

Court of Appeals, 1820.

IN A CAUSE BETWEEN

PIERRE GOUIN, *et ux* :  
(Plaintiffs in the Court below)

APPELLANTS ;

AND

PIERRE ROUSSEAU, *et ux* :  
(Defendants in the Court below)

RESPONDENTS.

This was an action brought in the Court of King's Bench for the District of Three-Rivers, in the Term of September last, grounded on, and arising out of certain clauses, stipulations and reserves contained in a Donation *entre vifs*, by the Appellants to Respondents, and executed on 25th October, 1819, before Ranvoyzé, Notary, and Witnesses, by which the Appellants gave to the Respondents—

First.—A lot of land of three acres in front by twenty-two in depth, situated in the Town of Three-Rivers, with a Barn thereon erected.

2ndly.—Another lot of seventy feet in front, by upwards of three hundred in depth, with a house thereon.

3dly.—Another lot of land of an acre in front.

4thly.—A building lot situated in the Town of Three-Rivers, of one hundred and thirty feet in front by ninety feet in depth, with an Oil Mill and House thereon.

5thly.—A lot of land situated in the Town of Three-Rivers, of thirty-six feet in front, by one hundred and eighty-six feet in depth.

6thly.—A lot of land in the Common of the said Town of Three-Rivers, containing two hundred and thirty feet in front by one hundred and twenty feet in depth, with two Houses, a Stable, a Store, and other dependencies built thereon.

7thly.—A lot of land situated in St. Philip street, of the said Town, of two hundred and six feet in front and one hundred and fifty-seven in depth, together with all the farming utensils and all the moveables, *meuble meublans*, of which they were possessed or might be possessed of at the time of their decease, except the reserves in the said Donation mentioned, to wit, all the moveables and household furniture, which they the Appellants might desire to take from among those which should be then found in the House for their use, and also on condition of maintaining the Appellants and furnishing them with all the necessaries of life, and that so long as they might agree together and a good understanding exist, but in the event of the contrary (*en cas d'incompatibilité d'humeur*) then the Appellants and Respondents should each name an Expert for the purpose of fixing and establishing *une rente ou pension viagère* for the said Appellants in conformity with the property so given by the Appellants, the said Appellants expressly reserving to themselves the right of taking all the Household furniture for their use, also, a horse, harness and such carriages as they might think fit to take, also, the enjoyment of a lot of land and house, situated in Three-Rivers, then in the occupation of one James Burns, bounded on one side by the property of one François Rousseau, and on the other by the house and premises of the Appellants, and in which they resided at the time of making the said Donation.

As early as the month of March following, some disagreement and misunderstanding having taken place, evincing too strongly the *incompatibilité d'humeur*, the Appellants left Three-Rivers and went to reside at Montreal, whereupon they required the Respondents in compliance with the provision made in the donation, to name an expert, and on the 10th of August, the Appellants by Geneviève Rousseau the wife of Pierre Gouin, his special Attorney for that purpose (see Exhibit, No. 2) and Respondents went before Badeaux, N. P. & witnesses, and there entered into an agreement of which the following extract is only material, "que le 25 Octobre de l'année dernière les dits Sieur et Dame Gouin, (the Appellants) auroient fait donation de certains biens et immeubles à la charge, entre autres que dans le cas d'incompatibilité d'humeur entre les Donateurs et Donataires, qu'ils nommèrent ensemble chacun un Expert pour fixer et établir une rente ou pension viagère au dits Sieur et Dame donateurs, conformément aux biens par eux donnés par le dit acte, en conséquence de laquelle clause, les dites parties sont convenus de nommer les personnes de René Kimbert et Etienne LeBlanc, Ecuyers, comme Experts pour fixer et établir une rente ou pension viagère et alimentaire, que le dit Pierre Rousseau, pourroit être tenu de payer aux dits Sieur et Dame Gouin, eu égard à la valeur des biens immeubles, donnés par la Donation, et dans le cas que les dits René Kimbert et Etienne