

The Legal News.

VOL. V. MARCH 18, 1882. No. 11.

EVIDENCE OF INSANITY.

An interesting case—*Russell & Lefrançois et al.*—was decided in the last term of the Queen's Bench, at Quebec, (Feb., 1882), in which the question was as to the mental capacity of a testator. The majority of the Court (Ramsay, Tessier, Cross, and Baby, J.J.) affirmed the judgment of Chief Justice Meredith in the Superior Court, which upheld the will. Chief Justice Dorion dissented. The following opinion was delivered by

RAMSAY, J. The late William Russell, a pilot, who had amassed a considerable fortune, for a man in his position of life, died interdicted on the 7th September, 1880. The curator to the interdict was one Austin, a notary. Lefrançois, one of the Respondents, as testamentary executor under a will of the said late Wm. Russell, executed on the 27th November, 1878, sued the curator to account. To this action one of the nieces of Russell, Elizabeth Russell, intervened in her quality of legatee under a previous will of her late uncle, executed on the 8th Oct., 1878, and also in her quality of heir-at-law to her said uncle, and set up that (1) her uncle was of unsound mind when he made the will of the 27th November, and that he so made it under the undue influence of Julie Morin, a woman who had been married to him, and was living with him as his wife, but who was really wife of a man called Robitaille. (2) That the will was void in so far as regards the disposition to Mme. Robitaille if he believed her to be his wife, and that it was void, as being contrary to good morals, if he knew she was not his wife. (3) That the will was not made in conformity with the law.

The first of these grounds alone deserves serious consideration. Article 831, C. C., gives full power to every one of sound mind to alienate his property to any person capable of acquiring and possessing, with the only exception that the dispositions and conditions be not contrary to public order or good morals. This, evidently, does not refer to the bequest to a mistress or to a concubine, but to dispositions or conditions which depend on the doing of something or leaving

something undone contrary to good morals. Again, if Russell believed Mme. Robitaille to be his wife, the bequest would be good even if she were not, as there is no doubt as to the person to whom the bequest is made. Error as to the person is of no importance unless the individuality be the determining reason of the contract; or in the case of donations, when the quality of the person is the sole determining cause. Mackeldy Brs. ed. p. 200. There are numerous passages in the Dig., recognizing the principles involved in these rules. D. xxxviii, 5, l. 48, §3. D. vi. 1, 5, §4. In the present case he gives his property to his wife, Julie Morin, and there can be no doubt, therefore, as to the person. He did not give her his property because she was his wife.

The technical objections to the will do not appear to have been pleaded.

We therefore come to the real question—the state of Russell's mind on the 27th November, 1878.

Cases of this sort always present considerable difficulty in appreciating the evidence, but I do not think there is much to be gained by elaborate commentaries on evidence consisting chiefly of opinions of persons more or less interested in the issue, or partizans of one party or the other. Nothing is more easy than, in a case like this, to make a brilliant exposition of one side that seems to leave nothing to be said on the other side, except, perhaps, it be to arrive at a totally unsound conclusion. All one has to do is to bring into strong relief some facts, and to subordinate all the others in order to transform an eccentric old man into a raving maniac, or the reverse. In this way I might easily insist upon the character of Russell as explanatory of his eccentricities, of his conduct of his own affairs during the time of his alleged insanity, that the intervening party who attacks the will claims under a will made on the 8th of October, 1878, six days after the execution of a deed which is relied on as the chief indication of Russell's folly, of his determined design to leave his money to his wife when under no conceivable influence but that of his own will. If this requires to be done, it has been done from different points of view with much more effect than I could hope to produce. It seems to me that we have to take the evidence as a whole, and before we can reverse the decision of the Court below, we must be prepared to say that on the 27th November, Russell