presumption might be and has been rebutted. The judgment, therefore, ordered Pouliot to account, and he deposited in Court $50,015.07. A project of distribution was then made collocating Fraser. To this respondent filed an opposition, setting up the same grounds as he had raised by his defence to the action, with the further allegation that by the Indian marriage, A. Fraser being a domiciled Lower Canadian, community of property was established by law between him and Angelique Meadows, and that therefore Jones had a right through his mother, to one-fourth, that is one-half of Angelique Meadows' share of the community.

There is also another question to which it is unnecessary for the moment to refer.

This contestation, so far as explained, was met by several counter pretensions. It was said that the whole matter had been litigated between the parties, that a judgment had been rendered against the opposant from which no appeal had been taken, and that there was *chose jugée* between them on the whole contestation. It was further contended, as before, that the bequest was not revoked, that there had been no marriage between Alex. Fraser and the Indian woman, and that if there had been such a marriage it could not give rise to community.

We have therefore to inquire, (1) whether under the circumstances, the sale of the object bequeathed, by the law of Canada prior to the Civil Code, implied the intention to revoke the legacy. (2) Whether there was a valid marriage between Alexander Fraser and Angelique Meadows. (3) Whether, admitting there was a marriage, it gave rise to community of property between them. (4) Whether all or any of these questions could be again argued by respondent against appellant.

I shall take the last of these questions first. Our law is expressed in general terms in Art. 1241, C. C. It would have avoided perplexity if the article had not been drawn with a view to originality. It differs from the article 1351, C. N., and also from Pothier's analysis, Ob. No. 888. As it appears to be the old law the legislature intended to embody, I shall take Pothier's version as the expression of that intention. We have first the principle, that to invoke successfully *res judicata* the new demand must have the same object as the former demand, of which the defendant has been absolved. The constituents of this requirement are three in number: 1. The same thing. 2. The same cause of action. 3. And the same qualities both of plaintiff and defendant. If any one of these three things is lacking, there is no *res judicata*. In the case before us do they all exist? With regard to the first question it seems to me that the decision of Chief Justice Meredith, from which there has been no appeal, is final, so far as it goes. It was contended that it was not a final, but an interlocutory judgment, because it was not absolutely the last judgment to be rendered in the case. This, however, is not the real distinction between final and interlocutory judgments. To avoid repeated and unnecessary appeals, judgments final by their nature are considered as interlocutory, although they are improperly so called; but no judgment on the merits, on which there has been a full hearing is interlocutory in the sense that it can be modified by the Court later. The difference between a final judgment and an interlocutory is that the former is a sentence determining the right, whereas the latter only prepares the way for its determination; 2 Cujas, 491 D. The latter can be altered, not the former, and so it has always been held, that a judgment deferring the oath cannot be altered, while a simple ruling at enquête can be altered. Toullier X, 116, 7. I think that the judgment of the Superior Court was a sentence, and therefore that the Superior Court had no authority to hear the question anew on the opposition.

Chief Justice Meredith, however, did not adjudicate on the second point, because, as it stood, it was of no importance whether Alex. Fraser and Angelique Meadows were married or not. Not having adjudicated on the point, in fact the issue not being fully before the Court, I don't think it possible to hold that there is any *res judicata* as to the question of legitimacy and the effect of the Indian marriage, if it took place.

But if I had to decide upon the merits of the first point, I concur in the able argument of the learned Chief Justice in the Court below so fully, that I should have only one