

Superior Court.

24 Dec., 1853.

Present:—Day, Smith and Mondelet, (C.), *Justices*.

No. 1026.

Bowker v. McCorkill & Graham, mise en cause.

PROCEDURE.—RE-OPENING ENQUÊTE.

This is a motion by the *mise en cause* to strike the cause from the *Role de droit* for final hearing, and be admitted to produce evidence in rebuttal of the evidence adduced by the plaintiff in support of his special answer.

A. & G. Robertson, in support.

Gugy, contra.

Day, J., It has been the habit in this Court for the party terminating his *enquête* to call upon the adverse party to fix a day for continuing his *enquête*, and in default of his so doing to fix a day for that purpose. The proper course, however, for the party closing his *enquête* is to call on the opposite party to go on with his *enquête*, and in case of no one appearing or fixing a day the party present may, upon application to the Court, have the *enquête* of the party in default closed. This was the impression of the Court at the time of the argument, and we find the 43 Rule of Practice supports that impression. In this case, however, the Court will permit the *mise en cause* to re-open *enquête*, as Counsel have been led into error by the incorrect practice that has obtained in this Court.

Motion granted.

No. 1732.

Genier v. Charlevoix.

MOTION TO DISCHARGE INSCRIPTION THERE BEING NO SIMILITER.

Held, *that similitur is not necessary. That Court can adjudicate on an imperfect issue.*

This case came up on a motion to discharge the Inscription for hearing on the merits there being no *similiter*.

Henry Stuart, in support of motion, contended that the issue in this cause was not joined. The record consisting of Declaration Plea, and a notice to the Plaintiff to file a Replication, and foreclosure consequent upon his not doing so. The Defendant then inscribed the cause upon the *Role d'Enquête*, and inscribed for hearing on the merits as in a contested cause.