

long previous to the birth of the child, and that his silence thereupon must be regarded as an acknowledgment of its paternity. We cannot assume that he detected her pregnancy, and if he had reason to suspect it, that he must have done so at so early a period after marriage as to have referred it to ante-nuptial incontinence. To one, who we must believe from the evidence, possessed a strong affection for his wife, the suspicion of a want of chastity would never arise. Affection will give every excuse for appearances, except that of dishonor." The Court dwelt on the fact that the child would be presumptive heir of the husband's estate, and continued: "A woman, to be marriageable, must at the time be able to bear children to her husband, and a representation to that effect is implied in the very nature of the contract. A woman who has been pregnant over four months by a stranger, is not at the time in a condition to bear children to her husband, and the representation in this instance was false and fraudulent." After enlarging on the disgraceful situation of the husband, the court concluded: "By no principle of law or justice can a man be held to this humiliating and degrading position, except upon clear proof that he has voluntarily and deliberately subjected himself to it." *Disapproving Scroggins v. Scroggins.*

In *Morris v. Morris*, Wright, 630, the complainant was "an honest simple fellow" of 28, "but little used to female society," and the defendant was a Quaker of 35. The child was born in less than a month from the marriage. The marriage ceremony took place in the dusk, without lights, "under circumstances as to the position and movement of the bride, with an arrangement of the full Quaker dress of the ladies, which excited the suspicion of the clergyman. The husband and wife lived together without his suspicions being awakened until the wife was taken in labor pains, and presented her wondering spouse a full grown child before the expiration of the honeymoon." A divorce was granted.

In *Ritter v. Ritter*, 5 Blackf. 81, the husband discovered the wife's condition the next night after the wedding and immediately left her. The statute authorized divorces for certain causes, and for another cause when in their discretion the court should think it reasonable

and proper. The court below refused a divorce, but this was reversed, the court observing that "the court did not exercise its discretion in a sound and legal manner, having due regard to the rights of the injured party, and the purity of public morals."

In *Carris v. Carris*, 9 C. E. Green. 516, the child was born two months and a half after the marriage, the husband had had no previous connexion with the mother, was very young, and was deceived by artifice of dress and conduct. A divorce was granted by the Court of Errors and Appeals, overruling the Chancellor. The court exclude cases of mere incontinence, and mistake of the husband who had had previous connexion. The Court cited the Massachusetts and California cases. Two judges dissented.

Mr. Schouler says (Husb. and Wife, § 27): "We apprehend that the woman who brings surreptitiously to the marriage bed the incumbance of some outside illicit connection, introduces a disqualification to the union as real as the physical impotence of a man would be, resulting from his own lasciviousness."—*Albany Law Journal.*

NOTES OF CASES.

COUR SUPÉRIEURE.

MONTRÉAL, 9 juillet 1883.

Coram RAINVILLE, J.

LUREAU V. DEBEAUFORT, et les mêmes sur demande incidente.

Chose jugée—Délai pour appeler—Cautionnement pour frais seulement—Identité d'objet.

Jugé, qu'il y a chose jugée entre les parties même pendant le délai accordé par la loi pour appeler d'un jugement.

Que lorsqu'une partie porte un jugement en appel, mais consent à l'exécution du jugement, et ne donne cautionnement que pour les frais, l'appel n'a pas l'effet en droit d'empêcher qu'il y ait chose jugée entre les parties.

Qu'un jugement renvoyant un plaidoyer à une saine-revendication d'une partie de certains effets par le propriétaire, est chose jugée à l'encontre du même plaidoyer produit par le même défendeur dans une action où le propriétaire réclame le prix de l'autre partie de ses effets vendue par le défendeur.