

Canada, so as to constitute a valid marriage. [The LORD CHIEF BARON. If there was a marriage *de facto*, it lies on you to show it was invalid in law.] To be valid it ought to have been performed by the Parish Priest: *Dagousseau*, *Tom. v.* pp. 150—153; *Pothier*, verbo "*Mariage*," *Partie 1. Ch. i. No. 3*; *Pothier, du Contrat de Mariage*, *Partie IV. Ch. 1. sec. 3, Art. 1, par. 5, No. 350* [Ed. 1781]; *Danty*, p. 102; *Durand de Mailanne*, *Dict. Can. voce "Clandestin," Tom. 1. p. 523* [Ed. *Lyons*, 1770]; *De Hericourt, Loix, Eccles. Ch. v. Art. 1, No. 27, p. 474*. [The Respondent's Counsel objected to this point being now raised, as in the declaration the appellant had admitted the marriage, and only sought to avoid it as being celebrated when Scott was *in extremis* and unconscious, and submitted that it was not for the respondents, to give formal proof of the *factum* of such marriage; but that if it were necessary, the proofs were sufficient according to the Provincial Statute, 35 Geo. 3, c. 4, sec. 4, which only requires the presence of two witnesses.] This point was not further argued. Second, the evidence of the medical attendants of Scott shows that at the time the marriage took place between Scott and the respondent, Paquet, which was only two days before his death, Scott was *à l'extrémité de la vie*, so as to render such marriage null and void by the *Ordonnance* of Louis XIII. of 1639, Art. 6, and the Edict of the year 1697; depriving of civil effect marriages *in extremis*; *Pothier*, *Tom. v. p. 238, Partie 5, Ch. II, p. 429*; *Ib. 239*; *Merlin's Rep. de Jur, verbo "Mariage," Tom. XIX. Sect. 9, Art. 3*; *Ib. Tom. VIII. Sec. 19, par. 1, No. 3, p. 47*; [Quarto Ed.] Third, the evidence establishes the fact, that at the time of the pretended marriage Scott was delirious and unconscious from an attack of *delirium tremens*, and then incapable of entering into any valid contract.

The Counsel for the respondents were not called upon.

July 10th.

The LORD CHIEF BARON: This is an appeal from a judgment by the Court of Queen's Bench for Lower Canada, affirming a decision of the Superior Court of that Province,

in an action brought by the appellant against the respondents, and in which the question to be determined was, whether a marriage between William Henry Scott, deceased, and the respondent, Marie Marguerite Maurice Paquet, on the 16th of December, 1851, was valid or void. Several questions were raised (but disposed of during the argument) upon the alleged non-compliance with the formalities essential to the validity of a marriage by the law of France, which prevails in Lower Canada. The objections to the marriage upon these grounds (which appeared when duly considered to be unsupported by the authorities) were abandoned by the Counsel for the appellant. Two questions alone remain: The first, whether this marriage was contracted while Mr. Scott was "*à l'extrémité de la vie*," within the meaning of the 6th article of the *Ordonnance* of 1639; the second is whether, at the time when the marriage was so contracted, Mr. Scott was of sound mind and in possession of his faculties. Both these questions have been decided in favour of the respondents, unanimously by the three Judges of the Superior Court, and by three Judges out of four of the Court of Queen's Bench in Lower Canada. And we think that this Court ought not, unless there be manifest error in the judgments under appeal, to over-rule these decisions so pronounced in the Country in which the law of France, by which the first question must be determined, prevails and must be known and continually acted upon by the Courts of Law; and in which, also, the witnesses on both sides reside, and may have been more or less known to, or seen, when under examination, by the judges, or some of them, who likewise are familiar with the usages and customs of the place in which all the circumstances which formed the subject of the evidence occurred. The language of the *Ordonnance* is this: "*Voulons que la même peine (de la privation des successions) ait lieu contre les enfans qui sont nés des femmes que les pères ont entretenues, et qu'ils épousent lorsqu'ils sont à l'extrémité de la vie.*" *Pothier*, (No. 430) says: "*Il faut que ceux qui attaquent ces mariages prouvent deux*