

Connolly
vs.
Woolrich and
Johnson et al.

and claimed by plaintiff as his share in a community of property alleged by him to have existed between his father, the late William Connolly, and *Susanne*, Connolly's wife, mother of the plaintiff. The case is one of importance, and involves a great number and variety of questions, both of law and fact. The Court has considered it an imperative duty, as the decision is one of much interest to the parties, and, in some measure, to the public, to enter at length into a review of the peculiar circumstances of the case, and also of the law by which it must be determined.

The declaration sets forth in substance, that in the year 1803, the late Wm. Connolly, at the *Rivière-aux-Rats*—Rat River—in the Robaska, or Athabaska country, in that part of British America, known and distinguished as the Hudson's Bay Territory, married an Indian woman, called *Susanne Pas-de-nom*, of the Cree tribe or nation; that this marriage was celebrated according to the usages and customs of the Territory, and could not be otherwise solemnized, as there were no priests or ministers residing there at that time; that these parties lived together continuously and happily as husband and wife from 1803 till 1832, during which period there were born of this marriage several children, of whom plaintiff is one; that Wm. Connolly died at Montréal on the 3rd June, 1849 leaving a large amount of property in Upper and Lower Canada, which is in part enumerated and described. It is then averred that there was no contract of marriage between the parties, and that consequently a community of property existed between them according to the law of Lower Canada, and that the real and personal estate was acquired during the existence of the marriage; that Mrs. Connolly died at Red River, in the Hudson Bay Territory, on the 14th August, 1862, leaving the plaintiff, and several other children, her heirs-at-law; that Wm. Connolly, the father, left a will, dated in 1848, by which he bequeathed all his property to one Julia Woolrich and to two children, issue of a connection between Wm. Connolly and the said Julia Woolrich; and that the latter took possession of all the estate, and still holds it; that Connolly, the father, could dispose of only one-half of the property, inasmuch as his lawful wife was living at the time of his death, and she was, consequently, entitled to the other half of the estate, as *commune en biens* with her husband; then, alleging baptism of children in December, 1831, the plaintiff concludes that he be declared proprietor of the sixth part of his mother's half share of the estate, belonging to the community, and that defendant do account.

It is to be remarked, that Robaska or Athabaska is stated (whether in 1803, or at the time of the bringing of the action, does not appear very certain) to be situated within the Hudson's Bay Territory; and it is also to be noted that the plaintiff does not pray to be declared the legitimate offspring of Wm. Connolly and the Indian woman, plaintiff's mother.

Defendant pleads that Connolly was never married to *Susanne*; that, on the 16th May, 1832, he was married to the defendant, Julia Woolrich, according to the rites of the Church of Rome, from which date they enjoyed the *status* of husband and wife, and that in this marriage there was continual acquiescence on the part of *Susanne* and her family, and among others by the plaintiff; that by the laws of the Hudson Bay Territory, and particularly such as were in force at

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