

Connolly
vs.
Woolrich and
Johnson et al.

Company in 1825,) came to Lower Canada with his Indian wife and several of his children. He first went with them to reside at St. Eustache, where two of his daughters were baptized by a Catholic priest, to whom, and the principal people of the locality, it seems, Connolly introduced Susanne as his lawful wife. She passed by the name of Mrs. Connolly, and associated with the people of St. Eustache as his wife. After remaining there four or five months, Connolly came with Mrs. Connolly and children to Montreal, and there boarded first with his sister, and afterwards with a Madame Plon. There is no proof to show that any intimation was given to Mrs. Connolly of the occurrence which was about to take place on the 16th May, 1832. She was still in Montreal when Connolly on that day married his second cousin, the present defendant, Julia Woolrich, a lady of good social position and of high respectability. It would appear that the Indian wife felt very sensibly this desertion, and Connolly's marriage to another woman.

The plaintiff contends that this was a repudiation by Connolly of his lawful wife, and the second marriage is void. The view which the Court takes of this summary proceeding on the part of Wm. Connolly, and of his subsequent union with Miss Woolrich, will appear in the sequel of these remarks, and by the judgment to be rendered in this case. Some time after these occurrences, Susanne was sent to the Red River Settlement, and was there supported in a convent until her death, in 1862, first by Mr. Connolly and after he died, in 1849, by the defendant, Julia Woolrich. Of the marriage of Wm. Connolly and Julia Woolrich, there was issue two children. Julia Woolrich died on 27th July, 1865, after making a will dated 28th January, 1861, by which she left several legacies, and amongst others, £30 to Susanne and two small legacies to the Indian children. William and Henry Connolly; but the principal part of the property, which was considerable, she bequeathed to her children.

Having adverted thus briefly to a series of facts clearly established, it is proper now to set forth the pretensions of the defendant more completely than they have been developed in the pleas.

The defendant's counsel, Mr. Cross, has urged in argument at great length, that the Common law of England prevailed at Rebasca in 1803, and that the testimony in this case does not establish a legal marriage between Wm. Connolly and the Cree woman under and according to that law; that the usages and customs of marriage observed by uncivilized and pagan nations, such as the Crees were, cannot be recognised by this Court as giving validity to a marriage even between the Indians themselves, and more particularly, and much less, between a Christian and one of the natives; that there can be no legal marriage between two parties so situated under the infidel laws and usages of barbarians; that the broad and well recognized principle that the *lex loci contractus* determines the validity of marriages solemnized in Christian countries, according to the laws, sanctions and ceremonies of such countries, does not apply in the present case; can have no application to the connection existing between Mr. Connolly and this Indian woman; that even if the plaintiff could successfully urge this principle of the law of all christian nations, and one so well known to the common law of England, yet there is no sufficient proof of the existence of any such usage as that contended for, or that the plaintiff's parents were ever married even ac-

ording to
written, in
tion of the
and had
gamy is o
regard to
garded as
assumption
because it
this argum
Indian law
of husband
beyond all
her child,
baptismal
before he c
may; tha
that it is a
declared; t
finally, tha
ing from t
Court; and
Rat River
It was urge
of Connolly

These are
more fully e
Proceedin
first question
riage prevail
her contiguo
Trent, were
the only rule
marriage bet
Mr. Justice
cause as with
"At the time
"prevailed i
"is to say, it
country."

Judge John
"which prev
"land, with a
"authority un
"introduced
"company by