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FROM THE TRANSACTIONS OF THE ROYAL SOCIETY OF CANADA  
THIRD SERIES—1913

VOLUME VII

PRACTICE OF COURT OF COMMON PLEAS OF  
THE DISTRICT OF HESSE

By

The Hon. Mr. JUSTICE RIDDELL, L.H.D., LL.D., Etc.

With the Compliments of

WILLIAM RENWICK RIDDELL.

OTTAWA

PRINTED FOR THE ROYAL SOCIETY OF CANADA

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*Practice of Court of Common Pleas of the District of Hesse.*

BY THE HONOURABLE MR. JUSTICE RIDDELL, L.H.D., LL.D., &amp;c.

PRESENTED BY C. C. JAMES, C.M.G., LL.D.

Read May 28, 1913.

A sketch of the first Puisne and fifth Chief Justice of the King's Bench in Upper Canada has been written by the late D. B. Read, Q.C.; it appears in the Magazine of Western History, Vol. 5, p. 375 (1887), and is included in his "Lives of the Judges."

Mr. Read mentions the fact that Powell sat in the Court of Common Pleas at L'Assomption on August 11th, 1791: and says that this appears from the "Archives at Osgoode Hall." The particular volume from which the account is quoted is no longer to be found at Osgoode Hall;\* but recently in going over the vault of the King's Bench for an entirely different purpose, I found a volume containing a record of earlier judicial acts of the future Chief Justice. This volume naturally escaped Mr. Read's notice, as it purports to be Volume 10 of the King's Bench Term Books. It is of foolscap size, a parchment bound volume: while the middle part is taken up with the proceedings in Term of the King's Bench from November 3rd, 1828, to July 1st, 1830, a number of pages, both at the front and at the back, contain a record of the proceedings of the Court of Common Pleas holden at L'Assomption (the word is spelled with an "o" not "u" in the original). The record begins July 16th, 1789, and continues till September 24th, 1789: then (reversing the volume) the record is from May 19th, 1791, to August 4th, 1791, at which day the Court was "adjourned to 11th inst." The volume cited by Mr. Read is a continuation of this. Some 36 pages are cut out from before the record of May 19th, 1791—which may have contained the proceedings from September, 1789 to May 1791.

The history of the Court is not without interest.

In the Royal Proclamation of 7th Oct., 1763, it was stated that until Assemblies should be called, "all persons inhabiting in or resorting to our said Colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our Realm of England"—and the Governor was instructed to "constitute and appoint Courts of Judicature

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\*This volume is now in the Ontario Archives, and contains the record from August 11th, 1791, to October 29th, 1791—there is also another volume in the Archives containing the record from October 27th, 1791, till January 26th, 1792.

and Justice" for that purpose. The "Quebec Act" of 1774 (14 Geo. III, c. 83) reintroduced the French law in Civil matters, leaving the English criminal law still in force.

The Royal instructions to Carleton, the Governor, advised him to constitute a Court of King's Bench for all Crown cases; and a Court of Common Pleas in each of the Districts of Montreal and Quebec to decide all civil suits and actions—further that in addition to these Courts for the Province at large, there should be an inferior Court of Criminal and Civil jurisdiction in each of the Districts of the Illinois, St. Vincenne, Detroit, Missilimakinac and Gaspée, with authority to determine all matters, civil and criminal—the Courts to be called the Court of King's Bench for such district, and each to have one Judge, a native born subject, and an Assistant or Assessor, a Caradian, to give advice to the Judge but to have no voice in the decision. The only limitation to the jurisdiction of these Courts was that in cases of Treason, Murder or other Capital Felonies, the local Court could only arrest and commit to the gaol at Montreal or Quebec for trial there. While these Courts were in that part of the Instructions called "Courts of King's Bench" they are in another part called "Courts of King's Bench and Common Pleas." Provision is made for the payment to the Judge of each of these five local Courts a salary of £100 and "to an assistant or assessor at each post . . . £50 per annum." This was in January, 1775.

Courts were accordingly established by Carleton in 1776 in Quebec and Montreal; but the troublous times of the Revolution then set in and Courts were a useless anomaly for the time being.

The Revolutionary War resulted in the loss of much of the western territory; and the five Courts were not necessary as most of the country they were intended to serve had ceased to be British. Therefore we find that in the Royal Instructions to Lord Dorchester of 23rd August, 1786, the provision for the salary of these Judges and assistants disappears. On July 24th, 1788, Dorchester issued a proclamation making a new District Gaspé to the far East and dividing all Canada west of what was afterwards called Lower Canada, into four Districts, Lunenburg (not Lunenburg as it is generally spelled), Mecklenburg, Nassau and Hesse—Hesse included Detroit. A Court of Common Pleas was established in each of these Districts—and it was in the Court of Common Pleas in and for the District of Hesse\* in the Province of Quebec that

\*This was not the first attempt to form a Court for the District of Hesse. Contemporaneously with the proclamation of July 24, 1788, Dorchester appointed as Justices of the Common Pleas the following gentlemen of Detroit: Alexander McKee, William Robertson and Dupéron Baby. In this he followed in principle the advice contained in sec. 15 of his instructions of 3rd January, 1775—he was there advised to erect in each of the Districts of Montreal and Quebec a Court of Common Pleas and "that there be three Judges in each of the said Courts of Common Pleas, that is

Powell sat as the first Judge and exercised civil jurisdiction with his headquarters at Detroit. In addition to this, he received, more than once, a Commission of Oyer and Terminer and General Gaol Delivery under which he sat to try criminal cases. He was to sit under such a commission in Kingston about the time the Act, 31 George III, c. 31, dividing Quebec into Upper and Lower Canada came into force and it was feared that he might refuse to sit in consequence of certain irregularities; he did not refuse to sit but showed his good sense by ignoring technicality.

Before this date he had been appointed to the Court of Common Pleas for the Hesse District; he arrived at Detroit in June, 1789, and seems to have opened his Court at L'Assomption (Sandwich) July 16th, of the same year.

In the practice of this Court a distinction was made between claims under £10 sterling and those £10 and over—the smaller claims to say two of our natural born subjects of Great Britain, Ireland, or our other Plantations, and one Canadian." This course he had followed in his appointments to the Courts at Montreal and Quebec—and he adopted the same principle for Detroit.

Alexander McKee, a native of Pennsylvania, had been from 1772 on, Deputy-Agent of Indian Affairs at Fort Pitt (Pittsburg) and was undoubtedly enthusiastically loyal to the Crown. He was a J.P. and carried on a large and lucrative business before the outbreak of hostilities between the Colonies and Motherland—imprisoned by General Hand in 1777, he was released on parole—being threatened with imprisonment the following year, he made his escape to Detroit with Simon Girty and others. Thereafter he took a most active part on the loyalist side and was made a Colonel. He went into business in Detroit and was appointed Deputy-Superintendent of Indian Affairs, afterwards in 1794 Superintendent-General. He was appointed in 1789 a member of the Land Board of Hesse and was granted land—he died in 1799.

William Robertson was also a resident of Detroit—he became a member of the Land Board which held its meetings for some time at his house. He sat on the Board till August, 1790, when he left for England. His name appears as heading the list of the Land Board of the late District of Hesse to be limited to the Counties of Essex and Kent only—being now the Honourable William Robertson—but he did not attend any meetings of that Board. He had been appointed a member of the Legislative Council of Upper Canada in 1791, but never was sworn in, nor did he come to Canada to take his seat. He resigned shortly afterwards.

Duperon Baby was of an old French-Canadian family; born in 1738, he became a prominent citizen of Detroit and a trader of great enterprise. He also was appointed a member of the Hesse Land Board, and rendered valuable services in interpreting. He died at Sandwich in 1796.

These appointments were very unpopular, for one reason because the appointees were not lawyers: a protest was drawn up and Robertson and Baby carried this to the Governor of Quebec, presenting it October 24th, 1788. It was pointed out that Robertson and Baby were so extensively engaged in trade—Baby being the only French fur trader—that they would be personally interested in ninety per cent. of the cases—and it was suggested to create a Court of Common Pleas with one Judge, a lawyer, who would devote all his time to the duties of the office. This was done—the former appointees never acted—and Powell was the first Judge as we have said.

being disposed of by a simpler procedure. This simpler and summary procedure was abolished in 1792 by the Statute, 32 George III (U.C.), c. 4, on the introduction of trial by jury in all civil cases, 32 George III (U.C.), c. 2. But debts of 40 shillings and under, Quebec currency (i.e. \$8), were made suable before Magistrates in Courts of Requests, provided for by c. 6 of the same Statute. In 1794, the first Parliament of Upper Canada in its third session, 34 George III, c. 2, abolished the Courts of Common Pleas altogether, created an entirely new Court of King's Bench, removed all cases pending in the Common Pleas into the King's Bench; and also all the records of the several Courts of Common Pleas were made records of the King's Bench. No doubt this provision accounts for the note-book to which I have referred being used afterwards in the King's Bench in Term.

The Act of 1794 provided for one Chief Justice and two puisnes. William Osgoode had already been in the Province of Upper Canada for some time with a Commission from the King as Chief Justice; Powell was made a puisne Justice the day of the Act being approved, 9th January, 1794; and the Hon. Peter Russell, a Legislative Councillor, received a Commission several times in a temporary emergency; but a second permanent puisne was not appointed until November 30th, 1798, when Henry Alcock became the junior puisne.

It is time now to return to the Court at L'Assomption. In all the cases tried I can find a reference to only one Attorney,\* Walter Roe; he appears for the plaintiff in most of the cases. When he does not appear we find Charles Smyth "acting by procuracy for the plaintiff," or sometimes the plaintiff in person. Thomas Smith† was the Clerk.

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\*Walter Roe was during the Revolutionary War, Warrant Officer in the Marine Department. He was afterwards, in 1790, given Lot No. 25 in the Two Connected Townships (afterwards Colchester and Gosfield). He was practicing at the bar in the Courts at the time of the passing of the Act of 1797, 37, Geo. III (U.C.), c. 13, establishing the Law Society of Upper Canada, and was accordingly qualified to become a member. He did so, being the third person to sign and immediately after the Attorney-General John White and the Solicitor-General Robert I. D. Gray. He appeared in the K.B. in Term at least once, July 17, 1797. In Michaelmas Term, 59 George III, Nov. 10th, 1818, at a Trial at Bar before Powell C. J., Campbell & Boulton JJ., of an action in ejectment, Doe dem. Dickson v. Penfield, Mr. Roe was called as a witness but did not answer. The jury found for the plaintiff (William Dickson).

†Thomas Smith was a loyalist of Welsh birth. In 1776 he came to Niagara with intelligence concerning the revolting colonists; and afterwards settled in Detroit. After the Peace he was, in 1789, made Clerk of the Land Board of the District of Hesse with Headquarters at Detroit—this situation he lost the next year. He had previously acted as Deputy-Surveyor from 8th May, 1787, and continued to act to 1st August, 1789. He received in 1790, 200 acres of land, Lot 30 in the First Concession of the Two Connected Townships. He seems to have been accused of

The currency is very varied—sometimes Quebec, Halifax or Provincial currency, or currency of the Province—in this £1 equals \$4 of our present money, and 1 shilling equals 20 cents; sometimes New York Currency—in this £1 equals \$2.50 of our present money, and 1 shilling (known even in my day as a “York shilling,” or “Yorker”) equals 12½ cents; sometimes livres and sols, the old Canadian French currency—according to a proclamation of Lieut. Col. Irving, 5th July, 1765, 24 livres equal £1, making the livre equal 18½ cents (about).\* The “Upper Canada Act” of 1796, 36 George III, c. 1, makes the livre equal 11 1/9 pence Canadian Currency (equal 18½ cents, about). A computation by the Clerk in one case makes the livre equal 17 cents (about). Probably the valuation was somewhat elastic—the livre in any case is about one franc.

The practice of the Court is very interesting from a historic point of view. In a case of £10 or over, “The plaintiff by his attorney, Walter Roe, filed his declaration.” The defendant is called—he generally appears in person. He may admit the debt, in which case judgment is entered up against him—or he may claim a set off. If this be admitted by the plaintiff, judgment is entered for the balance. For example, July 23rd, 1789, Meldrum and Park sue Dominique LaBrosse, of the Parish of St. Anne, the declaration is filed, the defendant appears and acknowledges the debt, but claims an account for work done for the plaintiffs to the amount of 180 livres ancient currency of Quebec. Judgment is recorded against him for the balance.

Or the defendant admits the debt, note or otherwise, but objects that he never agreed to pay interest—a day is set some time

selling the King's lands, and demanded an opportunity of justifying his conduct—there seems to have been nothing in the charge.

In July, 1792, we find him with Elliott and Girty accompanying a deputation of upwards of twenty Indians who waited on the Commissioners of the United States, who were on an island in the Detroit River, and demanded an explicit answer to the question whether they were authorized by the United States to fix the Ohio River as the boundary between the Americans and the Indians.

In August, 1792, he was granted Lot No. 12, First Township, North Side River La Franche (Thames)—and next month Lots Nos. 49 and 50 on the Petite Cote. In 1796 he was elected member of the Legislative Assembly (the Second Parliament of Upper Canada) for Kent, but continued to reside at Detroit for some time, practicing as a surveyor. He died at Sandwich in 1833. In one of the documents preserved of the Hesse Land Board, he is described as “Lt. M.” i.e., Lieutenant in the Militia, and it seems clear that he actually had that rank.

\*The pound sterling was considered equal to \$4 4/9—that is the “old par” and is still the nominal par. E.g., when sterling exchange is at intrinsic and actual par—that is the pound sterling is equal to \$4.8667—exchange is said to be 9½ per cent. premium (1.09½ of 4 4/9 equals 4.8667).

afterward for the plaintiff to prove his demand—or the defendant admits his signature to a note, but says he was an infant at the time of signing it—then a day is fixed for him to “prove his allegations.” The plea may be clearly bad in law—as when James Heward, of Detroit, Labourer, sues Thomas Heward, of the same place, Gentleman, for wages, and Thomas appears and saying that the debt is justly due and owing, pleads that he hired James, acting as agent for the Miami Company at Sandusky. There being no pretence that James knew anything of this, judgment was entered against Thomas for £14 - 1 - 3 “reserving to the defendant his recourse for repayment from his Employers.”

And, 19th May, 1791, “George McDougall vs. Jacques Campeau,” Roe filed the declaration, the defendant appeared in person and for “a plea says that he expected the plaintiff would wait for payment, as he had not wherewithal to satisfy him—especially as his land was mortgaged for the money.” These are, no doubt, perfectly satisfactory reasons for not paying, especially “*à* first—but the law is inexorable, and as the “defendant acknowledged the obligation,” “judgment was directed to be entered against him for £165 - 16 - 8, Hfx., and interest with costs.” These are taxed at £9 - 6 - 6, Hfx. “Hfx.”, of course, means Halifax or Quebec currency.

The defendant may appear in person and deny all liability. He may be allowed to plead before a certain time or a day may be set for the plaintiff to prove his demand. Very rarely, indeed, the defendant's Attorney Walter Roe, or Charles Smyth, by procuracy, enters an appearance; sometimes, too, the defendant himself “enters appearance.”

If the defendant upon being called three times, do not appear in person or by Attorney, “it is ordered that a default be entered against him.” That does not mean that judgment is entered for the plaintiff, however—the defendant has another chance—he may appear at the next Court and plead—or fail again to appear, in which case a second default is entered against him, and a day fixed for the plaintiff to proceed to proof. Let me give an instance. In the case of “Richard Dobie, of Montreal, Merch't., v. John Martin, of Detroit, Merch't., on July 16th, 1789 “the plaintiff by Mr. Roe his Attorney, filed his Declaration, and the Defendant being called thrice and not appearing, It is therefore ordered that default be entered against him.” At the Sittings of July 23rd 1789 “Mr. Roe the Attorney for plaintiff, informed the Court that this action was continued last Court day and that the defendant had been then thrice called and not appearing, and a Default was recorded against him. The Defendant now being called again and entered appearance and declares he is not in-

debted in the sum as set forth in the plaintiff's declaration. The Court ordered the plaintiff to prove his demand on the 20th of August next." On August 20th "This action was continued the 23rd of July last for the plaintiff to prove his Demand this day—in consequence Walter Roe, Attorney for the plaintiff filed his Replication the 18th inst. in the office. The Defendant being now thrice called and not appearing thereupon, the plaintiff's Attorney moved for judgment, the Court ordered the action to continue for eight days en Delibere, and a second default entered against Defendant." "Eight days" in those days meant a week. On August 27th "Walter Roe, Attorney for the Plaintiff—the defendant being thrice called and not appearing." Then appears what we should call reasons for judgment or the opinion of the Court, thus,

"District of Hesse" { This is an action the Gist  
of which is a record of  
judgment in another Court:

to this the Defendant has pleaded that he owes nothing, but as he has set up no payment or release of judgment, I must presume the meaning of his plea to be the proper issue and a Traverse of the Record of judgment. It seems so to be understood by the Replication of the Plaintiff, who again relies upon and proffers the Record. The Evidence filed is equally insufficient to support the action upon the Rules of Evidence either of the ancient or present Laws of the Province, the office copy of the Record being neither upon Parchment or under seal. Wherefore the Court considers that judgment be entered as in case of a nonsuit."

I do not stay to point out the accuracy or otherwise of the Judge's law; but hasten to another case which is thus intituled:—"John Robert McDougall, of Detroit, Gentleman, vs. Isaac Germain." On July 16th, the inevitable Walter Roe filed his declaration and the defendant had a default entered against him: on July 23, the defendant again did not appear, a second default was entered against him and the defendant directed to proceed to prove his demand on the 20th August—on August 20th the defendant did not appear and the plaintiff "by his Attorney Walter Roe" called evidence. It was proved that the defendant put certain cattle for agistment upon the plaintiff's land on Hog Island, agreeing to pay well for them, also that 20 shillings a head was the usual price on the Island—"This action is continued and remains en Delibere for eight days." On the 27th judgment is entered up for

	£30 - 9 - 6
and £9 - 9 - 5 costs, in all	£39 - 18 - 11
and a Writ of fi. fa. issued	5 - 0
	<hr/> £40 - 3 - 11

And an alias *fi. fa.* was issued Oct. 2nd for this sum—which writ was returnable the first Court day in June 1790—for

£40 - 3 - 11 and subsequent costs,

£ 1 - 15 - 0

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£41 - 18 - 11

The costs seem fairly large; it may be that the Clerk did not tax too stringently—in that respect being unlike a certain English taxing officer. Mr. Quirk, of Quirk, Gammon & Snap, had, we are told, “never been seen actually to shed a tear but once—when five sixths of his little bill (£196 - 15 - 4) were taxed off in an action on a Bill of Exchange for £13.”

In cases under £10 sterling there does not seem to have been any declaration or written pleading but otherwise the practice does not differ from what I have described.

A somewhat curious feature is that the evidence, given as it is, sometimes in English, sometimes in French, is taken down in the language employed by the witness—the orthography in neither language is unexceptionable and the syntax of the French sometimes is very bad—no doubt what appear to be solecisms are really the expressions of the witnesses themselves. The faulty orthography is just that of a man who understands French as spoken, but has no need to write it.

For example, on May 26th 1791, in *Graham v. McKenzie v. Louis, Campeau*, Mr. Roe appears for the plaintiffs: the defendant made default. J. B. Marin was called as a witness and he deposed as follows: (I give the original French and all) “*Qu’il est commis actuelment employer par le Demandeur et que de leur part il fut Dimanche dernier chez Defendeur pour lui demander sa raison pour avoir pas acquitté la demande actuel. Pour reponse le Defendeur a dit au Tremoin que ce est bien vrai que lui devoit le vingt trois Ponds pour une Quart<sup>s</sup> de Romme qu’il a eut tête passé mais peut pas faire ceste somme bien qu’il avoit demander en plusier maison.*” Accordingly judgment went for £23 - 16 - 0, N.Y. Cy. with costs—and the formal judgment for £14 - 17 - 6, and costs £6 - 8 - 2, in all £21 - 5 - 8, Provincial Currency. The computation here is exact—the judgment was for \$59.50 of our present currency.

Dollars were not wholly unknown in those days: at a Court holden at *L’Assomption*, 9th June, 1791, in a case *Samuel Edge v. John*

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\*This does not mean what we call a quart of rum—the “Quart” as is shown in another case was “more than 30 gallons”—so that the “Romme” cost less than \$2 a gallon.

Vert, judgment was given that the defendant should pay four dollars and a half and costs.

Some other cases are worthy of note—for example, as shewing an "Equity" practice in this Court of Common Pleas, at the Court held 19th May 1791 in the case of *George Lyons v. Francois Chabut Esquire*, we find the following as the proceedings: "That the plaintiff having this day filed the affidavit of James May purporting that the best and only witness to prove his demands are without the jurisdiction of this Court, and being willing to refer the said demand to the decisive oath of the defendant, prays that a rule may be personally served on the said Francois Chabut, Esq., requiring him to attend this Court in his proper person on Thursday the 9th of June next, then here to purge himself by his corporal oath from his said demand, failing whereof it shall be admitted and taken pro confesso. The Court order accordingly."

On June 9th the defendant did not appear, the declaration was taken as confessed and judgment was entered "for £26 - 10 - 4, currency of New York, equal to £16 - 11 - 5 currency of Quebec, with costs. The costs were taxed at £6 - 11 - 5 currency of Quebec, *Fi. fa.* was issued and the money made in full (there is a trifling error in calculation £26 - 10 - 4 N.Y. currency is equivalent to £16 - 15 - 2½ Quebec currency).

On the 20th August 1789, in the action of *Thomas Cox v. Guillaume Gyeaux of L'Assomption*, "Walter Roe for the plaintiff filed his Declaration and the Defendant appeared in person:—

"As judgment was rendered the 23rd of July last against the Defendant and Execution the 24th of August, and finding by the Return of the Sheriff that the Defendant's Goods and chattels, Lands and Tenements are not sufficient to satisfy the said judgment creditor, and the plaintiff's Attorney suspecting that the defendant had property secreted in the hands of Joseph Pilet, he was therefore summoned before the Court to give his declaration on oath, whom being called and duly sworn and declared to have no effects of the Defendant's in his hands at this time, nor have had at the time of the service of the Declaration."

August 20th 1789 "Isaac Dolson of L'Assomption, Yeoman, vs. Joseph Perrier, dite Vadeboncœur of the River of Ecosse, Walter Roe Attorney for the plaintiff, filed his declaration and the Defendant being called and appeared in person and acknowledged that the plaintiff was in peaceable and quiet possession of the land in question, and that he did enter upon the premises in manner and in form as set forth in the Plaintiff's Declaration, which being duly considered, the Court ordered the Defendant to put the Plaintiff immediately in pos-

session of the said Premises [this is what we should now call an "Interim injunction."] and the action to be considered in the meantime." On August 27th, on consent, a continuance was ordered for eight days; on Sept. 3rd the defendant not appearing the case was again "continued at the instance of Mr. Roe": on Sept. 10th the defendant still not appearing, the Declaration is set out and a judgment entered for re-entry and £9-17-0 currency of the Province for costs.

August 20th "James Fraser, Attorney to the Assignees of Thomas Cox vs. Pierre La Bute, Walter Roe for the Plaintiff filed his Declaration and the Defendant being called and appeared in person—and after some altercation, Mr. Roe the Plaintiff's Attorney moved to discontinue the suit. The Court ordered the suit to be discontinued accordingly."

July 23rd "Leith & Shepherd of Detroit, and Copartners in Trade vs. Jean Bte. Leduc, fils, of the Parish of L'Assomption, Yeoman." The Defendant admitted his signature to the note, but pleaded infancy. He was ordered to prove his plea and on Aug. 20th he "produced his *Batistere*", which proved that he was not a minor at the time of signing the note. His further plea that it was for his father's debt was equally ineffective and judgment went against him for note, interest and costs.

August 20th, "Frederick Arnold vs. J. Bte. Leduck fils, Walter Roe Attorney for the Plaintiff and the Defendant appeared; and by consent of parties, Claude Rheume and Isaac Dolson, is nominated to estimate the damages in the Detention of the plaintiff's horses, and to call in the third person in case of Differences, reserving to the Court the right of imprisonment of said horses and to report in eight days." The action was, Aug. 27th, continued for eight days; Sept. 3rd "the Court took into consideration the Report of auditors upon the matter in dispute who were nominated by consent of the parties to report on their differences" and entered judgment for the plaintiff, that Jean Bte. Leduck fils should pay him the sum of £10 of the currency of New York, equal to £6 - 5 currency of Quebec (the computation here is exact).

September 3rd "Magdalaine Peltier, spouse of Jaques Peltier, vs. Laurent Maure. The plaintiff filed her Declaration and the Defendant appeared in person. The Court having taken the matter into consideration and find that the plaintiff is under coverture and not authorized by a Letter of Attorney from her husband. It is ordered that the action be dismissed."

Sept. 3. "Antoine Jalbert v. Jonathan Schiffelin, Charles Smyth, Attorney for the Plaintiff by Procuration filed his Declaration. The

Defendant appeared and says that he owes nothing to the Plaintiff, but that he is indebted to him Two hundred and Thirty-one Livres, for which he prays to become an incidental Plaintiff, and filed the Plaintiff's engagement subscribed by him at Detroit and offers to bring proof that the defendant did not perform his engagement, and also files the account, items of which he begs leave to prove." On the 10th he called "John McGregor of full age and not interested" but all he said was "that he does not know anything respecting the matter in Question." Then he called Raphael Bellongir who said "Que lui ettoit en compagné avec Antoine Jalbert quant le dite Jalbert avoit laisser le service du Defendeur le dix septieme de mai." The case came on again Sept. 17th, when judgment was given dismissing the action with costs. It seems that Jalbert claimed that he had been employed by Schiffelin to go into the Indian Country to Saginan an Indian Post, to help him in the fur trade, but was discharged by him and accordingly claimed £20 - 16 - 8, Halifax currency, as wages—the defendant set up that Jalbert did not perform his engagement, and he claimed 231 livres as due him by Jalbert. Nothing is said in the judgment about this counterclaim.

August 27th. "Catherine Desriviere La Moinodiere Deguindre vs. Her Husband, Antoine Dagnio Deguindre" Declaration filed, defendant noted in default: Sept. 3, second default, Sept. 10 defendant still in default. Plaintiff ordered to produce her evidence next Court day at 9 o'clock in the morning: Sept. 17, the defendant being again absent, the plaintiff produced her marriage contract and called witnesses who gave evidence in French—I give a sample:—

"Question 2nd. by Mr. Roe—Si lui connait les Ettet de ces affaire? Ans. Que non."

"Question 4th by Mr. Roe:—Avez vous entendu dire que ce meubles ettes vendû, et par quil? Ans. Que lui avoit entendû dire que l'ont ettè vendû a L'Ençon."

"Question 5th by Mr. Roe:—Si l'ont ettè vendû par le Sheriffe? Ans. Je ne sai pas."

This is rather better than the French in another place "il se pas."

There is considerable evidence about "une Seizer au chez le Defendeur;" and then the case stands over till next Court. Sept. 24th it again stands over for eight days—and the record of all further proceedings is lost.

Sept. 3. In Thomas Cox v. William Gyeaux, the Sheriff had made a seizure but could not proceed with the sale till "the claims of the different opponents are first satisfied and paid or secured upon the proceeds."

Nicholas Gyeaux, nephew of William, produced witnesses who testified that he "a proposer seminez la Terre de son oncle a motie"

and the witness "croix dans sa conscience s'été a mottier entre l'oncle et nephew."

So he got half of 12 bushels of oats, 12 of wheat and one of Pease, the other half to go to the Sheriff.

Charles Prout produced a witness who swore that the defendant and Prout "lui avez dit que ce derniere été en Simmenser chez le premiere une Piece de Bled Fromment et une Piece de Voine a son proper profit"—and so Prout got his wheat (blé froment, what is called in the book bled fromment) and the proceeds of an Indian Corn patch, the oats (voine i. e. avoine) no doubt also.

Louis Gyeaux offered his brother Nicholas as a witness, the plaintiff's Attorney, the ubiquitous Mr. Roe, objected on the ground of relationship, but this objection was overruled—and he proved the case well: "son oncle Guillaume Gyeaux lui a dit que une de ce vache ettoit a Louis Gyeaux que lui a livre la vache a son Frere que lui a laisser sans le Park le opposent avec les otre animaux de Defendeur, et que cette vache et une de cette prix en execution." That settled it—Louis got "cette vache."

Alexis Maisonville did not succeed in his claim (perhaps the defendant's family name was Goyeaux, a well-known name of those parts).

The same day Phillip Fox obtained judgment against Pierre Durand "that he return the meat of a Hog which he killed, belonging to the Plaintiff (or to pay him three pounds New York currency)—and Francis Latour obtained judgment against Louis Trudell that he pay Ten Pounds currency (or return to the Plaintiff Four hundred and fifty Pounds of Flour).

Sept. 10th Jacques Peltier, whose spouse Magdelaine had failed in her action against Laurent Maure the week before now sues him, himself, and gets judgment for £27 - 10 - 0 currency for rent of a house.

Sept. 10th "Hyacinthe Latourelle v. William Groesbeck: The parties appeared and the defendant is ordered to give to the plaintiff his account before eight days; and then if the Defendant falls in debt to the plaintiff he has a recourse to the Court"—and September 17th "the Plaintiff is dismissed from his action and to pay costs of suit." What the order of Sept. 10th means I cannot say.

Sept. 10th "John Urquhart of Detroit, Gentleman v. John Askin of Detroit, Merch't, Walter Roe Attorney for the Defendant entered appearance and Charly Smyth acting by Procuration for the Plaintiff, declined to act any further in his behalf" and the Plaintiff, therefore, was thrice called and not appearing "judgment went against him with costs."

Sept. 17th a defendant Joseph Barron of St. Anne got 15 days delay "on account of his family being in a bad state of health." Sept. 24th Isabella Maholm (almost certainly "Malcolm") complains that her husband James Donaldson detains £50 sterling in his hands sent to her by her friends in Scotland. Mr. Roe for the husband "denies to detain any sum of the plaintiff's whatever" and "the Court ordered a Rule for trial in eight days"—The same day a case was postponed to get the evidence of Simon Girty, \* Isadore Chene † and Captain Caldwell. ‡

\*This is the well known Simon Girty, about whom so much has been written, most of it wholly untrue. Born in Pennsylvania in 1741, of an Irish father and English mother, he was in 1756 taken prisoner by the Indians with his mother and brothers. He lived with the Senecas for some three years when he was with the rest of the family delivered up. He took part in the border warfare and when trouble began brewing between the Colonies and the Mother Country, was counted on as well-disposed to the latter. He was for a time Lieutenant in a Virginia Company, but in 1778 finally cast in his lot with the loyalists. With McKee and Elliott who were afterwards to take no small part in Border history, he left Pittsburg, and made his way to Detroit. He became a Lieutenant in the Indian Department (a fact which has escaped Butterfield—History of the Girtys by Consul Willstine Butterfield, Cincinnati, Robert Clarke & Co., 1890—who gives the most accurate account of him, but which is attested by the proceedings of the Land Board of the District of Hesse: see Archives Report, Ontario, 1905, pp. 88, 281). He acted as interpreter but not as leader of the Indians as has been represented. He was present at some scenes of torture but there is no well-authenticated instance of his causing or directing it. He was a hardy, brave and indefatigable border warrior whose name has suffered from his being on the losing side of a civil war. He lived in Detroit and after its surrender in 1796, on the other side of the River, where he received a grant of land. He died there in 1818, about two miles below Amherstburg.

†Isidore Chesne was present with Girty and others at the Council held at Detroit in June, 1778, with the Indians, when a plan of campaign was arranged against the rebellious Americans. He seems to have been of a family of original concessionaires who were in 1734 granted lands near Detroit—and he was an ardent supporter of the British cause. Under the name J. Chisne he was awarded Lot 6, not far from Girty's lot.

‡Captain William Caldwell was by birth an Irishman, but was at the outbreak of the Revolution living in Pennsylvania. He took the loyalist side and made his way to Detroit. There he was given the command of a Company of Rangers who with a number of Indians under Captain Elliott went in 1787 to the help of the Wyandots, who had been threatened by an American force under Col. Crawford. The enemy met at Upper Sandusky, and Crawford was vanquished and his force driven back. Crawford and others were taken prisoners by the Indians and Crawford tortured to death in Girty's presence.

Caldwell was wounded and afterwards falling sick went back to Detroit, invalided. After peace was declared he applied for and obtained a grant of land in Upper Canada—his petition was the first filed with the Land Board of the District of Hesse—his "fenced field" is spoken of more than once as a starting point.

In a memorandum by Patrick McNiff, Deputy Surveyor, dated at Detroit, September 30th, 1791, he is mentioned as having received 800 acres of the 3,000 acres to which he was entitled, and is called a reduced officer on half-pay.

The last case reported at length is on June 16th 1791, James May sued Thomas Fleet for taking away an anchor from his yard at Detroit. But the evidence showed that Mr. Williams, mate of the "Felicity," commanding a party of six men, went to Mr. May's yard, pointed out the anchor to the men and had them remove it to the King's ship-yard—the defendant not being present and having nothing to do with the transaction.

On June 23rd 1791 "the Court met, but being a great holiday, *Fete de Dieu*, adjourned to the 30th inst."

June 30 "Jacob Dicks v. Jno. Cray and wife . . . a witness . . . proved the allegations as set forth in the plaintiff's Declaration—the Defendant's wife acknowledged that she does not know anything of the Plaintiff, and that she was sorry for what she had said, and that she was in a passion at the time and did not know what she said, and acknowledging the plaintiff to be an honest man. In consideration of the Plaintiff's relinquishing his claim to the damages, the defendant to pay the costs—allowed witness 2-6 and Ferriage 1-3." The defendant got off cheap—and with this case of happy ending, I should like to close this sketchy account of Mr. Justice Powell's first Court—but the very last case I cannot omit: 4th August, 1791 "George Lyons v. Porline Benac, Esquire, Mr. Roe for plaintiff informs the Court that on the second day of July last a writ of *fi. fa.* was issued from the Court at the suit of the plaintiff against the goods and chattels, lands and Tenements of the Defendant, addressed to the Sheriff of this District who in consequence granted his warrant to Jos. Elam one of his Deputies, who in execution thereof on the 1st day of August instant was violently assaulted and drove off the Defendant's premises by the defendant in person as appears by the affidavit of the said Jos. Elam filed in Court marked "A" and the return of the sheriff on the said writ; wherefore prays the Court to award a writ of *capias ad satisfaciendum* to issue against the Defendant. Court order that a *capias* do issue accordingly." And it is hoped that the Defendant received his just deserts for having drove the Deputy Sheriff off his premises.

WILLIAM RENWICK RIDDELL.

