Was it finally adjudged?

A.---Yes.

Q.---In whose favour was the final Judgment rendered?

A.---I have heard that it was rendered in favour of the Plaintiff.

Q.---Have you ever seen the inside of that paper?

A.---I never saw it, nor ever sought to see it.

Q.---Did the paper so indorsed, contain half a sheet, an entire sheet, or many sheets?

A.---I cannot say whether that paper contained a sheet or a half sheet, not having then paid any particular attention to it.

**EXAMINATION of Joseph Mathons, residing in the City of Montreal.**

Q.---Are you not a Clerk in the Office of the Prothonotaries of the Court of King's Bench at Montreal?

Yes



A.—Yes, I was led to believe that I was to deliver the terms of his answer to me, from the terms of the paper in question, which I delivered to the Clerk of the Court of King's Bench at Montreal, wherein Pierre Ignace Daillebont was Plaintiff, against Etienne Duchesnois, Defendant, and Etienne Duchesnois, Plaintiff *en garantie*, against Thomas Coffin, Defendant *en garantie*, and when?

A.—I have had a knowledge of that cause; it is to my knowledge three years since.

Q.—Did you examine the record in that cause?

A.—No.

Q.—Do you know that about the end of the Term of October, 1814, Mr. Justice FOUCHER sent to the Office for the Record in that cause?

A.—Yes; about that time he asked me for the Record in that cause, with some others, and I delivered it myself into his hands.

Q.—What did he do with that Record?

A.—I cannot say.

Q.—Did you not go to Judge FOUCHER's some time afterwards, for that Record?

A.—Upon my going to Mr. Justice FOUCHER's for other papers, he returned to me that Record, with other Records.

Q.—Did that Record contain the final Judgment?

A.—I did not see the Judgment.

Yes

Were



Q.—Were not Mr. Joseph Bedard and Mr. Louis Michel Viger, Advocates, present when Judge FOUCHER sent for the Record in that cause?

A.—I believe they were.

Q.—Did they not then make some remarks?

A.—Yes; they asked me what Judge FOUCHER wanted with that Record; I answered that I did not know.

Q.—When you went to Mr. Justice FOUCHER's for the Record, was not Mr. Daillebout living with Mr. Justice FOUCHER?

A.—Yes.

Q.—Did you enter the final Judgment in that cause?

A.—I do not recollect; but I believe it was not I who entered it.

Q.—Among the other Records which you then went for to Mr. Justice FOUCHER's, were there any Judgments rendered in those causes?

A.—I believe there were.

Q.—Was there a Judgment in the cause herein before mentioned?

A.—I cannot say.

Q.—Did you not suppose a Judgment had been rendered in that cause, as in the others?

A.—Yes.



**Q.**—Has not Judge FOUCHER, to your knowledge, often effaced the entries on the Register of the Inferior Court of King's Bench?

**A.**—Yes; sometimes during the Term, and sometimes after the Term.

**Q.**—What Books are kept for the Inferior Court of King's Bench at Montreal, for the entry of the Rules, Orders and Judgments of the said Court?

**A.**—A Book called a *Plumitif*; the Rules, Orders and Judgments of that Court, are entered thereupon as soon as pronounced; these Rules, Orders and Judgments, in the *Plumitif*, are then entered fair in another Book, called a Register. For about a year past, the Rules, Orders and Judgments, therein rendered, have been entered in that Register, and during the Term; before that time, those entries were not made until after the Term.

**Q.**—When authentic copies of the Rules, Orders and Judgments of that Inferior Court are required, from what Books are they taken?

**A.**—They are generally taken from the *Plumitif*, when the Register has not been compared, but they are taken from the Register when it has been compared.

**Q.**—Can you say, to the best of your knowledge, in what cases, and how often, Mr. Justice FOUCHER has made those erasures on the *Plumitif*, during the Term, and whether they were made during the pendency of the causes, or after the rendering of the Judgment?

**A.**—It has happened rather frequently, but how often I cannot say, neither can I say in what cases it has happened. Those erasures have been made in interlocutory Judgments, and in final Judgments, and to the best of my knowledge, after the Term. Those erasures have been made by Judge FOUCHER, sometimes at home, and sometimes at the Office.

Do



59  
Q.—Do you know that Mr. Justice FOUCHER has also made erasures in the Register of the said Court?

A.—Yes; but I cannot say whether in interlocutory or in final Judgments.

Q.—In the Registers and *Plumitifs* of what years were those erasures made?

A.—I believe from 1813 to 1817.

The Committee then adjourned.

Tuesday, 11th February, 1817.

The Committee met.

**P**RESENT: Messieurs Ogden, Taschereau, Languedoc, Panet, and M'Cord.

Mr. Ogden called to the Chair.

The Committee proceeded to the continuation of the examination of Mr. La Croix, as follows:

Q.—Did you receive the money arising from the Judgment obtained by Mr. Daillebout against Mr. Duchesnois?

A.—I was paid the amount of that Judgment; I believe by Mr. Viger, his Advocate.

Q.—Did you remit that money to Mr. Daillebout?

A.—I do not know whether the Committee determine that I ought



to answer; I do not wish to answer, and I think I ought not to answer that question, the same relating merely to my personal affairs, and being responsible to Mr. Daillebout alone, and not towards any other.

Q.—Did not the money arising from the said Judgment, remain in your hands for the use of Judge FOUCHER?

A.—No.

Q.—When the paper indorsed in the hand writing of Judge FOUCHER, was given to you by Mr Daillebout, did he not then tell you that he came on the part of Judge FOUCHER?

A.—I should wish the Committee to determine whether I ought to answer that question without a previous reading and communication of the questions put to me on the 8th and 9th?

The Committee decided that Mr. La Croix do answer without receiving that communication. He answers, "Not, to the best of my memory."

Q.—Was the note of the names of Mr. Daillebout's debtors contained in the packet which was delivered to you, or were the names within the cover and written thereon?

A.—As I have already said, to the best of my memory the names of the different debtors were written in the inside of the cover, that is to say, upon the same cover the back of which contained the title of the action I have already spoken of in any foregoing answers.

A.—I do not know whether the Committee determine that I ought

to Have



Q.—Have you in your possession your memorandum of causes?

A.—Yes, I have it in my possession.

Q.—Will you produce it to the Committee?

A.—I have it not about me.

Q.—The Committee desires to see it, it is necessary that you should produce it.

A.—I do not think I ought to submit it to the Committee, inasmuch as it concerns the affairs of a number of persons not concerned in this proceeding, and is for my private use.

Examination of Louis Montizambert Esquire, Clerk of the Court of Appeals.

Q.—Have you in your possession the Record of the cause *Dominus Rex vs. Pierre Ignace Daillebout* now in appeal?

A.—Yes, I have.

Q.—Will you produce the same for the information of the Committee?

Mr. Montizambert laid the said Record before the Committee.\*

\* For this paper see note E at the end of this report.



**EXAMINATION of Hugh Fraser, Esquire.**

**Q.—Are you Prothonotary of the Provincial Court of the District of Three Rivers ?**

**A.—Yes.**

**Q.—Do you remember the cause brought in the provincial Court of Three-Rivers intituled *Dominus Rex vs. Pierre Ignace Daillebout and Joseph Boucher Sieur de Montarville et uxor* intervening party ?**

**A.—Yes.**

**Q.—Is the paper now shewn to you No. 22, signed P. I. Daillebout, the defendant's plea filed in that cause ?**

**A.—Yes.**

**Q.—Was the plea used in that cause ?**

**A.—Yes, and was filed by me as a part of the Records.**

**Q.—Do you know the hand in which this plea is written, and whose is it ?**

**A.—Yes, I know it, it is that of Uriah Judah one of the clerks in my office.**

**Q.—Were you present when Uriah Judah your clerk copied that plea, from a Draught which had been given to him ? and relate what you know of the circumstances ?**

EXAMINATION

About



A.—About the 24th of September 1811, Judge FOUCHER came to my office having a paper which he requested Mr. Judah to copy. Mr. Judah in consequence copied it from a Draught in the handwriting of Judge FOUCHER. The copy when made was signed (I suppose) by Mr. Daillebout and I filed it. The paper is indorsed “*plea by defendant to the intervention.*” — When that paper was brought to the office several persons were present.

Q.—Did Mr. Daillebout appear in Court at the time of the return of that cause?

A.—Yes, and what follows is the entry in the register “the defendant in his aforesaid quality (of Testamentary Executor of the late Messire ST. ONGE) appears in person, and for *dé-fense* says that he has nothing to allege and relies entirely upon justice” and that is the only *dé-fense* made in the action except that I have already mentioned and furnished by Judge FOUCHER.

Q.—Was the cause finally adjudged?

A.—Yes, on the 24th of September, 1813, the cause was adjudged in favor of the intervening party, condemning the defendant to restore the inheritances without costs, and declaring the Testament of the late *Messire De St. ONGE* null.

Q.—Did Judge FOUCHER sit in that cause and concur in pronouncing the said Judgment?

A.—As provincial Judge he sat in the whole proceeding from the entry of the cause to the final judgment.



Q.—Is the cause now in appeal?

A.—Yes, since the month of November 1812.

Examination of Uriah Judah of Three-Rivers.

Q.—Are you a clerk in the Prothonotary's office of the District of Three-Rivers?

A.—Yes.

Q.—Have you a knowledge of a cause instituted in the Court of King's Bench of that District intituled *Dominus Rex vs. P. I. Daillebout*, and *Joseph Boucher de Montarville et uxor* intervening party?

A.—I have.

Q.—Is the original plea filed in that cause, in your handwriting?

A.—Yes, it is.

Q.—From what Draught did you copy the said plea?

A.—I copied it from a Draft given to me by Mr. Judge FOUCHER and in his own handwriting.

Q.—Was the said plea made use of in the said cause?

A.—It is marked filed and forms part of the Record in the said cause, as appears by the Record now exhibited.

Was



Q.—Was the said cause finally adjudged?

A.—It was.

Q.—To whom did you deliver the said Original Plea which you so copied from the Draft given you by Mr. Judge FOUCHER?

A.—I gave it to Mr. Judge FOUCHER himself.

Q.—Was the addition to the said Plea, purporting to be an Account of Mr. Daillebout's expences, also copied by you, and from what Draft?

A.—Yes the said addition is in my own hand writing and was copied from the draft given me by Mr. Judge FOUCHER at the same time.

Q.—Did you return the said draft to any person and to whom?

A.—I delivered it back to Judge FOUCHER.

Q.—Is the signature signed to the Plea in this cause of the hand writing of Mr. Daillebout?

A.—It is, to the best of my knowledge.



Wednesday, 12th February, 1817.

**P**RESENT, Messieurs Ogden, Sherwood, Panet, Tasche-  
reau, Stuart and Borgia.

**EXAMINATION** of the Honorable Edward Bowen, one of the  
Justices of His Majesty's Court of King's Bench for the Dis-  
trict of Quebec.

**Q.**—Did you in 1811, as H. M. Attorney general for this province  
file an information against P. I. Daillebout in the Court of K. B.  
in the District of Three-Rivers? can you inform the Committee  
what were the grounds of that information?

**A.**—In the year 1811, being then one of the King's Counsel in the Law  
for this Province, and holding a Special Commission to prosecute  
and file informations *ex officio* for the Crown in the several Courts of  
this province, in the absence of H. M. Attorney and Solicitor Ge-  
neral for the province, I did on or about the 13th of September of  
the same year file an information on the civil side of the Court of  
K. B. for the District of Three-Rivers against P. I. Daillebout as  
one of the Executors of the last Will and Testament of the late  
Messire Pierre Gareau de St. ONGE in his life time Vicar General of  
the District of Three-Rivers. The information was founded on the  
illegal disposition of certain immoveable property bequeathed by  
his last Will and Testament to a Religious community at Three-  
Rivers contrary to Law and to the prohibitions of the declaration of  
His Most Christian Majesty respecting *gens de main morte* of the year  
1743. The information being part of the Record now shown to me  
is the same I have mentioned.

Have



**Q**—Have you any knowledge that an intervention was filed by Jos. Boucher de Montarville Esquire, and Marie Josephte Averard ?

**A**—The process which issued to bring in the defendant to answer to the information was not returnable until the 17th of the same month at which period I had left Three-Rivers to return to Quebec and the subsequent proceedings on the part of the Crown were conducted by Mr. Berthelot, there being no counsel for the Crown in the District of Three Rivers and I afterwards learnt of him that such an intervention was filed and I now find it in the Record.

**Q**—Have you any knowledge that the defendant appeared in person on the day of the return of the summons ?

**A**—I have no personal knowledge of the fact but upon reference to the Record I find that he did appear in person on the return day and declared by way of defense to the information that he had no reasons to offer against the same and that he submitted the whole to the justice of the Court.

**Q**—Have you any knowledge that the intervention was admitted by the Court ?

**A**—None but what I derive from the Records.

**Q**—Previous to the final decision given in the Court of K. B. for the District of Three-Rivers were you appointed one of H. M. Judges for the District of Quebec ?

**A**—I was.

**Q**—As such Judge were you present at the final hearing and decision of that cause at the town of Three-Rivers ?

**A**—I sat on the Bench.



Q.—Do you recollect who were the other Judges present at the time?

A.—Mr. Justice Perrault and Mr. Justice Foucher.

Q.—Did you sit in judgment on that cause?

A.—No, I did not.

Q.—Can you say which of the Judges pronounced the judgment of the Court?

A.—Upon reference to the Record I find that Mr. Justice FOUCHER presided: and consequently I presume he pronounced the judgment. But I am also certain Mr Justice Perrault also delivered his opinion upon the case as is usual in cases of importance.

Q.—Did you consider this case as a case of importance?

A.—Certainly.

Q.—Would the Court have been competent in Mr. Justice Perrault alone?

A.—No; there must be two Judges at least.

Q.—Why did you decline sitting in that cause?

A.—Because the Court was competent without me. I declined from motives of delicacy though I consider I had a right to sit being a case of the Crown.

#### EXAMINATION of Charles Porteous, Esquire..

Q.—What is your profession?

A.—I am an Advocate and Attorney of this province.

Did



Q.—Did you in the year 1815, practise as Attorney and Advocate in the Court of K. B. in the District of Montreal?

A.—Yes, I did.

Q.—Did you act as Attorney for the defendant in a certain cause pending in the inferior Term of the Court of K. B. in that year where Louis Gibeault was plaintiff and Barril dit Namur defendant and *e contra*?

A.—I did.

Q.—Did you attend as Advocate and Attorney for the defendant on the *enquête* and trial of that cause, and what Judge or Judges were present?

A.—I attended as the Advocate on the *enquête* and trial of that cause and the sole Judge present was the Hon. L. C. FOUCHER, who presided.

Q.—Relate to the Committee the proceedings which were had in that cause and the nature of it.

A.—The action was brought by the plaintiff against the defendant for the sum of eleven pounds currency. I hand to the Committee a copy of the declaration and summons which the defendant handed to me himself and employed me to defend the suit. On the part of the defendant I pleaded the general issue and an incidental demand. When the cause came on for trial Mr. Binder as Attorney for the plaintiff examined two

witnesses



witnesses and the defendant upon *faits et articles*. I then called five witnesses who were sworn, and I called one Pierre Renoit who entered the witness box, to whom I put the question which is in my opinion always put to witnesses, that is to say. "Do you know the parties in this cause?" the Hon. L. C. FOUCHER who was then presiding addressed himself to me apparently much irritated and asked me "why do you put that question? It is absurd." I answered in a polite and respectful manner "may it please the Court \_\_\_\_\_." The Honorable Judge without giving me time to add another word "said Mr. Porteous hold your tongue, it is absurd, there is stupidity in putting such a question: it is absurd and stupid; proceed." I then put to the witness the same question. The Honorable Judge stopped me, and in a manner more violent and a more irritated tone said "Mr. Porteous hold your tongue, I will suspend you until His Majesty's pleasure be known," I answered "but really may it please the Court.—" The Honorable Judge still more irritated said "hold your tongue, cryer, or—der silence, Mr. Levesque give me some paper and write for me, I will not hesitate an instant to suspend him." During that conversation I was standing near the Prothonotary's desk as is customary with the Advocates practising at the Bar at Montreal in the inferior term. I left that place took my usual place at the Bar and addressed myself to the Court in the following words "May it please the Court, I am but a young man, it is but a very short time since I made choice of this honorable profession.—" The Honorable Judge immediately stopped me, and said "Mr. Porteous" "Cryer, cause silence to be kept" "proceed"—I answered "I wish to proceed." The Hon. Judge said, "Mr. Levesque, enter that the defendant not

choosing



"choosing to proceed to his proof, I put or take this cause  
 " *en délibéré.*" A short time after that one of the witnesses of  
 the defendant addressed himself to the Court for the purpose  
 of being taxed. The Honorable Judge said, "see what it is  
 " (shrugging his shoulders) to make witnesses attend without  
 " examining them, and to make them lose their time. Mr. Por-  
 " teous here is one of your witnesses who asks to be taxed;" I  
 answered "that as the Court had not chosen to allow me to  
 " proceed in that cause I could not do any thing about the mat-  
 " ter." The Hon. Judge in a great passion said, "Mr. Porteous  
 " what you say is false, it is a falsehood, and I do not hesitate to  
 " say here in full Court, in the face of the whole public which  
 " hears me, that you have just uttered a falsehood. I never  
 " refused it to you to proceed in this cause; the Court solicited  
 " you to proceed but you did not choose to do so. I will never  
 " allow myself to be thus restrained in the administration of jus-  
 " tice." I answered "I never refused to proceed in this cause  
 " and I take to witness the whole Bar if it be not the case."  
 "The Judge answered immediately "Mr. Porteous I shall  
 " not take the Bar as Judge; for my part, I know the powers  
 " and authorities I am vested with. I know in what manner  
 " I am accountable to my King and to the public. I have no  
 " account of my conduct to render to any one but myself. I am  
 " the representative of His Majesty, and I do not fear to say  
 " that upon this Bench I am more than His Majesty, for His  
 " Majesty even comes to my tribunal to be there adjudged, and  
 " if there be room to animadvert upon my conduct, let the me-  
 " thods deemed proper be taken and I shall be ready to answer."

After



After Court I went down to the Prothonotary's office, and took out a copy of the interlocutory judgment, putting the cause *en délibéré*, which copy I produce to the Committee certified by the Prothonotary.\* The next day being present in Court, the Hon. Judge FOUCHER pronounced Judgment in the said cause of which Judgment I now hand to the Committee a certified copy, † the Judge remarking at the same time "I can render Judgment in this cause although the defendant's witnesses have not been heard. I have heard the plaintiff's witnesses and have had from them all the information necessary to enable me to adjudge the cause and decide between the parties." A Writ of execution was taken out against the defendant, and I produce a certified copy of the *Procès verbal de Saisie* which took place in consequence of the above execution. The conversation above alluded to, took place in open Court, in the présence of the greatest part of the Bar, and a vast number of Auditors.

Q.—Was there a meeting of the Bar upon the subject of what took place on the trial of the cause of *Gibault vs. Namur*, and was it requested by you?

A.—I expressed my feelings to my brother Lawyers who had a meeting on the subject. It was not requested by me, but done voluntarily on their part.

\* For this Paper see Note F at the end of this Report.

† For this Paper see Note G at the end of this Report.

What



**Q.**—What was the result of that meeting?

**A.**—The meeting were of opinion that I should petition the House of Assembly for redress. I put the necessary documents into the hands of one of the Members of the House of Assembly, but he was prevented from doing so by the dissolution of the Provincial Parliament.

**Q.**—Do you continue to practice at the Bar at Montreal?

**A.**—I do not at present,

**Q.**—When did you abandon practice?

**A.**—In March, 1816.

**Q.**—From what cause?

**A.**—The principal cause was the conduct of Judge FOUCHER towards me on the trial of the cause *Gibault vs. Namur*; and I should have left the Bar immediately after that, had any other employment offered.

**EXAMINATION of Jean Guillaume Delisle, of the City of Montreal Esquire.**

**Q.**—What is your profession?

**A.**—I am one of the Notaries Public for this Province.

**Q.**—Had you not a cause in the Superior Term of the Court of King's Bench for the District of Montreal, in which cause you were Plain-



tiff, and the Commissioners for removing the Fortifications of the said City were Defendants, and when?

A.—Yes, I had such a cause; it was pending in that Court in 1814, and was therein finally adjudged in October, 1815.

Q.—When the said cause was *en délibéré* had you any conversation with the Honourable LOUIS CHARLES FOUCHER, one of the Judges of the Court of King's Bench of Montreal?

A.—No, not during the *délibéré*, but after the rendering of Judgment in my favour, he told me that if it had been in the power of the Judges of the Court of King's Bench of that Court, to grant me damages in money for the trespass committed; and of which I complained, they would not have rendered a Judgment against the Commissioners, compelling them to put matters in the condition in which they were.

Q.—Did not you and Madame Delisle, your wife, make a cession of the property and rights you had in the Succession of the late John Delisle, Esquire, your father, in favour of your children, and does not a suit exist between the Testamentary Executors of your late father, and your children, in consequence of that cession?

A.—Yes.

Q.—Have you ever been advised by Judge FOUCHER to make the said assignment or cession?

A.—No.

The Committee then adjourned.

Thursday



Thursday, 13th February, 1817.

The Committee met.

**P**RESENT: Messieurs Ogden, Sherwood, Taschereau, M'Cord, and Panet.

Mr. Ogden in the Chair.

**ORDERED**, That to-morrow the Chairman do move that this Committee have leave to cause to be printed, in both Languages; one hundred copies of the Evidence produced, and to be produced, before the said Committee, for the information of the Legislature.

The Committee then proceeded to the Examination of **LOUIS MICHEL VIGER**, Esquire, of the City of Montreal, Advocate.

**Q.**—Are you not one of the Advocates practising at the Bar of Montreal?

**A.**—Yes.

**Q.**—Have you a knowledge of a cause instituted in the Inferior Term of the Court of King's Bench at Montreal, in which **Louis Gibault** was Plaintiff, and **Joseph Barril**, otherwise called **Namur**, Defendant, and when?

**A.**—I had a knowledge of that cause, it was fixed for the *enquête* on the 29th November, 1815.

**Q.**—Who were the Advocates concerned in that cause?



A.—Mr. Bender was Attorney for the Plaintiff, and for the incidental Defendant, and Mr. Charles Porteous was Attorney for the Defendant, and for the incidental Plaintiff.

Q.—Was the cause called in the usual manner?

A.—It was called in its turn, according to the Roll, and the Parties appeared by their Attornies.

Q.—Relate to the Committee the circumstances which occurred in court respecting that cause.

A.—Mr Bender as Advocate for the Plaintiff, after having stated the nature of his demand, examined two witnesses and asked to interrogate the defendant on *faits et articles* or on the *serment décisoire* I do not exactly remember which. That being done Mr. Porteous caused his witnesses to the number of four or five to be called, and I think they were sworn. One of those witnesses being placed in the box in which witnesses are usually placed, Mr. Porteous asked him whether he knew the parties in the cause, the Honorable Judge then sitting and holding that Court, immediately interrupted Mr. Porteous and said to him in a tone of great irritation “why do you put that question to the witness, it is absurd, it is an absurdity.” Mr. Porteous in a very respectful manner addressed the Judge — saying “May it please the Court———” and intending to proceed, the Judge again interrupted him, saying “hold your tongue Mr. Porteous, it is absurd, there is stupidity in putting such a question;” and again repeating “it is absurd and stupid” he added “proceed” Mr. Porteous then addressing the witness again asked him whether he knew the parties. The Judge immediately interrupted him, and in a manner yet more violent and a tone of greater irritation told Mr. Porteous to hold his tongue,  
that



that he would suspend him until His Majesty's pleasure should be known. Mr. Porteous then addressing the Judge said "but really may it please the Court"—and intending to proceed, the Judge again told him to hold his tongue and addressing the Cryer of the Court ordered him to cause silence to be preserved, and said to the Prothonotary "Mr. Levesque give me some paper and write."—The Judge was at this moment extremely angry, and without saying any more to Mr. Levesque, addressing himself to Mr. Porteous he said "I shall not hesitate one instant to suspend you."—Mr. Porteous who until this moment had remained near the box where the witness was, resumed his place on the Advocates seat, and addressed himself to the Court in a very respectful manner, in a very calm tone and preserving great *sang froid* saying "may it please the Court, I am but a young man, I have but very recently chosen this honorable profession"—And as he was about to continue the judge immediately stopped him and, addressing Mr. Porteous by name, said "Cryer cause silence to be observed" and added "Mr. Porteous proceed" Mr. Porteous addressing the Court, said, "I wish to proceed" The Judge then ordered the Clerk, Mr. Levesque to enter upon the Register that the Defendant not choosing to proceed to his proof, he put the cause *en délibéré*. About an hour afterwards one of the witnesses summoned in that cause addressed the Court to be taxed—The Judge then made this reflexion "what a thing it is to make witnesses attend without examining them, to make them loose their time" and addressing Mr. Porteous, he said "Here is one of your witnesses who wants to be taxed." Mr. Porteous answered the Judge, saying, "as the Court has not chosen to allow me to proceed in their cause I can do nothing in that matter" The Judge then very much irritated and in a tone of anger, said to Mr. Porteous, "what you say is false. It is a falsehood, and I do not hesitate to say, here in full Court, and in the face of the Public which hears me, that you have just ut-

tered



“tered a falsehood; I never refused it to you to proceed in this cause; I shall never allow myself to be restrained in this way, in the administration of justice. The Court solicited you to proceed, but you did not chose to do so.” Mr. Porteous then replied, “I never refused to proceed in this cause and I take to witness the whole Bar if it be not the case.” The Judge immediately said, “Mr. Porteous I shall not take the Bar as Judge; for my part, I know the powers and authority with which I am vested. I know in what manner I am accountable to my King and to the Public. I have no account of my conduct to render except to myself. I am His Majesty’s Representative, I do not fear to say that upon this Bench I am more than His Majesty; for His Majesty comes to my Tribunal and submits to my jurisdiction to be adjudged and if my conduct be to be animadverted upon, let the means deemed proper be taken and I shall be ready to answer.” On the following day Judge FOUCHER in rendering Judgment in the aforesaid cause observed, that he could render Judgment in that cause although the Defendant’s witnesses had not been heard, and added “I have heard the Plaintiff’s witnesses, and have had from them every information necessary to enable me to adjudge the cause, and decide between the parties.”

Q.—Did not the Advocates meet after that business and what occurred at that meeting?

A.—Upon the day preceding or the very day of the rendering of the Judgment in the Cause, Mr. Porteous requested me to go to his House, in order to give him a correct detail of what had passed to my knowledge upon that matter—Having gone thither, I there met several of my *confrères* with whom I proceeded to make the recital and give the information I

have



off have just given to this Committee according to our knowledge.

Q.—Was there not another or were there not other meetings in that behalf and what were the further proceedings?

A.—Mr. Porteous feeling himself ill treated and injured by the conduct of Judge FOUCHER towards him, and intending to take steps against the said Judge FOUCHER, asked me perhaps twice, more or less, to go to his House to give information to the persons he wished to interest in his cause; and having gone thither, I there again met some of my *confrères* who were present in Court when that affair happened: Mr. Porteous then intending to apply to the House of Assembly to complain of the conduct of Judge FOUCHER.

Q.—Had not Mr. Porteous as extensive Practice as it is usual for so young an Advocate as he then was, to have, and was not his conduct in all points respectable and honorable?

A.—Yes, certainly.

Q.—What impression did the behaviour of Judge FOUCHER then make on the Gentlemen of the Bar then present?

A.—It appeared to me according to the conversation; I then had with about ten of my *Confrères* upon the subject that they disapproved the proceedings of Judge FOUCHER.



Q.—Is not Mr. Porteous of a very respectable family in the District of Montreal ?

A.—Yes, of one of the most respectable.

Q.—Is he not a young man of good morals and irreproachable conduct ?

A.—Yes.

Q.—Have you a knowledge of a certain cause of Daillebout *vs.* Duchesnois, and Duchesnois plaintiff *en garantie* against Thomas Coffin defendant *en garantie*, instituted in the superior term of the Court of King's Bench for the District of Montreal : and at what time ?

A.—Yes, I was concerned in that cause as Attorney for Mr. Duchesnois ; Mr. La Croix was Attorney for Mr. Daillebout and Mr. Beaubien Attorney for Mr. Coffin—that cause was entered on the 10th of February, 1814.

Q.—Is not the seat you occupy at the Bar of Montreal near that occupied by Mr. La Croix and have you not an opportunity of seeing the papers laying on his table ?

A.—In the Inferior Terms, the seat I occupy at the Bar is behind that occupied by Mr. La Croix, so that it is easy for me to see the papers which Mr. La Croix may have before him.

Q.—Have you not seen in Court in the possession of Mr. La Croix a paper marked Daillebout *vs.* Duchesnois, and the

words



words *actio negotiorum gestorum* written by Judge FOUCHER and when?

A.—On the 16th of April 1814. That cause having been fixed on that day for hearing on exceptions, and the argument having been had, I went to return it to Mr. Levesque the Prothonotary; Mr. JUSTICE FOUCHER who was then sitting asked for the papers in that cause, and I saw him put them into his coat pocket and upon returning to take my seat one of my *Confrères* led me to direct my eyes to the paper belonging to Mr. La Croix, and which lay on his table. Mr. La Croix not being at that instant in his place, I perceived the docket of a paper which I then supposed both from its form and the manner in which it was folded, to be the Draught of a declaration, as usually prepared by the Advocates upon which paper were written the names of “Pierre Ignace Daillebout plaintiff against Etienne Duchesnois defendant” the word “Declaration” as well as those “*actio negotiorum gestorum*” and the whole was the hand writing of the Honorable Judge FOUCHER.

Q.—Was it the red paper marked C now shewn to you?

A.—No; to the best of my knowledge the paper I have spoken of, was common white paper.

Q.—When you so saw that paper which appeared to you to be a Draught of a declaration in the said cause in the possession of Mr. La Croix did it not excite your surprise, as well as among your *Confrères*, and what were the remarks or observations then made in that behalf?



A.—About five or six of my *Confrères* who saw that paper as well as I did, testified to me great surprise. As to myself who was intrusted in the cause as Attorney for Mr. Duchesnois, the sight of that paper excited not only my surprise but my indignation, and made me say at the time, that it was unfortunate to be judged before being heard.

Q.—Do you recollect that that cause was finally pleaded on the merits and when; and whether Judge FOUCHER were then present?

A.—That pleading took place on the 18th of October, 1814. Judge FOUCHER was not there, for with the exception of the 2 or 3 first days of the term, he did not sit, being sick.

Q.—Was that cause finally adjudged, and in whose favor was the judgment pronounced?

A.—The final judgment was not pronounced on the last day of the term, the 20th of October, 1814, because then the Judges told the parties concerned that they had not examined the proceedings as in many other causes, and engaged the Advocates to sign consents authorising the Judges to render Judgment in vacation, and the entering in the register of the said Judgments as of the last day of term. The Advocates concerned in that cause in consequence signed a consent to that effect, and the judgment was given to the Prothonotary in December following. That Judgment was for the Plaintiff and dismissed the action *en garantie* against Mr. Coffin.



Q.—In the vacation after that term were you not at the office with Mr. Joseph Bedard one day when Judge FOUCHER sent off for the Record in that cause, and what passed on that occasion?

A.—Some time after the term of October in the said year, being in conversation with Mr. Joseph Bedard in the office of the Prothonotaries of the Court of King's Bench, I saw Mr. Joseph Mathon address Mr. Levesque the Prothonotary, saying that Judge FOUCHER wanted the proceedings in the cause of Daillebout against Duchesnois. That application having surprised me (inasmuch as the Hon. Judge FOUCHER had not assisted at the argument which had occurred on the 18th of October preceding) occasioned my saying to Mr. Levesque that the proceedings ought not to be sent to Judge FOUCHER, conceiving that he ought not to participate in the *délibéré* on this cause inasmuch as he was unacquainted with the arguments used on the said day (18th October 1814). Mr. Levesque answered that he must send the papers since the Judge asked for them. And thereupon Mr. Levesque gave them to Mr. Mathons.

Q.—Have you seen at the office and when, the Draught of a final judgment in that cause among the papers forming the Record?

A.—Upon the day in which the judgment was given to the Prothonotary to be entered I saw the said Draught of the judgment.



**Q.**—Was it in Judge FOUCHER's hand writing?

**A.**—Having seen this Draught of the judgment but once, on the day on which it was given to the Prothonotary the impression I received and retain, is that it was written by Judge FOUCHER: I am not however as certain that it was the hand writing of Judge FOUCHER, as I am of the three Draughts of the first interlocutory judgments which had previously been rendered in the said cause, and which I have often since seen among the pleadings.

**Q.**—During the pendency of the suit and after having seen the paper which appears to you to be the Draught of the declaration in that cause, did you not communicate to your client Mr. Duchesnois your apprehensions that he might lose his suit?

**A.**—In the course of the eight days following the day of the argument on the exceptions which was the 16th of April 1814, and the judgment rendered on the 18th of the same month, having had occasion to see my client Mr. Duchesnois, I conceived it my duty to acquaint him that I had seen the paper previously described with the circumstances attending it and at the same time added that he ought to despair of the success of his cause. In the course of it I have often had occasion to see him and especially after the rendering of the final judgment, I again acquainted him with the last circumstances which followed the argument of the 18th of October, 1814, and which I have detailed above. I also conceived it my duty to acquaint him, that he had a right to appeal from the judgment to a superior Court which is the Court of Appeals in



this country, and even that he had a right to address the House of Assembly of this province to complain of the conduct of Judge FOUCHER.

**Q.**—Did Mr. Duchesnois to your knowledge as his Attorney appeal either from the interlocutory judgment rendered on the 18th of April, 1814, or from the final judgment rendered on the 18th of October of the same year?

**A.**—Although I advised him to do so, he did not do it.

**Q.**—Did Mr. Duchesnois to your knowledge pay the amount of the judgment and costs rendered against him?

**A.**—Yes, he paid it about the middle of January, 1815.

The Committee adjourned to the hour of 4 in the afternoon.

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4 o'Clock Afternoon.

**P**RESENT, Messieurs Ogden, Sherwood, Taschereau, Languedoc and Panet.

Mr. Ogden called to the Chair.

EXAMINATION of F. X. Bender, of Montreal, Esquire,  
Advocate.

**Q.**—Are you not one of the Advocates practising at the Bar of Montreal?

Yes.



A.—Yes.

Q.—Have you a knowledge of a Cause instituted in the Court of King's Bench at Montreal in the Inferior Term, wherein Louis Gibault was Plaintiff and Joseph Barril otherwise called Namur was Defendant and when?

A.—I have a knowledge of that Cause: I was the Plaintiff's Attorney, I instituted it in the term of November 1815 and obtained Judgment in the Plaintiff's favor on the 30th of the same month.

Q.—Who was the Defendants Attorney?

A.—Mr. Porteous.

Q.—Was the cause called in the usual manner?

A.—Yes, and Judge FOUCHER was then sitting.

Relate to the Committee the circumstances of that cause.

A.—After having proceeded to the hearing of the Plaintiff's witnesses, the Judge asked Mr. Porteous whether he had any witnesses to examine. His Answer was in the Affirmative, and he immediately produced two or three witnesses, and having caused them to be sworn, he asked one of them, whose name I do not know, whether he knew the Parties in that cause. Judge FOUCHER then told the witness not to answer that Question, and addressing Mr. Porteous, he asked him why he put so useless a Question, and which according to him was absurd. Mr. Porteous then answered

the



of the Judge with the respect due to him, that he considered that Question as important to his cause and so much the more so as if the witness should say he did not know the parties his Deposition became useless. The Judge then ordered Mr. Porteous to be silent, adding that the Question was truly absurd, and that there was stupidity in putting it, adding; "Proceed Mr. Porteous." The latter again put the Question, the Judge then told him in a tone of irritation to hold his Tongue, and that he should not hesitate a single instant to suspend him, to which Mr. Porteous replied, "But, may it please the Court.—" The Judge then addressed the Cryer enjoining him to cause silence to be observed, and asked the Prothonotary for Paper saying to him "write,—I shall not hesitate a single instant to suspend Mr. Porteous," Mr. Porteous who was near the witness, removed from him and went to his seat. The Judge then said to Mr. Porteous, "proceed Mr. Porteous," the latter said that he wished to proceed; but was prevented by the Judge. Upon which the Judge ordered the Prothonotary to enter on the Plunitif that since the Defendant would not proceed, he took the cause *en délibéré*. Some minutes afterwards one of the Defendant's witnesses requested the Judge to tax him an allowance. The Judge said in a loud voice, (shrugging his shoulders,) "This is the result of making witnesses attend for nothing," and said to Mr. Porteous. "Here is one of your witnesses requesting to be taxed," Mr. Porteous answered, "Your Honour not having chosen to allow me to proceed, the fault is not mine." The Judge in a tone of the utmost irritation, said "Your assertion is false, it is a mere  
falsehood,



falsehood, and I so declare publicly : I never refused to hear your witnesses ; but I will never allow of being thus restrained in the Administration of Justice. I several times told you to proceed and you constantly refused so to do. Mr. Porteous replied, “ I never refused to proceed in this cause, and I call to witness of this, the whole Bar.” The Judge immediately said, “ I shall not take the Bar for Judge. For my part I know the powers with which I am invested; I know the duty I have to fulfil and what I owe to the King and to the Public. I have no account of my conduct to render to any one but myself. I am the Representative of my Sovereign, and I do not hesitate to say aloud that upon this Bench I am more than the King himself ; for His Majesty comes to my Tribunal and submits to my Jurisdiction to be judged; and if there be room for animadversion upon my conduct, let any steps that may be chosen be taken: I shall be ready to answer.” The Judge put the cause *en délibéré*, and on the following day he condemned the Defendant to pay to the Plaintiff, the sum demanded with Costs of Suit.

Q.—On the following day what did the Judge say in pronouncing the Judgment ?

A.—Before pronouncing it, the Judge observed that he could easily render Judgment in that cause, although he had not heard the Defendant’s witnesses, the Plaintiff having proved his demand.

Q.—Was the Judgment in question executed and did you obtain the amount in virtue of the Execution ?

Yes.



A.—Yes.

Q.—Did not the Advocates meet after that business, and what occurred at that meeting?

A.—Each expressed his indignation and took notes in writing of what had passed in Court relative to Mr. Porteous.

Q.—Was any other Judge then setting?

A.—I do not recollect.

Q.—Did Mr. Porteous also take notes?

A.—We took notes in common with several other gentlemen of the Bar.

Q.—Have you a knowledge of a cause instituted in the inferior term of the Court of King's Bench of Montreal wherein Susanne Lahaie widow of Jacques Liberson, was plaintiff and Louis Cousineau defendant, and when?

A.—Yes, I was the plaintiff's Attorney. The cause was instituted in the term of September, 1813.

Q.—Who was the defendant's Attorney?

A.—Mr. Joseph Bedard.

Q.—Relate to the Committee what happened in that cause from beginning to end.

A.—Mr. Justice FOUCHER having heard the parties, and put that



cause *en délibéré* went on the Bench on the 28th May 1814, and then and there condemned the said Louis Cousineau the defendant to pay to the said Susanne Lahaie widow of Jacques Liberson the above named plaintiff the sum of £3, currency, further condemning him to pay the costs of the action, as is more fully explained in the copy of the judgment which I produce to the Committee signed by the Prothonotary, and it is written in the *Plumitif* in Judge FOUCHER's hand.\*

On the 21st or 22d of June following, I went to the office to carry the judgment into execution, and as it has been usual since Judge FOUCHER has sat in the District of Montreal to recopy the *Plumitif* upon which the judgments are in the first instance entered, and this upon a register kept for that purpose, I turned over the said register in order to find the before mentioned judgment. I then perceived that with the exception of the title of the cause and of these words. "The Court having heard Joseph Paymant the *expert* named in this cause" the remainder of the said judgment had been entirely erased as with a Penknife, and I therein found the interlocutory judgment which had been substituted, and which I now produce, and which is in the hand writing of Joseph Mathons one of the clerks of the Prothonotaries who usually keeps that register † I then examined the *plumitif* to see whether the Judgment I have first produced had not been also effaced: not being so, I asked for a copy of it, which was delivered to me and certified by one of the Prothonotaries. Two or three days afterwards I met Judge FOUCHER at the office, and expressed to him my surprise at the alteration in question. The Judge then caused the register to be brought to him, saying to me that he did not recollect the cause, and after having examined the entry which

\* For this paper see note H at the end of this report.

† For this paper see note I at the end of this report.

had



had been made in the register, he said to me that the execution not having been taken out before the entry of that interlocutory, nor a copy of the said judgment, it was in the power of the Judge to revise and amend his judgment upon perceiving that he had fallen into error, whereupon I observed to him that a copy of that judgment had been taken out, and that the so doing had placed the parties in a very unpleasant situation. The Judge asked to see the said copy of the judgment and upon my telling him I had it not in my possession he answered that he would not thus be stopped in the execution of his duty. Finding myself now under the necessity of carrying into execution this interlocutory, I caused proceedings to be taken in obedience thereto, which I returned in Court on the 12th of September of the same year aforesaid and returned the same to Judge FOUCHER who on that day was upon the Bench: and then and there the said Judge FOUCHER dismissed the plaintiff's action, copy of which judgment I now produce, and which Judge FOUCHER himself pronounced in Court.\*

Q.—When you went to inspect the registers did you ask Mr. Mathons why he had made erasures on the register and what did he answer?

A.—He told me he had done so by order of Judge FOUCHER.

Q.—Was the cause of importance to the plaintiff, with respect to her means?

A.—Yes, the more so, as it related to a garden belonging to the plaintiff, of which she had the use during her life time, of which the defendant had forcibly taken possession and of the use of which she had been deprived. That the plaintiff had given her property to the

\* For this paper see note K at the end of this report.



defendant reserving only the use of the said garden, on condition of receiving a rent and annuity being unable to manage them at her advanced age of about eighty.

Q.—Have you a knowledge of a certain cause of Daillebout *vs.* Duchesnois, and Duchesnois plaintiff *en garantie* against Thomas Coffin defendant *en garantie* instituted in the superior term of the Court of King's Bench of Montreal, and when ?

A.—Yes; I do not exactly recollect the time : I believe however it was in April 1814.

Q.—Who were the Advocates employed in that cause ?

A.—Mr. Janvier Domptail La Croix was the plaintiff's Attorney, Mr. Louis Michel Viger that of the defendant and Mr. Beaubien that of Mr. Coffin.

Q.—Have you not seen in Court and in possession of Mr. La Croix, a paper marked Daillebout *vs* Duchesnois, and the words *actio negotiorum gestorum* written by Judge FOUCHER and when ?

A.—The seat I occupy in Court being very near that of Mr. La Croix, I had occasion, on the day on which the cause was argued (Mr. La Croix having left his place to approach the Prothonotary to procure the Record in that cause) to look before me, and perceiving upon the table at the place where Mr. La Croix usually puts his papers, a sheet of paper open, and as it occupied some space, I cast my eyes upon the sheet which was wholly in the hand writing of Judge FOUCHER with which I am perfectly acquainted. I paid particular attention to its contents, and I perceived that it was a Declaration drawn in that cause by Judge Fou-



CHER. Mr. Bourret, Advocate being near me, I pointed it out to him. Mr. La Croix returned to his seat a moment afterwards and folded up that sheet of paper. Upon the back were also written in Judge FOUCHER's hand the words *Daillebout vs Duchesnois*. Some minutes afterwards Mr. La Croix then sitting in his place again opened that sheet of paper holding it close to him that it might not be seen, and I again had an opportunity of ascertaining that it was the hand writing of Judge FOUCHER. Judge FOUCHER was then on the Bench.

Friday, 14th February, 1817.

**P**RESENT Messieurs Ogden, Taschereau, Sherwood, M'Cord and Panet.

Mr. Ogden in the Chair.

Continuation of the Examination of F. X. Bender, Esquire.

**Q**.—Was the Paper which you saw before Mr. La Croix as the Declaration in the cause of *Daillebout vs Duchesnois*, common white paper or was it red?

**A**. It was common white paper.

**Q**.—Did the inside of that paper which you so saw contain Instructions in the cause, or was it the Declaration itself in the cause?

**A**.—Not having read it, I cannot say whether it contained Instructions: but it then appeared to me and I still sincerely believe that it was the Declaration in the said cause.

Have



Q.—Have you read or seen the conclusion of the Declaration you have mentioned.

A.—To the best of my knowledge I saw the words written in large Characters which usually form the beginning of the conclusions of Declarations “wherefore the Defendant prays.”

Q.—Did you see on the inside of that paper the title of the cause ?

A.—When Mr. La Croix returned to his place as I have already said, Mr. La Croix took the paper (which was a sheet of foolscap completely open) and on his closing the paper, I perceived at the beginning of its contents these words “Daillebout *demandeur* vs. “Duchesnois *défendeur*” and then on again folding the paper in four I saw on its back the same words, and the whole was in the handwriting of Judge FOUCHER. That added to other words such as those at the head of paragraphs, and other words usual, which I perceived in the body of that paper led me to believe, as I do still believe, that it was the declaration in the said cause.

Q.—When you saw Mr. La Croix open that paper a second time did you again observe the title of the cause at the head of the paper and the usual beginning of a declaration ?

A.—I certainly did again see the title of the cause ; but I do not recollect having seen the rest, for at that second time Mr. La Croix instantly folded the said sheet and so convinced was I of its being the declaration in the cause itself, that I immediately mentioned it to such of my *confères* as were near me, expressing my indignation.

Q.—What gentlemen did you thus address ?

A.—Mr. Bourret was one of them, Mr. Michel Viger the other, and I think I also mentioned it to Mr. Roland ; for those gentlemen were near me.

*Continuation*



*Continuation of the EXAMINATION of Joseph Mathons.*

**Q.**—In what place did you deposit the Record in that cause of Daillebout against Duchesnois, as well as the other Records after you had gone to Judge FOUCHER's for them?

**A.**—I delivered them all to Mr. Levesque who I believe put them in the box in which are usually placed the Records of the causes in which judgments have been rendered.

**Q.**—After having received the summons to appear before this Committee had you any conversation with Mr. Justice FOUCHER relative to this subject, and what was the nature of that conversation?

**A.**—Yes, about two days afterwards I went to his house to see him as I occasionally do; I told him I was going down to Québec; He asked me what I had to say of him.—I answered that I did not know what questions might be put to me. He said “doubtless they will speak to you of the affair of Mr. Daillebout, and what knowledge can you have of that cause?” I told him that I perfectly recollected that he had asked me for the Record in that cause as well as for others, near the door at which the Court House is entered; “but” said he “how can you more particularly recollect that Record than others.”—I answered “having known Mr. Daillebout for many years, and knowing that he lived at your house, I remarked or paid attention to that cause;” and he put the same question to me several times that evening. “Well” said he, tell all you know of it, and tell the truth, that is what I want.” He added “the damned rascals (*sacrés gueux*) will not hang me, they can at the worst only have me suspended. The damned House would do much better to mind the public business than this.”

**Q.**—What time is necessary to complete after the term, the entries in the register of the inferior term, according to the plaintiff?



A.—In 1813, 1814, and 1815, it occupied 15 days, and 3 weeks it now requires about 7 or 8 days.

The EXAMINATION of Joseph Mathons was adjourned.

*The Committee then adjourned.*

*Saturday, 15th February, 1817.*

**P**RESENT Messieurs Ogden, Sherwood, Taschereau, M'Cord and Paret.

*Mr. Ogden in the Chair.*

EXAMINATION of *Pierre Desautels*, of the city of Montreal Merchant.

Q.—Have you not lately had in His Majesty's Court of King's Bench for the district of Montreal several suits?

A.—Yes, both in the superior and in the inferior terms of the said Court.

Q.—Had you not among others the two causes following in one of which you were plaintiff against Pierre Le Duc and the other against one Desroches?

A.—Yes; and they were both decided in the superior term of the said Court.

Q.—During those two suits, had you not frequently occasion to go to Mr. Justice FOUCHER's, and what conversation had you with him respecting those suits?

In



A.—In the year 1815, I had two suits against one Pierre Le Duc and his wife which were commenced four years before in superior term. In the month of June of the same year 1815, I was one day passing before the door of Mr. Justice FOUCHER who then lived in the Quebec Suburbs when he called me upon some business not at all relating to him as Judge, and in the course of the conversation he said to me, “well, “poor Desautels you have many suits in Court I see, you “are old, you must abandon all that, and plead no “longer :” I said to him, “It is hard to lose my property— “two Lots which I purchased and built upon myself, “I have the Deeds of them and pay the Rents.” He answered, “you promised to sell that House as appears in “your suit with Le Duc, but you took out your writ improp- “perly, you ought not to have proceeded as you have done. “I fear much that you will lose ;—For my own part I had “a glimpse of the papers in the suit, I am not alone ; the “opinion of others will not perhaps be mine,” I said “To “lose or to win, is all the same to me, the matter has been “so long spun out.” He said to me “it does not depend “on me : it is occasioned by the opposition,—speak to your “Advocate: hasten him,”—I said “I have gone so often to “him that I am tired of doing so.” Mr. Bender was my Advocate. He said “see Mr. La Croix, take him if you “choose, or some other, perhaps he would hasten it more.”

About Christmas last, after having obtained Judgment against Auguste Desroches in the Superior Term of October last, for about £60 I went to Judge FOUCHER's to get him to



sign a Petition to cause to be seized some furniture belonging to another person named Baptiste Desroches, and who was a lessee in one of my houses: after having caused my Petition to be signed, I had occasion to ask Mr. Justice FOUCHER, whether it were necessary that I should Petition to have the furniture of Auguste Desroches sold, notwithstanding his having put in an opposition to the seizure I had made upon him for my Judgment of £60. Judge FOUCHER said, "I do not see that it is necessary, you have a *Gardien*. He has a right either to convey away the things or to leave them, that does not concern you, you will sue the *Gardien* if he do not take care of the things." This advice agreed with that my Advocate had given me, and I asked him no further Questions."

Q.—In consequence of what Mr. Justice FOUCHER said to you did you change your lawyer?

A.—No.

John Taylor, Esquire, Deputy Secretary of the Province, transmitted to the Committee two Commissions marked L and M\*.

The Committee adjourned.

\* For these Papers see notes L and M at the end of this Report.

Monday



Monday, 17th February, 1817.

**P**RESENT, Messieurs *Ogden, Gagy, M<sup>c</sup>Cord and Panet.*  
Mr. Ogden in the Chair.

Examination of Alexis Bourret of the City of Montreal Esquire.

Q.—Are you not one of the Advocates practising at the Bar of Montreal?

A.—Yes.

Q.—Have you a knowledge of a cause instituted in the Superior Court of King's Bench at Montreal, wherein Pierre Ignace Daillebout was Plaintiff, against Etienne Duchesnois Defendant, and Etienne Duchesnois Plaintiff *en Garantie*, against Thomas Coffin Defendant *en Garantie*, and when?

A.—I know that cause was pending in the said Court about April, 1814.

Q.—What Advocates were concerned in that cause?

A.—Mr. La Croix was the Plaintiff's Advocate, Mr. Louis Michel Viger that of the Defendant, and Mr. Beaubien, Advocate of the Defendant *en Garantie*.

Q.—Did you see in Court in possession of Mr. La Croix and pending that cause, a paper marked P. I. Daillebout *vs* Etien-



the Duchesnois, and the words *actio negotiorum gestorunt* written in Judge FOUCHER's hand, and when ?

A.—I do not recollect when, but I recollect that upon a day on which some proceedings were taken in that cause, I saw in Court and at Mr. La Croix' place, a paper in which was the Name of the aforesaid cause with the Latin words *actio negotiorum gestorunt* written by Mr. Justice FOUCHER.

Q.—Did you then or at any other time see the inside of that Paper ?

A.—I saw at the same time or a few moments afterwards some words on the inside of the said paper; they were in the hand writing of Judge FOUCHER; that happened while Mr. La Croix was holding the paper in his hand and reading it, I then paid rather particular attention from having some minutes before seen the title of the said paper, which had made some impression upon me, and especially from being called on by Mr. Bender (the Advocate) then near me, to remark that Mr. La Croix possessed a paper in the cause written by Judge FOUCHER.

Q.—What was that Paper ?

A.—I cannot exactly say what that paper was, but I then thought, and I do so still, that it was a draught of the Declaration in the before mentioned cause.

Q.—What led you to believe it to be the draught of the Declaration in the said cause ?



A.—The reasons which led me to suppose it to be the draught of the Declaration in the said cause are—First, the way in which the said paper was indorsed—having the names of “ Pierre Ignace Daillebout, Demandeur, contre Etienne Duchesnois, Défendeur,” and the nature of the Action described by the latin words “ *actio negotiorum gestorum*,” and secondly because on seeing the inside of the said paper as I have already said, the words I there remarked, were words of form generally used in a Declaration.—I cannot recollect what the words were in particular ; the inside of the said paper was wholly in manuscript and the words I therein saw were in Mr. FOUCHER’s hand writing.

Q.—Did there appear to you to be other writing in that sheet of Paper than that of Mr. Justice FOUCHER ?

A.—I did not remark any other ?

Q.—Was it the paper now shewn to you marked C ?

A.—It was certainly not the paper now shewn to me marked C.

Q.—Are the three Copies of Judgments now shewn to you marked H. I. K. true Copies extracted from the Register of the Inferior Term of the Court of King’s Bench of the District of Montreal ?

A.—The two Copies of Judgments dated 28th May, 1814, whereof one is an Interlocutory and the other a final Judgment, shewn to me, marked H. and I. are true Copies extracted from the Registers and *Plumitif* of the said Court.

As



As to the third copy of a Judgment dated 12th September, 1814, and now shewn to me marked K. I am unable to certify it to be a copy extracted word for word from the Register or *Plumitif* of the said Court, but I can certify that that copy agrees in substance with the Judgment which I saw entered in the Register or *Plumitif* of the said Court in the cause of Susanne Lahaie, Widow of Jacques Liberson vs Louis Cousineau.

The Committee adjourned.

Tuesday, 18th February, 1817.

**P**RESENT Messieurs Ogden, Sherwood, Taschereau, Panet, Languedoc and Gagy.

Mr. Ogden in the Chair.

Examination of Samuel Wentworth Monk, Esquire.

Q.—Are you not one of the Prothonotaries of the Court of King's Bench for the District of Montreal?

A.—Yes.

Q.—Have you in your possession the *Plumitifs* and Registers of the Inferior Term of the Court of King's Bench of the said District for the years 1813, 1814, 1815 and 1816?

I have



A.—I have in my possession the Registers of the Inferior Term of the said Court for the Years 1815 and 1816.

Q.—Will you produce them to the Committee for its information?

A.—Yes.

Mr. Monk then laid the said Registers and *Plumitifs* upon the Table.

The Committee then called Mr. Joseph Mathons; and the Registers of the Inferior Court of King's Bench for the District of Montreal of the year 1816, for the entry of the Rules, Orders and Judgments of the said Court in the year aforesaid, also the *Plumitifs* containing the Rules, Orders and Judgments of the said Court for the Term of November 1816 having been shewn to the said Joseph Mathons, he was required by the Committee to point out the places in those Registers and *Plumitifs* in which alterations and erasures had been made either by Mr. Justice FOUCHER, or by his orders and the particular cases.

Mr. Mathons then pointed out in the said *Plumitif* under date of 22d November 1816, an entry in the form following.

No. 96, September, 6.

Antoine Bombardier,

vs.

Albert Bombardier, et al.

The Plaintiff not proving any diligence, the Court dismisses his Action with Costs.

Which



Which entry Mr. Mathons declared to be in the hand writing of Ant. Louis Levesque, Esquire, one of the Prothonotaries of the said Court, and that the foregoing final Judgment was pronounced in open Court.

Mr. Mathons pointed out in the Register of the said Court, also under date of 22d November, 1816, the entry of the same cause in the form following :—

No. 96, September, 1816.

Antoine Bombardier, otherwise called Labombarde, of Montreal, Yeoman.  
Plaintiff.

vs.

Albert Bombardier, otherwise called Labombarde Carpenter, Toussaint Bombardier otherwise called Labombarde of Montreal, weaver, Pierre Bombardier otherwise called Labombarde, of St. Martin, Yeoman, as having espoused Susanne Bombardier otherwise called Labombarde, and Jean Baptiste Bombardier otherwise called Labombarde, and Josephte Bombardier otherwise called Labombarde, widow of François Barrette of Montreal.

The Court heard the Plaintiff, and the Defendant Pierre Bombardier upon the Report of the *experts*, C. A. V.

Mr. Mathons declared that the before mentioned final Judgment is as the same is entered upon the said *Plumitif*, and was to his knowledge entered upon the said Register in the course of the same Term of November, 1816, and that to

the



the best of his knowledge the said entry was made by Samuel W. Monk, Esquire, one of the Prothonotaries of the said Court. That he knows that a few days after the said Term Mr. Justice FOUCHER sent for the said Register and that the same was afterwards returned to the Office, having the final Judgment as herein before entered erased and scratched out; and that in the place and stead of the said final Judgment so erased and scratched out, the interlocutory Judgment which is thereto substituted and such as the same appears entered on the said Register, appeared thereon written in Judge FOUCHER's own hand writing.

The Committee then adjourned.

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*Wednesday, 19th February, 1817.*

**P**RESENT Messieurs Ogden, Stuart, Taschereau, Panet, Sherwood, Gogy and M'Cord.

Mr. Ogden in the Chair.

Samuel Wentworth Monk, Esquire, was this Day again called before the Committee, and the following Question put to him.

**Q.**—The Committee desires that you lay before it the *Plumitifs* and Registers of the Inferior Terms of the Courts



of King's Bench of the District of Montreal for the years 1815 and 1816.

A.—I do not think myself justifiable in so doing—and I will not do so. It was then intimated to Mr. Monk that he might withdraw.

The Committee then again called Mr. Monk, and the aforesaid Question and Answer having been read to him he was asked whether he persevered in his answer.

To which inquiry Mr. Monk answered "I do persist."

And then he withdrew.

Whereupon it was

ORDERED, That the Chairman do leave the Chair and report the said circumstance to the House.

Saturday, 22d February, 1817.

**P**RESENT Messieurs Ogden, Gagy, Sherwood, Tasche-  
reau, McCord and Panet.

Mr. Ogden in the Chair.

Examination of Benjamin Beaubien of the City of Montreal,  
Esquire.

Q.—Are you not one of the Advocates practising at the Bar at Montreal?

Yes.



A.—Yes.

Q.—Have you a knowledge of a cause instituted in the Superior Term of the Court of King's Bench at Montreal, of Pierre Ignace Daillebout, plaintiff; vs. Etienne Duchesnois, defendant, and Etienne Duchesnois plaintiff *en garantie* against Thomas Coffin defendant *en garantie*, and when?

A.—Yes, the principal action was brought and returnable in February 1814, and the action *en garantie* was brought and returnable on the 1st April 1814.

Q.—Who were the Advocates concerned in that cause?

A.—Mr. Janvier Domptail La Croix was Mr. Daillebout's Advocate, Mr. Louis Michel Viger that of Mr. Duchesnois and I was Mr. Coffin's Advocate.

Q.—Did you see in Mr. La Croix' possession pending that cause or afterwards a Draught of a declaration in the aforesaid cause in the hand writing of Mr. Justice FOUCHER?

A.—On the 2d of April 1814, Mr. Janvier Domptail La Croix called on me, saying that in a certain cause wherein Mr. Daillebout was plaintiff, Mr. Duchesnois defendant, and Mr. Coffin *garant* he was Mr. Daillebout's Advocate, and that he had also been charged by Mr. Coffin with the defence of the action *en garantie*; that he had even entered an appearance for Mr. Coffin to that effect; but that having since reflected on the matter, he thought it would be better some other Advocate should be employed for Mr. Coffin, adding that he had



every power from Mr. Coffin and that in using that power he chose me to represent Mr. Coffin in that cause; that as the Interests were nearly the same, as well those of Mr. Daillebout as those of Mr. Coffin, he wished to confer with me in order to settle together the line of defence so as the better to insure success. To this end, Mr. La Croix communicated to me several papers and letters between Mr. Duchesnois and Mr. Coffin; and also the Draught of the declaration in the principal cause, which appeared to be the hand writing of the Hon. Judge FOUCHER; I read through the said Draught of the declaration to learn the nature of the action.

I wish to remark to the Committee that I feel myself in a situation of great delicacy. I derive my profession from Mr. Justice FOUCHER, what I declare might occasion to him the loss of his own, and I have ever considered myself the friend of Mr. La Croix; but it is a consolation to me that the bringing of the present accusation against the Hon. Judge FOUCHER is not in consequence of any information given by me, and I owe homage to truth, and under these circumstances I cannot do otherwise than deplore my situation.

Q.—Are you perfectly acquainted with the hand writing of Mr. Justice FOUCHER?

A.—Yes, I am as well acquainted with it as with my own.

Q.—Do you know whether the said declaration so shewn to you by Mr. La Croix were conformable to the original of the declaration filed in the said cause, and whether the said Draught were also conformable to the paper now shewn to you marked C?



A.—The Draught of the declaration which I read was given to me by Mr. La Croix as the Draught of the original declaration filed in the said cause; but I did not compare it with that original; and the paper now shewn to me marked C to the best of my recollection corresponds with the said Draught so shewn to me by Mr. La Croix.

Q.—When Mr. La Croix shewed you the Draught of the declaration in question did you not remark to him how it happened that it was written by or in the hand writing of Mr. Justice FOUCHER, and what was his answer?

A.—No, I did not remark that to him, but I was struck on seeing him and felt painfully. I said to Mr. La Croix, care must be taken, this writing ought not to appear. The reason of my feeling painfully is that I should ever have been unwilling to know such a thing, and also that I considered the fact as a mere indiscretion of Mr. FOUCHER's, and the act of Mr. La Croix in having shewn me the Draught of the declaration as an indiscretion of his. I apprehended also that Mr. La Croix' indiscretion might lead him to keep that Draught still longer, and thereby expose Mr. FOUCHER to disagreeable consequences. So strong was the impression on me that I have ever retained it. One thing struck me on reading the Draught of the declaration which is that on seeing on the docket the words *actio negotiorum gestorum*, and after having acquired a knowledge of the facts upon which the action was founded I thought the Hon. Judge FOUCHER had been mistaken, and that the action ought to have been the *actio mandati* because the said action was founded upon two letters of Attorney; but upon afterwards seeing the pleas I perceived that in the former there was more art, inasmuch as the said action included the *actio negotiorum gestorum* and the *actio mandati*. I percei-

ved



ved also that the action was so brought as to frustrate every *défense* which might have been applied in the *actio mandati*.

Q.—Have you reason to doubt that the said Draught of a declaration was in the hand writing of Mr. Justice FOUCHER ?

A.—I have no reason to doubt that fact.

Q.—You have said that you had considered the conduct of Mr. Justice FOUCHER on that occasion as indiscreet, should you not have considered it as criminal if you had for an instant thought that he was to sit in the same cause ?

A.—I thought at the time that he would sit in that cause ; but at the same time my opinion of Judge FOUCHER was such that I thought that in sitting he would render a judgment according to the best of his knowledge although he had so drawn the said Draught of the declaration ; and the reason why my feelings were painfully affected by his indiscretion, was that such conduct might occasion the very reverse to be supposed by persons knowing him less than I thought I knew him.

Q.—Did Mr. Justice FOUCHER sit in that Cause and pronounce one or more interlocutory Judgment ?

A.—He did sit in that Cause, I saw among the pleadings two interlocutory Judgments written by him whereof one ordered an *ave-nir* and the other ordered the Defendant Mr. Duchesnois to render an account ; but I do not recollect whether he heard the parties finally ; that is to say upon the account rendered.

Q.—Was the Cause finally adjudged and in whose favor was it pronounced ?

A.—Yes ;—the Judgment in the principal Cause was rendered in

favor



favor of Mr. Daillebout against Mr. Duchesnois, and in the Cause *en garantie* of Mr. Duchesnois against Mr. Coffin the action was dismissed.

Q.—Did you see the Draught of the final Judgment?

A.—No.

Q.—Have you ever been consulted by Mr. De Montarville, respecting a certain Cause instituted in the Superior Term of the Court of King's Bench for the District of Three Rivers, of our Sovereign Lord the King against Pierre Ignace Daillebout?

A.—Before the late War I remember having been consulted by Mr. De Montarville on the subject of a Crown Cause against the Testamentary Executor of the late Mr. De St. Ouge which action related to a Legacy left to Demoiselle Arard wife of Mr. De Montarville and to Mademoiselle Cavanad. Mr. Justice FOUCHER was then Provincial Judge at Three Rivers. The name of Mr. Daillebout was not to the best of my knowledge at that time mentioned.

Q.—Did not Mr. De Montarville then shew you a letter from Mr. Justice FOUCHER advising Mr. De Montarville to intervene in that cause?

A.—Mr. De Montarville shewed me a letter from Mr. Justice FOUCHER, he even read the said letter to me, it explained the rights of Madame De Montarville, and engaged her to form an intervention in the said cause to make her rights effectual, and also to employ an Advocate.

Q.—Was the intervention formed, and what was its fate?

A.—At the request of Mr. and Madame De Montarville I entrusted Mr. Vezina of Three-Rivers Advocate, to form that intervention. Mr.



Vezina informed me that he had made the intervention, that it had been maintained, and that the information on the part of the Crown had been dismissed.

EXAMINATION of *Pierre Bibaud* of the city of Montreal.

Q.—Are you not a clerk in the office of the Prothonotaries of the Court of King's Bench for the district of Montreal?

A.—Yes.

Q.—Have you a knowledge of a cause instituted in the Court of King's Bench of the district of Montreal wherein P. I. Daillebout was plaintiff vs. Etienne Duchesnois plaintiff, and E. Duchesnois plaintiff *en garantie* vs. Thomas Coffin defendant *en garantie*, and when?

A.—Yes, I had a knowledge of that cause, but I do not recollect in what term it was brought, it was adjudged in October 1814.

Q.—Did you enter the final judgment rendered in that cause, and when?

A.—Yes, I entered that judgment a few days after the end of the term of October 1814; but I do not exactly recollect when.

Q.—In what hand writing was the Draught of the said final judgment?

A.—I cannot positively assert, or recollect in what hand the Draught of that judgment was written, but having lately examined the entry I made of it in the *Plumitif* of the said Court of King's Bench, I believe it was written by one of the Judges of the said Court; because the title of the cause at the head of the judgment in question, was to



the best of my recollection, abridged and not at full length, as the same is entered in the said *Plumif* and that to the best of my knowledge the Prothonotaries or Advocates always insert at full length the title of the cause in the judgments drawn by them : and as the judgments written in french and not drawn by the Advocates or Prothonotaries of the said Court, are almost always in the hand writing of Judge FOUCHER, I am led to believe that the Draught of the said judgment was written by him.

**Q.**—Does any other Judge of the Court of King's Bench for the district of Montreal, prepare judgments of that Court in french?

**A.**—I remember having seen one special judgment written in the hand of Mr Justice Reid, in french ; and it is the only one of that nature, which I recollect having seen written in french by any other Judge than Mr. Justice FOUCHER ; I believe Mr. Justice Reid prepares some interlocutory judgments in french.

Mr. Cuvillier then declared to the Committee that it was not in his power to proceed to the Examination of other witnesses upon the said Heads of Accusation, until the Registers and *Plumitifs* of the Court of King's Bench for the District of Montreal which have been called for, are produced before the Committee.

**ORDERED** That the Chairman do leave the Chair and report.

The whole nevertheless humbly submitted.

C. R. OGDEN,

Chairman.

P.



the best of my recollection, and not at full length, as the same is entered in the said Volume, and that to the best of my knowledge the voluminous or voluminous always insert at full length the title of the cause in the judgments drawn by them: and as the judgments written in French and not drawn by the Advocates or Prothonotaries of the said Court, are almost always in the said writing of Judge Foucher, I am led to believe that the Draft of the said judgment was written by him.

Q.—Does any other Judge of the Court of King's Bench for the District of Montreal prepare judgments of that Court in French?

A.—I remember having seen one special judgment written in the hand of the Justice Hall, in French; and it is the only one of that nature which I recollect having seen written in French by any other Judge than the Justice Foucher; I believe Mr Justice Haid prepares some interlocutory judgments in French.

Mr Justice then declared to the Committee that it was not in his power to proceed to the Examination of other witnesses upon the said Heads of Accusation, until the Registers and Papers of the Court of King's Bench for the District of Montreal which have been called for, are produced before the Committee.

Ordered That the Chairman do leave the Chair and report.

The whole nevertheless humbly submitted.

C. R. OGDEN

Chairman.



A

(Translation.)

DISTRICT OF }  
MONTREAL }

COURT OF KING'S BENCH,

MONDAY, 18th April, 1814.

PRESENT—The Honourable

Isaac Ogden, }  
James Reid, } Esquires Justices.  
L. C. Foucher, }

N<sup>o</sup>. 95.

*Pierre Ignace Daillebout*, residing in the Parish of *St. Jean Baptiste de Nicolet*, in the District of *Three Rivers*, now at *Montreal*, in the District of *Montreal*, Esquire.

Plaintiff.

vs.

*Etienne Duchesnois*, Merchant, residing in the Parish of *Vareennes* in the District of *Montreal*, Esquire. Defendant.

The said *Etienne Duchesnois*, Plaintiff *en garantie*.

*Thomas Coffin*, of the Town of *Three Rivers*, in the District of

*Three Rivers*, Esquire. Defendant *en garantie*.

The Court having heard the Parties by their Advocates upon the exceptions of the Defendant, and having deliberated, dismisses the said exceptions of the Plaintiff with Costs.

The Defendant excepted to this Interlocutory.



Wednesday, 20th April, 1814.

PRESENT—The Honourable,  
 Isaac Ogden,  
 James Reid,  
 L. C. Foucher, } Esquires Justices.

THE Court on the motions of the Plaintiff and Garant order, that the *Enquête* in the cause both on the *Demande* in Chief and on the *Demande en garantie* be fixed for the second Witness day in Vacation.

Saturday, 18th June, 1814.

PRESENT—The Honourable,  
 Chief Justice Monk,  
 Isaac Ogden,  
 James Reid,  
 L. C. Foucher,

THE Court having heard the parties by their Counsel both on the *Demande* in Chief and on that *en garantie*, having examined the Pleadings and deliberated, condemn the Defendant (on the *Demande* in Chief) to render an account to the Defendant of the rents, farm-rents or other monies whatsoever which he may have received for him, or belonging to him, since the year one thousand eight hundred and ten, as also of the titles, Contracts and other Papers, which may have been placed in his hands, or which he may have had belonging to the said Plaintiff, which account upon Oath, and which titles Contracts and Papers he shall be bound to produce and file in the Office of this Court between this day and the fifteenth day of August next, and condemns him to the Costs, and with respect to the *Demande en garantie*, the said Court suspends Judgment thereon until the said Account shall be rendered.

Thursday



Thursday, 20th October, 1814.

PRESENT—The Honourable,

James Monk, Chief Justice,

Isaac Ogden,

James Reid.

**T**HE Court having heard the Parties by their Advocates upon the account rendered by the Defendant on the tenth of October instant, again examined the pleadings, and considered the whole, in deciding both the *demande* in chief and the action *en garantie*, dismisses the Plaintiff's said action *en garantie* with costs, and upon the *demande* in chief adjudges and orders that the said Defendant do pay to the Plaintiff the sum of ninety five Pounds six shillings and five Pence currency, equal to that of two thousand and forty seven *livres* and seven pence, former currency, with interest from the fourth of February last, the day of the service of the summons, at which sum the said Court has settled the balance due by him to the Plaintiff, by the said account rendered, each party paying his own costs upon the proceedings subsequent to the rendering of the said account, giving *acte* to the said Defendant of the restoration and production of the titles and papers demanded of him by the Declaration which shall be restored to the said Plaintiff.

We the Prothonotaries of the Court of King's Bench for the District of Montreal in the Province of Lower-Canada do certify that the foregoing copies of Judgments are conformable to the entries of the said Judgments in the Register of the said Court in the Cause No. 95 wherein Pierre Ignace Daillebout, Esquire was Plaintiff, against Etienne Duchesnois, Esquire, Defendant, and the said Etienne Duchesnois, Esquire, Plaintiff *en garantie*, against Thomas Coffin, Esquire, Defendant *en garantie*. Montreal, 31st January, 1817.

REID, LEVESQUE, and MONK, P. K. B.



Wednesday, 20th October, 1814.

B

(Translation.)

DISTRICT OF }  
MONTREAL. }

Court of King's Bench,

FEBRUARY TERM.

No. 105.  
Pierre Daillebout, Esquire,  
Etienne Duchesnois, Esqr.  
Thomas Coffin, *garant formel.*

The Parties consent that Judgment be pronounced in this Cause during the next vacation and be entered of Record as of the twentieth of the present Month.

MONTREAL, 20th October, 1814.

J. D. Lacroix, Attorney for Plaintiff.

Benjamin Beaubien, Attorney for.

(Signed)

Thos Coffin,

L. M. Viger.

True Copy,

L. Levesque, P. B. R. D. M.

Messrs. Levesque and Monk, P. B. R. D. M.



**C** much belonging to the said Plaintiff in Capital, interest and costs  
 under a certain Judgment of the Court of which sum or of the  
 application thereof the said Plaintiff has not rendered (and  
 (Translation.)

DISTRICT OF }  
 MONTREAL }

*Court of King's Bench.*

FEBRUARY TERM, 1814.

*Pierre Ignace Daillebout, Esq.*..... Plaintiff,

*vs.*  
*Etienne Duchesnois,*..... Defendant.

**P**IERRE IGNACE DAILLEBOUT, Esquire, residing in  
 the Parish of *St. Jean Baptiste de Nicolet* in the Dis-  
 trict of Three Rivers now at Montreal, in the District of Mont-  
 real Plaintiff, declares that Etienne Duchesnois of the Parish  
 of *Ste. Anne de Varenne* in the said District of Montreal Es-  
 quire, Merchant, has for many years, that is to say, about the  
 year 1810, for and in the name and as the Attorney of him the  
 Plaintiff, or as employed by, or in the name or as the Attorney  
 or Agent of the Attorney of the Plaintiff, or otherwise, received  
 divers sums of money, rents, farm-rents or other monies  
 belonging to him the said Plaintiff, of which, although  
 therefor become in consequence accountable towards him, he  
 neither rendered nor kept any account, and whereof he refused  
 and still refuses to render to him an account, although there-  
 unto often required.

That on the 12th day of July last, in particular he received  
 from the Sheriff of this District (having to that effect styled himself  
 Attorney of the Plaintiff so constituted by power of Attorney  
 passed before Doucet Notary,) a sum of £181 0s 5d. (for so

much



much belonging to the said Plaintiff in Capital, interest and costs under a certain Judgment of this Court, of which sum, or of the application thereof the said Defendant has not rendered (and refuses to render) an account to the said Plaintiff.

That, in order to collect and receive the several sums of Money, rents or other monies belonging to the Plaintiff, there were placed in his hands in the name and by the Agents or Attornies of the said Plaintiff, or he did otherwise obtain the several titles, *constitutions de rente*, leases to farm (*baux à ferme*) and other papers of the Plaintiff, which he refuses to restore to him and unjustly detains; the whole to his great injury and Damage.

That for the reasons aforesaid the said Plaintiff is founded in Law in an Action against the said Defendant, for the purpose of compelling him to render an account of, and recover the sums received for him or belonging to him with Damages.

Wherefore he prays that he may be condemned to render to him a true and faithful account under oath of the sums of money, rents, Farm Rents, or other monies whatsoever, to pay to him the Balance which shall be ascertained to be due to him with Interest from the day of his receiving the same: as also to restore to him his titles Contracts and other papers which he may have had in his hands belonging to the said Plaintiff, the whole with Costs and under the penalties and personal arrests by Law provided, and to pay the Costs.

Montreal, 31st January, 1814.

J. D. LACROIX, Advocate.

*Indorsement*



(Indorsement.)

No. 95.

King's Bench, February term, 1814.

DECLAR.

P. I. Daillebout,

vs.

Et. Duchesnois.

Action negotiorum gestorum.

A £250.

Ret. 10th.

To Plead. 12th April.

Cont. 15.

Do. 16.

Proof the 2d day of Vacation

Int.

Q

D



D

*Montreal.**Court of King's Bench.*

October Term, 1814.

*Pierre Ignace Daillebout,*

Plaintiff.

*Etienne Duchesnois,*

Defendant.

*Thomas Coffin,*

Garant.

Objections to and against the account of the Defendant (*re-brèches et débats de compte*) taken by the Plaintiff to the charges claimed by the Defendant among the expenses stated in the account by him filed in this cause—that is to say: Because with respect to the sum paid to Mr. Ross by the Defendant, the Plaintiff says that assuming his having paid that sum, he must have been and has been repaid by the said Ross the disbursements which he alleges his having paid; and for which he does not credit the Plaintiff in the account of receipt; Because assuming that he had paid to D. B. Viger Esquire, Advocate the sum of ninety four livres former currency by him alleged in his account of expence the said Plaintiff says that he was reimbursed the said sum, as appears by the judgment filed by the said Court in that cause, and from the receipt of the Defendant to the Sheriff of this district, the said sum at the foot of the said judgment, and for which the said Defendant does not credit the Plaintiff in his said account of receipt, the said Plaintiff alleging that the

said



said Defendant ought not to pay that sum to the said Viger, who had not a right to receive the same,—having received his fees by the said judgment.—Because the Defendant cannot have or exact the sum of £6 currency for the six journies which he states his having made for the benefit of the Plaintiff, the Plaintiff alleging that if the said journies have so been performed, the Defendant performed them for his own profit, he himself being the opposant on the judgment filed in that cause, or interested, and that no necessity of performing six journies existed, nor has he a right to the said sum.

Because the Defendant cannot exact the sum of fifty six livres former currency by him demanded for preparing the account filed, the Defendant not deserving to have, and not having any right to that charge.

Because the Defendant cannot have, and has not a right to receive any of the charges, N<sup>o</sup>. 1, 2, 3, 4, 5, 6, 7, 8, and 9, contained in his account of expences, and ought only to receive five per cent for his trouble and gestion of affairs, on the part of the Plaintiff; and that in the five per cent, ought to be included all the other charges claimed by him by his said account of expenses, so that the balance in which he acknowledges himself indebted to the Plaintiff amounting to the sum of fifteen hundred and twenty-nine livres only, ought to amount to nineteen hundred and sixty-three pounds, and a few half pence former currency, which he is entitled to claim, and upon the whole relies on this Court, and prays its judgment with costs.

For the Plaintiff.

J. D. LA CROIX, Adv.

Montreal. 14th October, 1814.



E

(Original.)

Extract of the Record of the Court of King's Bench for the District of Three Rivers in a cause between our Sovereign Lord the King vs. Pierre Ignace Daillebout, defendant, transmitted to the Office of the Clerk of the Provincial Court of Appeals on the twenty first day of November one thousand eight hundred and twelve.

PROVINCE OF LOWER-CANADA, }  
District of Three-Rivers. }

In the King's Bench.

Our Sovereign Lord the King,

vs.

Pierre Ignace Daillebout, Defendant.

Be it remembered that Edward Bowen, Esquire, one of the Counsel in the Law of our Sovereign Lord the King, of and for the Province of Lower Canada, who prosecutes for our said Lord the King being present here in Court, this thirteenth day of September, in the year of our Lord one thousand eight hundred and eleven, in his proper person doth give the Court of our said Lord the King to understand and be informed that by the Laws of this Province of Lower Canada, no Religious Community or other *gens de main morte* can or may legally have, acquire or possess any immoveable property, Houses or Estates of what nature or kind soever situate within the said Province of Lower Canada either by virtue of a forced or voluntary sale and acquisition, exchange, donation, cession or transport (not even in payment of what may be due and owing to them) or under or upon any other cause consideration or pretext whatsoever without express permission of our said Lord the King to be signified by His Letters Patent duly enregistered.

That



That by the laws of this Province of Lower Canada, no such property, Houses or Estates as aforesaid, can or may legally be given or bequeathed to such Religious Community or *gens de main morte* by last Will or Testament, and that in all cases where the Testator instead of bequeathing his Property or Estates to such Religious Community or *gens de main morte* directly shall have ordered and directed the same to be sold and the price or produce thereof, to be paid or delivered to such Religious Community or *gens de main morte* as aforesaid, the said disposition or last Will and Testament and every thing relating to such bequest is, and are and shall be held and considered absolutely null and void in Law to all intents and purposes whatsoever.

That all such property or estates which shall have been so as aforesaid acquired by any such religious community or *gens de main morte* as aforesaid without such royal permission to be duly signified as aforesaid, or which shall or may have been willed or bequeathed as aforesaid for the purpose of being sold and the proceeds or price thereof paid or delivered to any such religious community or *gens de main morte* as aforesaid, and which not having been claimed by the children, heirs or other representatives (*les ayans cause*) of the person or persons to whom such property belonged within the delay of six months are to be escheated and shall be reunited to the *Domaine* of our said Lord the King, to the end that the same may be sold and applied to the uses and purposes directed in and by the declaration of his late Most Christian Majesty *Louis* the fifteenth, bearing date at *Versailles* the twenty fifth day of November one thousand seven hundred and forty three and duly enregistered in the said Province of Lower Canada. And



And the said Edward Bowen on behalf of our said Lord the King doth further give the Court of our said Lord the King to understand and be informed that on the third day of September which was in the year of our Lord one thousand seven hundred and ninety four, Pierre Garrault de St. Onge, residing in the Town of Three Rivers, in the District aforesaid *Vicaire Général* of the said District of Three Rivers by his last Will and Testament bearing date the same day and year aforesaid and made and executed in presence of A. Badeaux, Notary Public and the witnesses thereunto subscribing, did amongst other things in and by his said last Will and Testament bequeath to certain persons therein described by the names of Demoiselle Josephite Avrard his Niece and Demoiselle Thérèse De Cabana the *usufruit* and enjoyment of all the real or improveable property of which he the said Pierre Garrault de St. Onge should die seized, without any further exception whatever, the same then consisting in an *emplacement*, Dwelling House and Premises herein after described situate in Notre Dame Street in the said Town of Three Rivers and in another lot of ground situate in the same street also herein after particularly described to be held and enjoyed by them jointly or separately as they might choose for their lives only, and upon the death of either of the said Josephite Avrard or Thérèse De Cabana, the survivor to have and enjoy the whole for her life and that in case either the said Josephite Avrard or Thérèse De Cabana married in the life time or after the decease of the said Testator, she should be thence deprived of the *usufruit* and the enjoyment aforesaid as if she had died; the other nevertheless being thereby bound to pay to her who should have married as aforesaid out



of the *usufruit* of the said immoveable property the sum of fifty livres. of twenty *sols* each annually during her life, and that in the event of both the said Josephte Avrard and Thérèse De Cabana marrying, then that they should be both deprived of the *usufruit* and enjoyment of the property aforesaid, and the subsequent dispositions of the said Will be executed in the same manner as if both were deceased, thereby also expressly prohibiting and excluding his heirs from all participation whatsoever in the future Estates and Succession of him the said Pierre Garrault de St. Onge for reasons to him known.

That the said Pierre Garrault de St. Onge did thereby also further will and direct that upon the termination of the said *usufruit* and enjoyment so given and bequeathed as aforesaid, either by the decease of the said Josephte Avrard and Thérèse De Cabana or their being provided for in marriage as aforesaid that the said real or Improveable Property whereof he should die seized as aforesaid with its dependencies should be sold upon the best and most advantageous terms by the Executors of his said last will and testament or the survivor of them, and in case of the decease of said Executors, his by such person as the Roman Catholic Bishop who should then fill the seat at Quebec, should nominate for that purpose and whom he the said Pierre Garrault de St. Onge thereby authorised to act in the same manner as if he had been one of the Executors of the said last will and Testament and which said sale it was by the said last will and testament directed should be made publicly and by adjudication to the last and highest bidder after the necessary advertisements and notice, that the produce of the said sale should be delivered into the hands of the said Roman Catholic Bishop of Quebec whom the said Testator thereby entreated and authorized to deliver to such Person as he might think fit one Half of the proceeds thereof which he thereby gave and bequeathed.



bequeathed to the Religious Community of Ursuline Nuns of the Town of Three Rivers aforesaid to be employed towards the wants and support of the sick poor of the Hospital of the said Religious Community of Ursuline Nuns of the Town of Three Rivers aforesaid, and the other half thereof which he thereby gave and bequeathed to the said religious Community of Ursuline Nuns of the Town of Three Rivers aforesaid to serve and to be employed in the decoration of the Church or Chapel of the said Religious Community, the said sums respectively to be laid out under the direction and inspection of the said Roman Catholic Bishop of Quebec.

That the said Pierre Garrault de St. Onge thereby named and appointed the above named Pierre Ignace Daillebout then of the Town of Three Rivers, in the District of Three Rivers, Esquire, now residing at the Parish of St. Jean Baptiste de Nicolet, in the said District of Three Rivers aforesaid, and the Officiating Curate, of the Town of Three Rivers at the time of the decease of the said Pierre Garrault de St. Onge to be the executors of his said last will and testament thereby divesting himself of his said Property in their favor and revoking all former wills or Codicils by him made.

That the said Pierre Garrault de St. Onge afterwards to wit on the twenty second day of September in the year of our Lord one thousand seven hundred and ninety five at the Town of Three Rivers aforesaid, died, seized of the real property herein after mentioned without having in any wise altered his said last Will and Testament.

That after the making of the said last Will and Testament the said Josephte Avrard married, and the said Thérèse De Cabana died, and the said Pierre Ignace Daillebout as such Testamentary Executor as aforesaid by Advertisement in the Quebec Gazette bearing date the fifteenth day of February now last past gave public notice that in the due execution of the last Will and Testament of the said late Pierre Garrault de St. Onge on Tuesday the thirteenth day of April then next and now last past, at the hour of eleven of the clock in the forenoon



noon at the Court House in the said Town of Three Rivers; would be sold and adjudged to the last and highest bidder the following immoveable property belonging to the estate and succession of the said late Pierre Garrault de St. Onge deceased, that is to say: first an *Emplacement* situate in the Borough of Three Rivers, containing forty feet in front upon Notre Dame Street by one hundred and three feet in depth joining on one side to the South West by St. François street and on the other side to John Antrobus, Esquire, and ending in depth at the *emplacement* belonging to the Succession of the late Honorable Mr. Deschenaux with a stone House of forty feet in front upon Notre Dame Street, by thirty two feet in depth upon St. François Street with a small addition "*allonge*" and a stable thereon—Secondly another *Emplacement* near to the one above described of sixty five feet upon Notre Dame Street by fifty nine feet, fronting towards the North East to St. François street joining to the South West the *emplacement* of the representatives of Godefroy de Touancour, Esquire, and to the South East to the representatives of Joseph Hamel.

That the said two *Emplacements* belonging to the Estate and Succession of the said late Pierre Garrault de St. Onge still remain unsold in the hands and possession of him the said Pierre Ignace Daillebout as the surviving Executor of the said last Will and Testament.

That by reason of the said several Premises and by law, the said two *emplacements* with the appurtenances have escheated to our said Lord the King and a right of action hath accrued to our said Lord the King to ask, demand and obtain that the same and every part and parcel thereof be reunited to his Domain to be afterwards disposed of according to Law.

All which allegations the said Edward Bowen on the behalf of our said Lord the King doth hereby aver to be true and well founded in fact and in Law and the same will verify, prove and maintain when and as this Honorable Court shall direct.

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Where-



Wherefore the said Edward Bowen on behalf of our said Lord the King prays the advice of our said Lord the King now here in the premisses, and that the process of this Honorable Court may issue to compel the said Pierre Ignace Daillebout to be and to appear in this Honorable Court on Monday the sixteenth day of September instant to answer unto our said Lord the King of the demand contained in the information and for the causes aforesaid by the Judgment of this honorable Court the said last Will and Testament of the said Pierre Garrault de St. Onge may be declared null and void and of no effect the said Pierre Ignace Daillebout adjudged and condemned in his quality of Executor as aforesaid to quit and surrender up the possession of the said above described *emplacements* and premisses that the same and every part thereof may be declared escheated to our said Lord the King and be reunited to the Royal Domain for the purpose of being sold and the proceeds applied as the law directs, and to that end that this honorable Court will proceed by sale and adjudication thereof at the Church Door of the said Parish of Three Rivers to the last and highest bidder after the usual and requisite notices,—And further that the said Pierre Ignace Daillebout may be adjudged and condemned to render an account in due form of law of his gestion of the said real estates and of all such sum or sums of money as may have come to his hands appertaining to the said real estate in order that the same may be paid over to our said Lord the King, the whole with the full costs of suit.

And the said Edward Bowen on the behalf aforesaid further prays that this honorable Court will do further in the premisses all that to Law and Justice shall appertain and be requisite for the preservation of the rights of our said Lord the King.

Dated the 13th September, 1811.

(Signed)

EDWD. BOWEN,

For our said Lord the King.

(Indorse-



(Indorsement.)

In the KING's BENCH,

THREE RIVERS.

N<sup>o</sup>.

Our Lord the King,

vs.

*Pierre Ignace Daillebout,*

Defendant.

**INFORMATION.**

Filed 13th September 1811.

(Signed) THS. & FR. P. K. B.

(Signed) EDWD. BOWEN,

For Our Lord the King.



(Translation.)

LOWER-CANADA, }  
District of Three-Rivers.

**GEORGE THE THIRD**, by the Grace  
of God, of the United Kingdom of Great  
Britain and Ireland, King Defender of the  
Faith.

To the Sheriff of Three Rivers, GREETING :

L. S.

**WE** command you to Summon Pierre Ignace Daillebout,  
formerly of the Town of Three Rivers, now residing  
in the Parish of St. Jean Baptiste de Nicolet, in the District  
of Three Rivers, to appear before our Justices of the Court  
of King's Bench, at the Court House, in the Town of Three-  
Rivers, on Tuesday, the seventeenth instant, at the Hour of Ten  
in the forenoon, to answer to our demand contained in the in-  
formation to be herewith served, and have you then and there  
this Writ. Witness the Honourable **LOUIS CHARLES FOUCHER**,  
our Provincial Judge, and one of the Justices of our said Court  
at Three-Rivers, on the thirteenth day of September, in the year  
of our Lord, one Thousand eight hundred and eleven, and in  
the fifty first year of our Reign.

(Signed) **THOMAS & FRASER, P. B. R.**

(Original.)

By virtue of this Writ, I have summoned the within named  
Defendant to appear, by serving a Copy of the said Writ and  
information



information annexed, at his *Domicile*, in the Parish of Nicolet, on the thirteenth instant, speaking to himself.

Three-Rivers, 14th September, 1811.

(Signed) L. GUGY, Sheriff.

(Translation.)

PROVINCE OF LOWER CANADA,  
District of Three-Rivers. }

Court of King's Bench,

September Term, 1811.

Our Sovereign Lord the King,

*vs.*

Pierre Ignace Daillebout, Esquire,

To the Honourable the Justices of the said Court.

**J**OSEPH BOUCHER de Montarville, of Boucherville, Esquire, and Marie Josephte Avrard, his wife, most respectfully represent to Your Honours.

That the said Marie Josephte Avrard, wife of the said Montarville, Esquire, is sole Heir in the collateral line of the late Messire Pierre François Garrault otherwise called St. Onge, deceased in this Town, Priest and Vicar General, as appears by the extracts annexed to the genealogy which the Petitioners produce.

That



That the said late Pierre François Garrault dit St. Onge, did by his last will and testament bearing date the third day of September, one thousand seven hundred and ninety four dispose of and give, in contravention of the Laws of this Country, his real property situate in this Town consisting of. 1. A Lot of forty feet in front upon Notre Dame Street, by one hundred and three feet in depth along St. François Street, adjoining at present on one side to John Antrobus, Esquire, and in depth to the representatives of the late Honourable Louis Desche-neaux, with a Stone House of forty feet by thirty three feet, with an *allonge* and a stable. 2d. Another Lot near that herein before mentioned of sixty five feet along Notre Dame Street aforesaid, and of fifty nine feet upon St. François Street, adjoining on one side to the representatives of Godefroy Ton-nancour, Esquire, and on the other side to the representatives of one Hamel ; to persons holding indirectly *en main morte*, as is more fully explained in the will produced in that information.

That the aforesaid hereditaments are by law the property of the said Marie Josephte Avrard, wife of the said Montarville, as heir of the said late Pierre François Garrault otherwise called St. Onge, the annulment of whose Testament is in question.

Wherefore your Petitioners most respectfully pray that your Honors will permit them to intervene as parties in that cause or information and that the will of the said late Pierre François Garrault be set aside and annulled, and the said Pierre Ignace Daillebout, Esquire, condemned to abandon the possession and

occupation



occupation of the aforesaid Hereditaments, and to restore the same to them as being the property of the said Marie Josephte Avrad, descended to her as the Heir of the said late Garrault her Uncle, and that His Majesty's claims thereto, may be dismissed with Costs against the said Defendant.

Three-Rivers, 20th September, 1811.

(Signed)

P. VEZINA

Atty. of the Petrs.

B. I. Daillyport Esqr.

and

J. Foucher & Co.

Intervening party.

Filed 21st September, 1811.

(Signed) Jnos & Mr. B.

(Signed) P. VEZINA

Atty. of Interv.

(Indorsement)

DISTRICT



(Indorsement.)  
and to restore the  
property of the said Marie Joseph  
descended to her as the wife of the said late Garret  
may be dis-

No. 72.

**COURT OF KING'S BENCH,**

September Term, 1811.

Petition in Intervention.

P. VEZINA

(Signed)

Dom : Rex

Atty. of the Pet.

vs.

P. I. Daillebout, Esqr.

and

J. Boucher, & ux :

Intervening party.

Filed 21st September, 1811.

(Signed) THOS. & FR. P.

(Signed) P. VEZINA.

Atty. of Interv.

(Indorsement)

DISTRICT



DISTRICT OF }  
 Three-Rivers. }

COURT OF KING'S BENCH,

SEPTEMBER TERM, 1811.

Our Sovereign Lord the King,

Pierre Ignace Daillebout, Esquire,

and

Joseph Boucher de Montarville, Esquire,

and

M. Josephite Avrard.

**T**HE Intervening party moves that the delay for filing their exhibits in support of their Intervention be prolonged to \_\_\_\_\_ to complete the age

Three Rivers, 21st September, 1811.

(Signed) P. VEZINA,

Atty. of the Intervg. party.

S

(Indorsement)

(Original)



(Indorsement.)

DISTRICT OF  
Middlesex

No. 72.

Court of King's Bench.

September Term, 1811.

Motion to obtain delay.

Dominus Rex,

vs.

P. I. Daillebout,

and

J. Boucher, Esqr. & uxor.

Intervening party.

Filed, 21st September, 1811.

(Signed) THS. & FR. P..

(Signed) P. V.

(Indorsement)

(Original)



(Original)

LOWER CANADA, }  
 District of Three Rivers. }

In the King's Bench.

Our Sovereign Lord the King,

vs.

Pierre Ignace Daillebout,

and

Joseph Boucher de Montarville et Marie  
 Josephite Avrard, his wife, Intervenant.

Be it remembered that Edward Bowen, Esquire, one of the Counsel in the Law of our Sovereign Lord the King, of and for the Province of Lower Canada, who prosecutes for our said Lord the King, being present here in Court, this twenty third day of September, in the year of our Lord one thousand eight hundred and eleven, in his proper person, in answer or plea to the merits of the *Requête* of the said Intervenant parties, doth give the Court of our said Lord the king, to understand and be informed that all the allegations and facts given in the said *Requête* and all and each of them are insufficient untrue and unfounded both in law and fact to maintain the several and each of the conclusions contained in the said *Requête*.

Wherefore the said Edward Bowen in behalf aforesaid per-

S 2

sists



exists in the conclusions contained in his information in behalf of  
our said Lord the King.

Three Rivers, 23d September, 1811.

(Signed) A. BERTHELOT,

Atty. Acting for the Attorney General.

(Indorsement.)

Court of King's Bench.

THREE RIVERS.

No. 72.

September Term, 1811.

Our Lord the King

vs.

P. I. Daillebout,

Defendant.

and

Joseph Boucher de Montarville, & Uxor.

Intervenants.

Answer to the *Requête* of the Intervenant parties.

C.

Filed, 23d September, 1811.

(Signed) THS. & FRs. P.

(Translation.)



(Translation.)

No.

King's Bench.

September Term 1811.

Dominus Rex.

vs.

Pierre Ignace Daillebout, Defendant.

and

Joseph Boucher, Sieur De Montarville, Esquire, et uxor.

Intervening party.

AND the said Pierre Ignace Daillebout for *défenses* or answer to the intervention of the said Joseph Boucher de Montarville and his wife, and so far as it is necessary for him to answer saith that with respect to the conclusions by them taken for causing the said Will to be declared null, he cannot do otherwise than thereupon submit to and he doth submit to Justice.

That with respect to their remaining conclusions he saith that they cannot nor can similar ones taken against him by the information be granted, because after the decease of the said late De St. Onge he the Defendant and the other Testamentary Executor of the late De St. Onge took possession of his personals only, they immediately rendered an account to the Legatees and obtained a legal and full discharge.

That



That with respect to the real property the said Defendant was unable to take and did not in fact take possession of them, which possession remained in the said Legatees who held and hold the same since the decease of the said late St. Onge so that the said Defendant, since the said discharge not having had any gestion or administration has not any account to render.

That it is true, that in execution of the Will of the said late St. Onge the Defendant caused to be announced the sale of the said Immoveables but that he did not in consequence take possession of them, which sale was stopped by the Officer of the Crown.

That the said Defendant for his costs and expences has disbursed a sum of \_\_\_\_\_ which he has a right to claim, and does claim either against the Intervening party or against the Officer of the Crown, according as the Decision may be in favor of the one or of the other.

Wherefore he prays that the said sum may be adjudged and that he may be discharged from this action with costs.

Three Rivers, 24th Sept. 1811.

(Signed)

P. I. DAILLEBOUT.

Disbursements by Pierre Ignace Daillebout, Esquire, Testamentary Executor of the late Messire St. Onge, in executing his Will.

1811.







(Original.)

PROVINCE OF LOWER CANADA,  
District of Three-Rivers.

Court of King's Bench,

Our Sovereign Lord the King,

vs.

Pierre Ignace Daillebout, Esquire,

and

Joseph Boucher de Montarville,

and Marie Josephte Avrard, his wife.

Intervening.

Motion that the Defendant's Plea or Defence to the *Requête* of the Intervening parties be set aside inasmuch as it contains a Plea or Defence to the merits of the Information, the said Defendant according to the Rules of this Court having no more right, on the twenty fourth instant, to file such a Plea or Defence to the merits of the Information.

Three Rivers, 25th September 1811.

(Signed) A. BERTHELOT,

Acting for the Atty. Genl.



K. B. September Term 1811.

Attorney General's Motion to set aside the Defendant's Plea  
to the Information.

Pierre Ignace Daillebout  
Defendant

Our Lord the King,

vs.

Pierre Ignace Daillebout,

Jacques Boucher de Montarville,

Def.

and

Joseph Boucher de Montarville, Esq.

et uxor, Intervening.

Filed this 26th Sept. 1811.

(Signed) Ths. & Fr. P.

Attorney General

Attorney General

T

DISTRICT



DISTRICT OF }  
THREE-RIVERS. }

King's Bench.

Our Lord the King,

Attorney General's Motion: vs. the Defendant's Plea  
to the information

*Pierre Ignace Daillebout,*  
Our Lord the King,  
Defendant,

vs.  
and

*Joseph Boucher de Montarville,*  
Def.  
*et uxor.*

has  
Intervenent.

Motion to have the cause, fixed to be heard to-  
morrow on the Point of Law, postponed to the 27th  
instant.

Filed this 26th Sept. 1811.  
Three-Rivers, 23d September 1811.

(Signed) T. & F. R.  
(Signed) A. BERTHELOT,

Attorney acting for the  
Attorney General.

DISTRICT

T

In



*In the King's Bench.*

No. 72.

September Term 1811.

Our Lord the King,

vs.

*Pierre Ignace Daillebout*, Defendant.

and

*Joseph De Montarville, et uxor.*

Intervenant.

The Attorney General's Motion to be heard on  
the Point of Law.

Filed 26th Sept. 1811.

(Signed)

THS. & FR. P.

(Translation.)

DISTRICT OF }  
Three-Rivers. }

COURT OF KING'S BENCH,

SEPTEMBER TERM, 1811.

Our Sovereign Lord the King, Plaintiff,

vs.

*Pierre Ignace Daillebout*, Esquire, Defendant,

and

*Montarville, et uxor.*

Intervenant.

**T**HE Intervening party moves for leave to annex to the

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exhibits



exhibits of the Intervening party an Extract which the Intervening party has been unable to procure before this time.

Three Rivers, 29th September, 1811.

(Signed) P. VEZINA,

Atty. of the Intervg. party.

No. 72.

Court of King's Bench.

September Term, 1811.

Motion to be admitted to file the new Exhibit

*Dominus Rex,*

vs.

*Daillebout, Esquire,*

and

*Montarville, Esq. et uxor.*

Filed 29th Sept. 1811.

(Signed) THS. & FR. P.

DISTRICT



DISTRICT OF  
THREE-RIVERS. }

*Court of King's Bench.*

September Term 1811.

*Dominus Rex.*

vs.

*Pierre Ignace Daillebout, Esquire,*  
Defendant,

and

*Joseph Boucher, Esquire, et uxor.*  
Intervenant.

Replication.

**T**HE Intervening party confess that the said Defendant has never had nor could have had possession of the House and Lots in question, and that they reduce their Intervention solely to the point of the nullity of the Will of the late Messire P. François Garrault otherwise called St. Onge.

Wherefore the said Intervening party pray Judgment according to the conclusions of their Intervention upon the nullity of the Will in question, desisting from further and other conclusions thereupon taken, with costs.

Three Rivers, 16th March 1812.

(Signed)

P. VEZINA,

Atty. of the Intervening party.

(Indorsement.)



(Indorsement.)

No.

Court of King's Bench.

September Term, 1811.

Replication.

D. Rex,

vs.

P. I. Daillebout, Defendant.

and

J. Boucher, Esqr. & uxor.

Intervening party.

E.

Filed 16th March, 1812.

(Signed)

H. FR. P.

(Signed)

P. VEZINA.

Atty. of Interv.

(Translation.)



(Translation.)

THREE RIVERS.

King's Bench.

Our Lord the King

vs.

P. I. Daillebout,

Defendant.

and

Joseph Boucher de Montarville, Esquire.

& Uxor.

Intervening.

Motion that the Cause be argued *de novo* on the merits on the 22d Instant.

Three-Rivers, 21st September, 1812.

(Signed)

A. BERTHELOT,

Acting for the Atty. Genl.

No.



(No. 72.)

King's Bench.

September Term 1811.

Motion to réargue the Cause on the merits.

Our Sovereign Lord the King,

vs.

Pierre Ignace Daillebout,

and

Joseph Boucher de Montarville,

et uxor.

Filed, 21st September, 1812.

(Signed H. &amp; FR. P.

(Translation.)

Transcript of Record.

THREE-RIVERS,

King's Bench,

Three-Rivers,

Tuesday, 17th September, 1811.

PRESENT,

The Honourable *Jenkin Williams,* } Justices.  
*L. C. Foucher.* }

Our



Our Sovereign the Lord  
King.  
vs.

*Pierre Ignace Daillebout*,  
Esquire, Testamentary Ex-  
ecutor of the late Messire de  
St. Onge. Defendant.

M. Berthelot appears for our  
Sovereign Lord the King.

The Defendant in his quality  
aforesaid appears in person and  
says by way of *défense* that he has  
nothing to offer and relies entirely  
on the Justice of the Court.

Saturday, 21st September, 1811.

PRESENT

The Honourable *Jenkin Williams*, }  
*Js. Chs. Foucher*. } Justices.

Our Sovereign Lord the King,  
vs.

*Pierre Ignace Daillebout*,  
Esq., Defendant.  
Cause and also for delay to file  
Intervention.

Joseph Boucher de Montar-  
ville, Esquire, and Marie Jo-  
sephite Avrard his wife, move  
for leave to intervene in this  
Cause and also for delay to file  
their exhibits in support of their  
Intervention.

The Parties having been heard,

*Cur. adv. vult.*

Monday, 23d September, 1811.

PRESENT

The Honourable *Jenkin Williams*, }  
*Js. Chs. Foucher*. } Justices.

Our



Our Sovereign Lord the King, }  
 vs. }  
*Pierre Ignace Daillebout*, Esq. }  
 and }  
*Joseph Boucher*, Esq. *et uxor.* }  
 Intervening party. }  
 Esquire, Sieur de Montarville, and Marie Josephte Avard,  
 his wife, to intervene in this Cause, and grants them a delay  
 until Wednesday next, to file their exhibits in support of their  
 Intervention.

Thursday, 26th September, 1811.

PRESENT

The Honourable *Jenkin Williams*, }  
*Js. Chs. Foucher.* } Justices.

(Original.)

Our Sovereign Lord the King,

vs.

*Pierre Ignace Daillebout*, Esq.

and

*Joseph Boucher*, Esq. *et uxor.*

Intervening party.

Mr. Berthelot acting for the  
 Attorney General moves, that  
 the Defendant's Plea or *défense*  
 to the *Requête* of the Intervene-  
 ning parties be set aside inas-  
 much as it contains a Plea or  
*défense* to the merits of the In-  
 formation, the said Defendant  
 according to the rules of this  
 Court having no right on the  
 24th inst. to file such a Plea or  
*défense* to the merits of the  
 Information.

(Translation.)



(Translation.)

The Court having heard the Parties, considering that the Defendant's Paper is not a *défense*, nor can in any way be taken for further answers than he has already made to the information of His Majesty's Attorney General by which the said Defendant joined issue by his answers of the seventeenth instant, order that the said Mr. Berthelot take nothing by his said motion.

On motion of Mr. Berthelot and with consent of Parties the Court fixes this Cause for hearing *en Droit* to-morrow.

Friday, 13th March, 1812.

PRESENT

The Honourable Isaac Ogden, }  
 Ls. Chs. Foucher. } Justices.

Our Sovereign Lord the King, }  
 vs. } On motion of Mr. Bowen  
 Pierre Ignace Daillebout, Esq. } on the part of our Sovereign  
 and } Lord the King the Court fixes  
 Joseph Boucher, Esq. *et uxor.* } this Cause to be heard *de no-*  
 Intervening. } *vo* on Monday next.

Monday



Monday, 16th March, 1812.

PRESENT,

The Honourable Isaac Ogden,  
*Ls. Chs. Foucher.* } Justices.

Our Sovereign Lord the King, }  
 vs. }  
*Pierre Ignace Daillebout, Esq.* } The Parties having been  
 and } heard. *Cur. adv. vult.*  
*Joseph Boucher, Esq. et uxor,* }  
 Intervening party. }

Monday, 21st September, 1812.

PRESENT

The Honourable *Ls. Chs. Foucher,* }  
*Olivier Perrault,* } Justices.

Our Sovereign Lord the King, }  
 vs. }  
*Pierre Ignace Daillebout, Esq.* } On motion of Mr. Berthelot  
 and } on the part of our Lord the  
*Joseph Boucher, Esq. et uxor.* } King, and with consent of the  
 Intervening party. } parties, the Court fixes the  
 Cause to be heard *de novo*  
 to-morrow.

Tuesday, 22d September, 1812.

PRESENT

The Honourable *Ls. Chs. Foucher,* }  
*Olivier Perrault* } Justices.

Our



Our Sovereign Lord the King,

vs.

*Pierre Ignace Daillebout*, Esq.

and

*Joseph Boucher*, Esq. *et uxor*.

Intervening party.

The Parties having been  
heard. *Cur. adv. vult.*

Thursday, 24th September, 1812

PRESENT

The Honourable

*Ls. Chs. Foucher*,

*Olivier Perrault*.

Justices.

Our Sovereign Lord the King,

vs.

*Pierre Ignace Daillebout*, Esq.

heretofore of the Town of Three

Rivers now residing in the Pa-

rish of St. Jean Baptiste de Ni-

colet Testamentary Executor

of the late Messire De St. Onge.

Defendant.

and

*Joseph Boucher* Esquire, *Sieur*

*de Montarville* and *Marie Jo-*

*sephite Avrard*, his Wife, Inter-

vening Party.

inadmissible, and in consequence

dismiss the said conclusions,

and, deciding upon the merits of the

The Court having heard Mr.

Berthelot, Attorney for and in

the name of His Majesty; the

Intervening party by their Ad-

vocate; the Defendant having

heretofore appeared and sub-

mitted to the Judgment of the

Court, and having maturely

examined the proceedings and

productions of the parties in

this cause, adjudge that the

conclusions taken by the At-

torney General in and by his

information in this cause, are

inadmissible, and in consequence

dismiss the said conclusions,

and, deciding upon the merits of the

*Joseph*



*Joseph Boucher* and his wife, adjudge and declare that part of the Will of the said *Pierre François Garrault dit St. Onge*, bearing date the third of September, one thousand seven hundred and ninetyfour, by which he directs that his real property shall be sold and the proceeds distributed, one half for the indigent invalids of the Hospital of Religious Ursulines of Three Rivers, and the other half to be applied to the decoration of the Church of the said religious Ladies Ursulines of *Three-Rivers*, is null as being made in contravention of the Laws in force in this Province: in consequence set a side, annul and rescind that part of the said Will, and condemn the Defendant to deliver to the said intervening party in their quality, the possession of the hereditaments in the said Will mentioned and of the lot (*emplacement*) in the said information described, without costs against the Defendant.

(Original.)

I do hereby certify that the foregoing is a true extract from the Register of the Court of King's Bench for the District of Three-Rivers.

*Three-Rivers*, 24th November, 1812.

(Signed) H. FRASER, P. K. B.

Certified,

LS. MONTIZAMBERT.

C. C. A.



(Translation.)

DISTRICT OF  
MONTREALDISTRICT OF  
MONTREAL

Court of King's Bench.

Tuesday, 29th November, 1815.

No. 308, Nov. 1815.

Louis Gibault,  
vs.  
Joseph Barril dit  
Namur.

Plaintiff's Witnesses, *François Sans Quar-*  
*tier Joseph Coté.*

The Court, on motion of the Plaintiff  
allows him to examine the Defendant upon  
*Faits et Articles.*

The Defendant was examined accordingly.

Defendant's witnesses, *Pierre Renoit, Antoine Gauthier, Jo-*  
*seph Brousseau, Felix Brien, Joseph Belanger, and Madame*  
*Nicolas Charbonneau.* The Defendant refusing to proceed to  
his proof.

C. A. V.

(A true Copy)

REID, LEVESQUE et MONK.

P. B. R.



G

DISTRICT OF }  
MONTREAL. }

Court of King's Bench.

Thursday, 30th November, 1815.

No. 308. Nov. T. 1815.

Louis Gibault of Montreal,  
Merchant,

vs.

Joseph Baril dit Namur, of  
the same place, also Mer-  
chant.

and

E. Contra.

The Court having heard the parties and Witnesses both on the Demand in chief and on the incidental demand, deciding upon the whole and adjudging to the Defendant payment of three months rent, condemn the said Defendant to pay and reimburse to the Plaintiff the sum of three pounds five shillings currency, an excess received by the said Defendant from the said Plaintiff in money and in wood upon the said rent of a room according to lease of the thirteenth of October last, and over and above the said three months which the Court allows the said Defendant, and condemn the said Defendant to pay costs.

(A true Copy.)

REID, LEVESQUE and MONK.

P. B. R.

other



(Other Papers produced by Mr. Porteous.)

(Translation)

(L. S.) GEORGE the THIRD by the Grace of God of the  
United Kingdom of Great Britain and Ireland, King  
defender of the Faith.

To *Joseph Baril* otherwise called *Namur* of Mon-  
treal, Merchant, the Defendant in the action.

**Y**OU are hereby enjoined and ordered to pay to the Plaintiff  
the sum of £11 expressed in the foregoing declaration, with that  
of 7s. 8d. amount of costs, or else to appear either in person or by  
some one impowered by you before the Justices of our Court of  
King's Bench at the Court House at Montreal on Friday the  
twenty-fourth day of November instant at the hour of nine in the  
forenoon, upon which day the contents of the *Demande* made  
against you in the said Declaration will be heard and finally ad-  
judged. Failing which you will be condemned by default.

Witness the Honourable *Isaac Ogden*, Esquire one of the  
Justices of our said Court at Montreal on the 20th day of Nov.  
1815 in the 56th year of our reign.

To a Bailiff

(A true Copy)

to be served.

(Signed)

REID, LEVESQUE and MONK.

P. B. R.

REID, LEVESQUE and MONK.

P. B. R.



308.

DISTRICT OF  
MONTREAL. }

## COURT OF KING'S BENCH,

The 20th day of November, 1815.

*Louis Gibeau of Montreal, Merchant,*

Plaintiff.

vs.

*Joseph Baril dit Namur of the same place,*

Defendant.

**T**HE Plaintiff sues the Defendant for the sum of eleven pounds currency due to him as follows—Six pounds being the value of four cords of hard wood furnished and delivered by him to the Defendant, and three pounds being for monies had by the Defendant of him in advance upon the lease made to him by the Defendant of an apartment in his house situated in St. Laurence Suburbs, as is more fully explained in the *Acte* passed between the parties, received on the 13th of October last, by Mr. Desautels Notary, at Montreal, which apartment the Defendant was compelled to abandon fifteen days since, from want of the repairs necessary thereto, which the Defendant neglected to make, although often required, and which moreover the Plaintiff gave up to him at the request and with the consent of the said Defendant—which said sum although often demanded still remains due—Wherefore the Plaintiff prays judgment.



**I** the undersigned Bailiff do certify that under and by virtue of a Writ of execution issued from His Majesty's Court of King's Bench in and for the District of Montreal and province of Lower Canada signed by the Honourable *Louis Charles Foucher* Esquire, one of the Justices of our said Court, to me directed and delivered, dated the thirtieth day of November, one thousand eight hundred and fifteen, at the suit of *Louis Gibeau* of Montreal, Merchant, Plaintiff, against the moveable property and effects of *Joseph Baril* otherwise called *Namur* of the same place, also Merchant, Defendant, for the sum of five pounds seventeen shillings and two pence currency, being the principal sum and costs of the said execution, I did for the purpose repair to the domicile of the said Defendant, and in order to seize and take the same in execution, or so much thereof as will suffice to satisfy the amount of the said debt, and the costs mentioned, I did seize and take in execution as belonging to the said Defendant the articles following, that is to say: one large double stove of Iron, with the pipe thereof, and one Horse having white hair. I do further certify that I seized the above mentioned effects in the house of the said Defendant in the Suburbs of *St. Lawrence* at Montreal, on the fourteenth day of December, one thousand eight hundred and fifteen.

(Signed) JOHN MONTGOMERY, Bailiff.

Bill of the costs, £2 9 8,

Debt, 3 5 0,

Execution, 0 2 6,

—————  
£5 17 2,

(Signed) JOHN MONTGOMERY, Bailiff.

X 2

H



## H

(Translation)

Montreal,

Court of King's Bench.

Saturday, 28th May, 1814.

No. 146, September Term, 1813.

Susane Lahaie Widow of }  
 Jacques Liberson of Ste. }  
 Genevieve.

vs.

Louis Cousineau of the }  
 same place Yeoman. }  
 pounds currency, for the causes mentioned in the Declaration  
 with costs.

The Court having heard Joseph  
 Payement an *expert* named in this  
 cause, and examined the report and  
 plan, returned by him in the said  
 cause, condemn the Defendant to  
 pay to the Plaintiff the sum of three  
 pounds currency, for the causes mentioned in the Declaration  
 with costs.

(A true Copy.)

REID, LEVESQUE and MONK,  
 P. B. R.

## I

(Translation.)

DISTRICT OF }  
 Montreal. }

Court of King's Bench.

Saturday 28th May, 1814.

No. 146, Sept. 1813.

Susanne Lahaie and }  
 Jacques Liberson of }  
 Ste. Genevieve.

vs.

Louis Cousineau of }  
 the same place Yeoman. }

The Court having heard Joseph Paye-  
 ment the *expert* named in this cause, or-  
 der that the parties do make proof on the  
 thirtieth day of June next, of the facts  
 following that is to say, 1st whether the  
 garden or ground in dispute were enclosed  
 in March one thousand eight hundred  
 and



and ten. 2d of what the said ground consists as well as that designated by the name of an Orchard. 3d whether the said ground in dispute, and the said Orchard were separate from each other and how. 4th All other circumstances indicating whether the said ground were the garden reserved mentioned in the donation of the twentieth of March, one thousand eight hundred and ten.

(A true Copy.)

REID, LEVESQUE and MONK,

P. B. R.

**K**

(Translation.)

Montreal,

Court of King's Bench..

Monday, 12th September, 1814.

No. 146, September, 1813.

*Susanne Lahaie* Widow of *Jacques*

*Liberson* of Ste. Genevieve.

vs.

*Louis Cousineau* of the same place

Yeoman.

The Court having heard the parties and their witnesses examined the pleadings and especially the Acte of Donation of the twentieth of March, one thousand eight hundred and ten, and maturely considered the whole, discharge the Defendant from the action brought against him, without costs.

(A true Copy.)

REID, LEVESQUE and MONK.

P. B. R.

L



L

(Original.)

Commission appoint-  
ing Louis Charles Fou-  
cher, Esquire, to be  
Provincial Judge in and  
for the District of Three  
Rivers.

(Signed)

ROBT. S. MILNES,

Lieutenant Governor.

GEORGE THE THIRD, by the Grace of  
GOD of the United Kingdom of Great Britain  
and Ireland, King Defender of the Faith.

FIAT.

Recorded in the Of-  
fice of enrollments at  
Quebec the 14th day of  
January 1803, in the  
second Register of Let-  
ter Patent and Commis-  
sions.

Folio 87.

(Signed) NATH. TAYLOR  
Depy. Register.

To our trusty and well beloved LOUIS CHARLES  
FOUCHER, and to all others whom these pre-  
sent may concern; GREETING:—  
Know ye that we having taken into our Royal  
consideration the loyalty, integrity and ability  
of you the said LOUIS CHARLES FOUCHER of our  
Especial Grace, certain knowledge and mere mo-  
tion, have assigned, constituted and appointed  
and by these presents do assign, constitute and ap-  
point you the said LOUIS CHARLES FOUCHER Our Provincial Judge for  
the District of Three-Rivers in our Province of Lower Canada, and  
also one of our Judges of our Court of King's Bench to be holden in  
our said District of Three Rivers; to have, hold and exercise and  
enjoy the said Office and Place unto you the said LOUIS CHARLES FOU-  
CHER for and during our pleasure and your residence within our said  
Province of Lower Canada; together with all and singular the rights,  
profits, privileges and emoluments unto the said Place and Office be-  
longing, with full power and authority to hold our Provincial Court  
of the said District of Three-Rivers at such times and places and all  
Civil Pleas to hear and determine, when by Law the same may be or  
ought to be done, and all and every the rights, duties and functions  
of our Provincial Judge of the District aforesaid to exercise, per-  
form and fulfil. In testimony whereof we have caused these our  
Letters to be made Patent and the great Seal of our said Province to



be hereunto affixed, Witness our trusty and well beloved Sir ROBERT SHORE MILNES, Baronet, our Lieutenant Governor of and for our said Province of Lower Canada at our Castle of Saint Lewis, in our City of Quebec, in our said Province, the first day of January, in the year of our Lord one thousand eight and three, and in the forty third year of our Reign.

(Signed)

R. S. M.

(Signed) NATH. TAYLOR,

D. Secy.

I do hereby certify the foregoing to be a true Copy of the Original as on Record in the Provincial Secretary's Office in a Register, intituled, Reg: of Comms. and Letters Patent, No. 2, Folio 87.

Provincial Secretary's Office,

Quebec, 14th February, 1817.

(Signed)

JNO. TAYLOR,

Deputy Secretary

and Register.



M

PROVINCE OF }  
Lower-Canada. }

(Signed)

GEORGE PREVOST.

GEORGE the THIRD, by the Grace of God of the United Kingdom of Great-Britain and Ireland, King defender of the Faith.

## COMMISSION.

Appointing Louis Charles Foucher Esq. }  
one of the Justices of the Court of King's }  
Bench for the District of Montreal. }

To our trusty and well beloved L. C. Foucher Esq. }  
and to all others whom these presents may concern. }

FIAT.

Recorded in the office of enrollments at }  
Quebec, the 11th day of December, 1812. }  
In the fourth Register of letters patent }  
and Commissions. Folio, 38. (Signed) }

JOHN TAYLOR. Dept. Secry.

Know Ye that we having taken into our Royal consideration, the loyalty, integrity and ability of you the said Louis Charles Foucher, of our especial grace, certain knowledge and mere motion, have assigned constituted and appointed, and by these presents do assign constitute and appoint you the said Louis Charles Foucher, one of our Justices of our Court of King's Bench for the district of Montreal, in our province of Lower-Canada, in the room and place of Pierre Louis Panet, Esquire, deceased.—To have hold and exercise, and enjoy the said office, unto you the said Louis Charles Foucher for and during our Pleasure, and your residence within our said province of Lower-Canada, together with all and singular the rights, profits, privileges and emoluments unto the said Place and Office belonging with full power, all and every the Rights and Privileges of a Justice of our said Court of King's Bench for the district of Montreal aforesaid, to exercise and perform in as full and ample a manner as the same by law may or ought to be done. In testimony whereof we have caused these our letters to be made patent and the great seal of our province of Lower-Canada to be hereunto affixed and the same to be entered of Record in our Register's office, or office of Enrollments in our said province of Lower-Canada, Witness our trusty and well beloved Sir GEORGE PREVOST, Baronet, our Captain General and Governor in Chief in and over our provinces of Lower-Canada, Upper-Canada, Nova-Scotia, New-Brunswick, and their several Dependencies, Vice-Admiral of the same Lieutenant General and Commander of all our forces in the said Provinces, and in the Islands of Newfoundland, Prince Edward, Cape Breton and Bermuda. &c. &c. &c.

At Our Castle of St. Lewis in our city of Quebec, in our said Province, the tenth day of December, in the year of our Lord, one thousand eight hundred and twelve, and of our reign, the fifty-third. (Signed) G. P.

(Signed) JOHN TAYLOR, Depy. Secy.

I do hereby certify the foregoing to be a true copy of the original as on Record in the Provincial Secretary's Office in Register, intituled "Register of Commissions and Letters patent N<sup>o</sup>. 4,—Folio, 38.

(Signed)

Quebec, 14th February, 1817.  
JOHN TAYLOR, Depy. Secy.  
and Register.



## HOUSE OF ASSEMBLY,

*Tuesday, 18th February, 1817.*

**ORDERED,** That the Report of the Special Committee to whom was referred the Articles of Accusation against **LOUIS CHARLES FOUCHER**, Esquire, one of the Puisné Judges of the Court of King's Bench of the District of Montreal, be referred to a Committee of the whole House.

**RESOLVED,** That this House will, on Saturday next, resolve itself into a Committee of the whole House on the said Report.

*Monday, 24th February, 1817.*

**MR. Lagneux** from the Committee of the whole House to whom was referred the Report of the Special Committee on the Articles of Accusation against **LOUIS CHARLES FOUCHER**, Esquire, one of the Puisné Judges of the Court of King's Bench of the District of Montreal, reported according to order, the Resolutions of the Committee; and he read the Report in his place and afterwards delivered it in at the Clerk's table, where the Resolutions were again read, as followeth :

**RESOLVED,** That in the year 1811, *Louis Charles Foucher*, Esquire, being the Provincial Judge for the Court of King's Bench for the District of Three Rivers, an Information in the nature of a Civil Suit, was exhibited and filed on the part, and in behalf of Our Sovereign Lord the King, and in support of the rights of the Crown, against one *Pierre Ignace Daillebout*, that the said *Louis Charles Foucher*, being



being in the habits of intimacy and friendship with the said Defendant, *Pierre Ignace Daillebout*, drew up a Plea to a certain Intervention fyled in the said Cause, in his, (the said *Louis Charles Foucher's*) hand-writing, in support of the interest of him, the said *Pierre Ignace Daillebout*, and delivered it to one of the Officers of the said Court, ordering him to copy it, which was done: and the said copy signed by the said *Pierre Ignace Daillebout*, was fyled, and now stands of record in the Cause. That the said *Louis Charles Foucher* afterwards sat as a Judge upon the Bench in the said Court, upon the trial of the said Cause; and assisted in giving Judgment against His Majesty.

That the said *Louis Charles Foucher*, in this respect has been guilty of gross malversation, corrupt practice, and injustice, and has violated his oath of office, swerved from his duty to His Sovereign, and has been guilty of conduct tending to disgrace the administration of justice in Lower-Canada.

RESOLVED, That in the year 1814, the said *Louis Charles Foucher*, being then one of the Judges of the Court of King's Bench for the District of Montreal, made the draft of a Declaration in a Cause, instituted in the said Court, by one *Pierre Ignace Daillebout* against one *Etienne Duchesnois*, and sent the said draft of a Declaration, by the said *Pierre Ignace Daillebout* to one *Janvier Domptail Lacroix*, an Attorney and Barrister at Law in Montreal, and also an intimate friend and relation of the said *Louis Charles Foucher*. That the said *Lacroix* brought an Action, in which he used the said draft of a Declaration, and obtained interlocutory judgments in favor of the said *Pierre Ignace Daillebout*, and also obtained a final judgment in favor of the said *Pierre Ignace Daillebout*, for the sum of £85:6:5, with costs of suit. That the said *Louis Charles Foucher* drew up the said interlocutory



locutory Judgments, which now appear of record, in the hand-writing of him, the said *Louis Charles Foucher*, who also assisted in rendering the final Judgment.

That the said *Louis Charles Foucher*, in this respect has been guilty of gross malversation, corrupt practice and injustice, and has violated his oath of office, swerved from his duty to His Sovereign, and has been guilty of conduct tending to disgrace the administration of justice in Lower-Canada.

**RESOLVED**, That in the year 1815, the said *Louis Charles Foucher*, then being one of the Judges of the Court of King's Bench for the District of Montreal, held alone a Court, called the Inferior Term of the Court of King's Bench, that in the said Court, the said *Louis Charles Foucher* was guilty of a denial of justice, of great oppression towards *Charles Porteous*, Esquire, Attorney and Barrister at Law, threatening illegally and unjustly to suspend him, without any reasonable cause; and at the same time, using low and insulting language, unworthy of a British Judge upon the Bench, such as: "Hold your tongue, your question is stupid, you  
 " tell a falsehood, what you say is false, it is a falsehood; and I do not hesitate to say, in open Court,  
 " and in the face of the public, that I do not understand  
 " that you should come here to tell a falsehood; I am only  
 " accountable to myself for my conduct: I am the representative of the King, I do not hesitate to say, that  
 " upon the Bench, I am greater than His Majesty, because His Majesty himself comes to my tribunal to be  
 " judged." The said *Louis Charles Foucher* then proceeded with anger, to give Judgment against the Client of the said *Charles Porteous*, refusing at the same time to hear his witnesses.

Y 2

That



That the said *Louis Charles Foucher*, in this respect, has been guilty of gross malversation, corrupt practice and injustice, and has violated his oath of office, swerved from his duty to His Sovereign, and has disgraced the administration of justice in Lower-Canada.

**RESOLVED**, That in the Month of May, 1814, the said *Louis Charles Foucher* alone held a Court, called the Inferior Term of the Court of King's Bench for the District of Montreal, and the said *Louis Charles Foucher* pronounced a final judgment in favor of a Plaintiff, one *Susanne Lahaie*, against a Defendant, one *Louis Causineau*, and afterwards the said *Louis Charles Foucher*, caused the said judgment to be erased and scratched out from the Register, and in the Month of September following the said *Louis Charles Foucher*, rendered a second final judgment in the same cause, which judgment was in favor of the said defendant, *Louis Causineau*, and dismissed the Action of the said Plaintiff, *Susanne Lahaie*, and on several other occasions, the said *Louis Charles Foucher* has caused Records to be altered, erased and scratched out.

That the said *Louis Charles Foucher*, in this respect has been guilty of gross malversation, corrupt practice and injustice, and has violated his oath of office, swerved from his duty to His Sovereign, and has disgraced the administration of Justice in Lower-Canada.

The Question being put on the said Resolutions it was

**RESOLVED**, That this House do concur with the Committee in the said Resolutions.

ad P.

8 Y

**RESOLVED**,



**RESOLVED**, That an humble Address be presented to His Royal Highness the Prince Regent with the Resolutions annexed, and also an humble Address to His Excellency the Governor in Chief, praying him to be pleased to transmit the said Address to His Royal Highness the Prince Regent and praying His Excellency also to suspend *Louis Charles Foucher*, Esquire, from the office of Judge of the Court of King's Bench, for the District of Montreal, until the pleasure of His Royal Highness shall be known.

**RESOLVED**, That a special Committee of Seven Members be appointed to prepare and report drafts of the said Addresses.

**ORDERED**, That *Mr. Sherwood*, *Mr. A. Stuart*, *Mr. Panet*, *Mr. Gagy*, *Mr. Taschereau*, *Mr. Borgia* and *Mr. Ogden*, do compose the said Committee.

*Tuesday, 25th Feb. 1817.*

**MR. Sherwood**, from the Special Committee, appointed to prepare and report draughts of Addresses to His Royal Highness the Prince Regent, and to His Excellency the Governor in Chief, pursuant to the Resolutions of this House of yesterday, reported, that the Committee had prepared the said Addresses, and had directed him to submit them to the House whenever it shall be pleased to receive the same. And he read  
the



the Report in his place, and afterwards delivered it in at the Clerk's table, where it was again read.

The Addresses contained in the said Report, are as followeth:

TO HIS ROYAL HIGHNESS  
**THE PRINCE REGENT.**

**WE**, His Majesty's loyal and faithful subjects, the Commons of Lower Canada, in Provincial Parliament assembled, most respectfully beg leave to approach your Royal Highness, and to represent to your Royal Highness, that *Louis Charles Foucher*, esquire, one of the Judges of His Majesty's Court of King's Bench for the District of Montreal, has been accused before us of high crimes and misdemeanors in his capacity of Judge as aforesaid; and that, after a patient and diligent examination of witnesses, the testimony of whom we now transmit, we have unanimously adopted several Resolutions as Articles of Complaint against the said *Louis Charles Foucher*, esq. which are hereunto annexed.

The impartial administration of justice, one of the most important privileges of our fellow subjects in the United Kingdom, as declared by our revered and beloved Sovereign, hath been by the said *Louis Charles Foucher* swerved from, in various instances referred to in the said resolutions.

The Criminal Law of England, and the free trial by jury,



in criminal cases, has been granted to His Majesty's loyal subjects of Lower Canada, by the wisdom and justice of the British Parliament; and they would be deprived of the security for reputation, liberty, and life, which the criminal Law of England, and the free trial by jury are calculated to afford, if a Judge destitute of uprightness, should be allowed to act.

That as by the municipal Laws of this Province, the greater number of civil suits are tried by the Court without the intervention of a Jury, the sole security for the property of His Majesty's loyal subjects in this Province, is to be found in the integrity of the persons to whom the administration of justice is confided.

Wherefore We, His Majesty's faithful Commons of this Province, most respectfully beg leave to be permitted to lay at the feet of Your Royal Highness, the grounds of our complaint against the said *Louis Charles Foucher*, esq. and pray, that in consideration of the premises, he may be removed from his office; and that the authority of His Majesty's Government may be interposed in such way as in your Royal Highness's wisdom may appear necessary for bringing him to justice.

BY



## TO HIS EXCELLENCY

Sir JOHN COAPE SHERBROOKE, Knight Grand Cross of the Most Honorable Military Order of the Bath, Captain-General and Governor in Chief in and over the Provinces of Lower-Canada, Upper-Canada, Nova-Scotia, New-Brunswick, and their several dependencies, Vice Admiral of the same, Lieutenant-General and Commander of all His Majesty's Forces in the said Provinces of Lower-Canada, and Upper-Canada, Nova-Scotia and New-Brunswick, and their several dependencies, and in the Islands of Newfoundland, Prince-Edward, Cape-Breton and Bermuda, &c. &c. &c.

WE, His Majesty's most dutiful and loyal subjects, the Commons of Lower Canada, in Provincial Parliament assembled, humbly beg leave to represent to Your Excellency, that we have found ourselves constrained by a sense of duty, to direct our attention to the investigation of certain accusations brought against the honorable *Louis Charles Foucher*, esq. one of His Majesty's Puisné Judges for the district of Montreal, upon which, after mature deliberation, we have adopted certain Resolutions as articles of Complaint against the said *Louis Charles Foucher*, esq. and have made an humble Address to His Royal Highness the Prince Regent, which we have now the honor of presenting to Your Excellency, and pray that Your Excellency will be graciously pleased to transmit them to His Majesty's Ministers, to be laid before His Royal Highness the Prince Regent, together with the documents accompanying the Address.

And



And we humbly beg leave to represent to your Excellency, that from the importance and magnitude of the charges which we have deemed it our bounden duty to exhibit against the said *Louis Charles Foucher*, esq. it would be inconsistent with the honor and dignity of His Majesty's Government, and the interest of His faithful subjects in this Province, that the said *Louis Charles Foucher*, esq. should continue to exercise the high and important duties of his office, while the said charges are depending against him. In representing to your Excellency the necessity of suspending the said *Louis Charles Foucher*, esq. from his office, we only act in conformity to the principles which our beloved Sovereign manifested, when he was graciously pleased to declare from the Throne, to both Houses of Parliament, that he looked upon the uprightness of Judges, as one of the best securities to the rights and liberties of His loving subjects, and as most conducive to the honor of his Crown.

Therefore, We, His Majesty's faithful Commons of Lower Canada, humbly pray, that your Excellency will be graciously pleased to suspend the said *Louis Charles Foucher*, esq. from his said office, until His Majesty's pleasure shall be known.

**RESOLVED**, That this House doth concur in the said Addresses.

**ORDERED**, That the said Addresses be engrossed.

**RESOLVED**, That the said Addresses be presented to His Excellency the Governor in Chief, by the whole House.

Z

**ORDERED**,



ORDERED, That *Mr. Panet, Mr. Gagy, Mr. Davidson,* and *Mr. Dessaulles,* do wait upon His Excellency the Governor in Chief, to know when His Excellency will be pleased to receive this House, with the said Addresses.

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*Wednesday, 26th February, 1817.*

**M**R. *Panet,* accompanied by the other messengers, reported, that in obedience to the orders of the House, of yesterday, they had waited upon His Excellency the Governor in Chief, to know when he would receive this House, with its Addresses to His Royal Highness the Prince Regent and His Excellency, and that he had been pleased to say, he will receive the House on Monday next, at one o'clock.

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*Monday, 3d March, 1817.*

**A**T the hour appointed, Mr. Speaker and the House went up to the Castle of St. Lewis, and presented their Addresses to His Royal Highness the Prince Regent, and to His Excellency the Governor in Chief.

And being returned,

Mr. Speaker reported, that the House had attended upon His Excellency the Governor in Chief, with their Addresses, to which His Excellency had been pleased to make the following answer :

*Gentlemen*



*Gentlemen of the House of Assembly,*

I shall not fail to transmit to His Majesty's Secretary of State for the Colonies, for the purpose of being laid before His Royal Highness the Prince Regent, the Resolutions which you have adopted as articles of complaint against *Louis Charles Foucher*, esquire, one of His Majesty's Puisné Judges for the district of Montreal, together with your Address to His Royal Highness the Prince Regent thereupon, and the documents accompanying the same.

Many objections would have arisen to prevent me from suspending Mr. *Justice Foucher*, on your Address, but particularly the precedent furnished by the conduct pursued on a similar occasion, by the late Governor in Chief; respecting which, as His Majesty's Government do not appear to have stated any explicit opinion, I could not but feel some doubt.

But this difficulty has been avoided by my having already, on an attentive perusal of the evidence adduced in the course of this investigation, and under the authority vested in me by my commission, communicated to Mr. *Justice Foucher*, my desire that he shall abstain from the exercise of his judicial functions, until the determination of His Royal Highness the Prince Regent, with respect to any further proceedings on these accusations, shall be made known. And for this purpose, I shall report to His Majesty's Government the line of conduct I have thought it necessary to pursue on this occasion,

*FINIS.*



Continuation of the House of Assembly

I shall not fail to transmit to His Majesty's Secretary of State for the Colonies the enclosed list of the names of the persons who have been elected as members of the House of Assembly for the several Colonies, and who have taken the oath of allegiance to His Majesty, and the documents accompanying the same.

I have the honor to be, Sir, your obedient servant,

By His Majesty's Secretary of State for the Colonies,  
 (Signature)



















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