SUPERIOR COURT, 1867.

MONTREAL, 9TH JULY, 1867.

Coram MONK, J.

No. 902.

Connolly vs. *Woolrich* and *Johnson* et al., defendants *par reprise d'instance*

INDIAN MARRIAGE—QUESTION AS TO VALIDITY.

William Connolly was born about 1786, at Lachine, in Lower Canada, which was his original domicile, and remained there till the age of 16, when he went to the North West territories, where he resided at different posts of the North West Company for 30 years. In 1803, at the age of 17 years, he took to live with him, as his squaw or Indian wife, an Indian girl, the daughter of an Indian Chief, with the consent of her father, and cohabited with her as his squaw or Indian wife, according to the usages and customs of the Cree nation to which she belonged. They cohabited in the Indian country, and were faithful to one another there for 28 years, and had a family of six children. They came to Lower Canada in 1831 and co habited there for a short time as husband and wife. In 1832 Connolly left his squaw and had a marriage ceremony, after a dispensation by the Bishop, celebrated between himself and his second cousin Julia Woolrich, according to the rites of the Roman Catholic Church in Lower Canada where he continued to be, and from that time, till his death, in 1849, cohabited with her as his wife.

HELD:—1°, That though the Hudson's Bay Company's Charter is of doubtful validity, yet, if valid, the chartered limits of the company did not extend westward beyond navigable waters of the rivers flowing into the Bay;

2°. That the English Common law prevailing in the Hudson's Bay territories, did not apply to natives who were joint occupants of the territories; nor did it supersede or abrogate even within the limits of the Charter, the laws, usages, and customs of the aborigines;

3°. That no other portions of the English Common law than that introduced by King Charles' Charter obtains in Hudson's Bay Territories;

4°. That the English law was not introduced into the North West territories by the cession by France to England, nor by royal Proclamations subsequent to that date;

5°. That neither the decrees of the council of Trent, nor the ordinances of the French kings, nor the British Marriage Acts, were law nor in force at Rat River, or in any part of the North West Territories, in 1803;

6°. That a marriage contracted where there are no priests, no magistrates, no civil or religious authority, and no registers, may be proved by oral evidence, and that the admission of the parties, combined with long cohabitation and repute will be the best evidence;

7°. That such a marriage, though not accompanied by any religious or civil ceremony, is valid.

SEMBLE:—That polygamy and divorce, or repudiation at will, prevail among the Cree Indians who are pagans;

8°. That an Indian marriage between a Christian and a woman of that nation or tribe is valid, notwithstanding the assumed existence of polygamy and divorce at will, which are no obstacles to the recognition by our Courts of a marriage contracted according to the usages and customs of the country;

9°. That a Christian marrying a native according to their usages, cannot exercise in Lower Canada the right of divorce or repudiation at will, though SEMBLE:—He might have done so among the Crees;

10°. That an Indian marriage, according to the usage of the Cree country, followed by cohabitation and repute, and the bringing up of a numerous family, will be recognised as a valid marriage by our Courts, and that such a marriage is valid;

11°. That *Connolly* never lost his domicile of birth and never acquired one in the Indian Territory;

12°. That, under the circumstances, a community of property existed between him and his Indian wife or squaw, as to all property subject to such law in Lower Canada.

The facts of this most important case appear from the remarks of the Court (Mr. Justice MONK) in giving judgment for plaintiff, at Montreal, the 9th July, 1867, as follows:

This is an action instituted the 13th of May, 1864, for the recovery by the plaintiff of the sixth portion of one-half of the estate in defendant's possession