

MONTREAL, 30TH APRIL, 1866.

Coram SMITH, J., BERTHELOT, J., MONK, J.

No. 954.

Dewar vs. McLennan, & McLennan Plaintiff en faux vs. Dewar, Defendant en faux.

Held.—That a will, made in solemn form, by a person who could not write or sign his name and who was wholly ignorant of any other language than Gaelic, before a Notary who only spoke and understood the French language, and two witnesses, one of whom was wholly ignorant of the French language (in which the will was written) and the other spoke English, French and Gaelic, and acted as interpreter all round, was valid.

This was a hearing in revision of a judgment rendered in the Superior Court, at Montreal, on the 30th day of April, 1866, by the Hon. Mr. Justice Smith, dismissing an inscription *en faux*, filed by the defendant to the last will and testament on which the plaintiff's action was based.

The will attacked as being false was that of one Kenneth McLennan, and purported to have been executed in solemn form, in the French language, before a Notary Public and two witnesses. And the *moyens de faux* relied upon were, to the effect, that the testator (who could not write or sign his name) was wholly ignorant of the French language and knew only the Gaelic language,—that the Notary was wholly ignorant of the Gaelic language and spoke and understood only the French language,—that one of the witnesses was wholly ignorant of the French language,—and that the other witness was the only one of all the persons concerned who understood the language both of the testator and of the Notary who wrote the will.

The evidence adduced in the cause fully established the facts to be as alleged in the *moyens de faux*.

The Court of Review sustained the judgment of the Court below, and it was consequently confirmed.

Judgment of S. C. confirmed.

Doutre & Doutre, for plaintiff and defendant *en faux*.

Dorion & Dorion, for defendant and plaintiff *en faux*.

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