

PRIVY COUNCIL.

SCOTT v. PAQUET ET AL.

The decision of the tribunal of last resort in this celebrated case, pending for so many years, will be read with deep interest. The judges present at the re-argument on the 28th and 29th of June, and at the rendering of judgment, were Sir John Taylor Coleridge, Sir James William Colville, Sir Edward Vaughan Williams, Sir Fitz-Roy Kelly, (the Lord Chief Baron,) and Sir Richard Torin Kindersley.

The Counsel for the plaintiff in Montreal were Cross & Bancroft, and for the defendants, Cartier & Berthelot.

Construction of Ordonnance 1639, Art. 6—

Marriage in extremis.

Art. 6. of the *Ordonnance* of Louis XIII. (26th Nov. 1639,) in force in Lower Canada, is in these terms:—"Voulons que la même peine (de la privation des successions) ait lieu contre les enfants qui sont nés de femmes que les pères ont entretenues, et qu'ils épousent lorsqu'ils sont à l'extrémité de la vie." Held, first, that as the above article of the *Ordonnance* was a restrict of natural liberty, and penal in its nature, it was to be strictly interpreted, and only when the fact of a party being in *extremis* at the time of the solemnization of the marriage was clear and beyond doubt, could it be applied. Second, that although death had taken place two days after a marriage had been celebrated, such Article of the *Ordonnance* did not affect the validity of the marriage, unless the party was at the time sensible that he was in his last illness, and in immediate danger of dying.

Suit for nullity of marriage, and to set aside a marriage contract, on the ground that at the time of its celebration the husband was delirious and of unsound mind, arising from an attack of *delirium tremens*, from which disorder he died two days afterwards. The evidence in chief of one of his medical attendants being to the effect that he was unconscious, and, in his opinion, from the nature of the disease, incapable at any time of contracting such marriage:—

Held, on a general review of the evidence, to be rebutted especially by the conduct of the same medical witness in speaking of the probability of deceased's recovery; and by the evidence of the Priest, Notary, and witnesses at the marriage, of his capacity; and the judgments of the Courts in Lower Canada sustained.

This was an action brought by the appellant in the Superior Court, District of Montreal, against the Respondents, Paquet and others, the widow and children of William Henry Scott, late of the Village of St. Eustache, county of Two Mountains, merchant, deceased, to have the marriage of Scott with the respondent, Paquet, declared null and void, as regarded its civil effects, and also to set aside the marriage contract executed on the occasion thereof. The appellant claimed as his sister and heiress-at-law. The Superior Court, by its judgment, sustained the marriage and contract, and that judgment was confirmed on appeal by the Court of Queen's Bench in Lower Canada. Hence the present appeal.

The facts were these:—Scott, a member of the Presbyterian Church, had for many years cohabited with the respondent, Madame Paquet, a Roman Catholic, by whom he had a family of five children, whom he recognized and treated as his own children. In 1845 a marriage was contemplated and intended between Scott and Madame Paquet, which was to be celebrated according to the rites of the Roman Catholic Church, and all necessary preparations were made for that purpose, but the completion was prevented by Scott's refusal to give a preliminary engagement, required by the Priest before celebration, that he would cause his children to be educated in the Roman Catholic religion.

On the 15th of December, 1851, Scott went to the house of Madame Paquet, who resided in the village of St. Eustache, just opposite to his own, and there sent for a Roman Catholic Priest, for the purpose of proceeding to a marriage; and finding that no other engagement was now demanded of him than that he would leave his wife and children free in point of religion, he caused a marriage to be celebrated between himself and Madame Paquet on the evening of the following day, the 16th, according to the rites of the Roman Catholic Church. By the act of marriage, the consorts acknowledged as legitimate their five children. The marriage was accompanied by a contract or settlement prepared