

german inclusive. In civil suits it extended to second cousins. A strong confirmation of this doctrine is found in the Provincial declaration of the 6 May 1733, Edits et Orddes. t. I. p. 499.

In the examination of the various irregularities in marriage contract, which are there specified and to which relief is afforded no case like the present, is to be found. And this evidently because it required none; relations being by law competent witness to marriage contracts.

But, secondly, there was no sufficient evidence of the alleged relationship. In notarial instruments *omnia præsumentur ritè & solemniter acta*. Now the greater part of the marriage and burial entries are not certified in legal form, and there is no evidence of the identity of the persons witnessing the contract with those named in these extracts.

The Appellants call upon the Court to *presume* that the Notary was grossely and culpably regardless of his duty.

And thirdly, whatever might be the situation in which a *bonâ fide* purchaser would stand in respect of his land, the Appellants, by whom the contract was made, cannot now set it aside, it having received its full and complete execution: in the subsequent intermarriage and co-habitation of the parties, and a third person (Antoine Dumas) having acquired an interest in the land. It is contrary to the first principles of legal equity, that one man shall profit at the expence of another, or that he shall be allowed to lead another into error and avail himself of that error for his own benefit. This would be to make Court of Justice accessory to a fraud: *Nemo debet alterius detrimentum locupletari*. As to the second objection of the Appellants, that the instrumentary witnesses have not signed the deed, it is to be observed that there is no law which requires that instrumentary witnesses shall sign the deed.

On the contrary, the French Ordonnances contemplate and advert to the case of their not signing it.

Thus Charles the IX, at the Etats d'Orléans in 1560, says: Seront tenus les Notaires de faire signer aux parties et aux témoins instrumentaires, *s'ils savent signer*, tous actes et contrats qu'ils recevront. The same words; seront tenus faire signer aux parties et aux témoins instrumentaires *s'ils savent signer*, are met with in the Ordon. of Blois A. D. 1579, art. 165.

In the following article of the same Ordonnance, it is provided that the Notary, *s'il est es villes et gros bourgs esquels vraisemblablement on puisse recouvrer témoins qui sachent signer et que la partie qui s'oblige ne puisse signer*, shall cause at least one of the witnesses to sign.

This clause of the Ordonnance is merely directory, does not create any nullity and is besides confined in its operation to the cities and towns.

The Respondents have deemed it necessary to enter into a more full statement of their case than is perhaps usual, because they are persuaded that the more fully the claims of the Appellants are examined, the more satisfactorily will it appear that they are not only contrary to good conscience and to equity, but also to law.