

## The Legal News.

VOL. VII. FEBRUARY 23, 1884. No. 8.

### RUSSELL & LEFRANÇOIS.

The judgment of the Supreme Court in this case was rendered on the 11th January, 1883, but as yet no report of it has seen the light. The proceedings on the appeal to the Supreme Court present some peculiarities which it is desirable to make known beyond the precincts of the modest retreat where the highest of our courts makes known the results of its vigils.

In its passage through the very inferior tribunals of this province, the case was one purely of evidence. The question to be decided was whether an eccentric old man, formerly a pilot, was insane when he made a will leaving almost the whole, or nearly the whole, of his property to a woman, who was married to him publicly and whom he believed to be his wife, and who for all that is known in this case was his wife. The person excluded by this will was a niece who had lived with the testator till after his marriage, and whose principal pretension in the suit was that her uncle had made a will in her favor not four weeks before the one she complained of, that he was perfectly sane when he made the former and insane when he made the latter will. Her second proposition was that she was an heir at law. By a judgment pronounced by Chief Justice Meredith and showing all his well known care and discernment, the will was maintained. The niece appealed, and the judgment was maintained by the Court of Queen's Bench, the Chief Justice alone dissenting. From this judgment the niece appealed again. The case was heard by the Supreme Court towards the end of 1882. The Court, composed of Chief Justice Ritchie, Strong, Fournier, Taschereau and Gwynne, J.J. (the two first dissenting), reversed the judgment of the two Provincial Courts, and rendered the following judgment:

"Considering that in the judgment rendered by the Superior Court for Lower Canada, sitting at Quebec, in the District of

Quebec, on the 2nd of May, 1880, there is error;

"And considering that in the judgment of the Court of Queen's Bench for Lower Canada (Appeal Side), rendered at Quebec on the 4th February, 1882, on the appeal of the said Elizabeth Russell from said judgment of the Superior Court, there is also error;

"This Court did order and adjudge that the demand in intervention of said Elizabeth Russell, and the *moyens* of intervention filed and of record in this cause, and the declaration of the said Elizabeth Russell against the said Julie Morin, be amended and be henceforth held and taken to be amended for all lawful intents and purposes whatsoever, by adding to each of them in the record the allegations following, that is to say:—

"That the said will of the 27th day of November, 1878, and the universal bequest therein made to Julie Morin, are also null by reason of error, the said William Russell having made such will and the said universal bequest, because he believed that the said Julie Morin was his lawful wife, when in truth the said Julie Morin was not then his lawful wife," and by adding also to the conclusions of the said paper-writing in the record, a demand that the universal legacy made to the said Julie Morin by the said will be set aside and annulled.

"And this Court, proceeding to render the judgment which the said Superior Court, exercising original jurisdiction, *ought to have rendered*, and which the said Court of Queen's Bench for Lower Canada, upon the appeal of the said Elizabeth Russell, *ought also to have rendered*, did order and adjudge that the said appeal of the said Elizabeth Russell should be and the same was allowed, and that the judgments aforesaid should be and the same were reversed, and that the contestation by the said Julie Morin of the demand in intervention of the said Elizabeth Russell should be and the same was dismissed, and that the said intervention of the said Elizabeth Russell should be and the same was maintained, and that the conclusions thereof should be and the same were granted with costs of the said Superior Court against the said Julie Morin.