

west. Now our law is composed of the public law of England, and the municipal law of France; and the public law of England and France in these matters being almost identical, it is unimportant to inquire whether this is to be governed by public or by municipal law. If we were to presume that any other law than that of this Province existed in the North-west, we should be obliged to say it was that of England, which no more than ours recognizes a natural marriage. If, however, we were to give the fullest effect to consent, as being the one thing essential to marriage, for that is really the doctrine relied on, to what must the consent extend? Certainly to something more than co-habitation. Although evidence of co-habitation may go to establish status, it is not marriage.

The marriage, which the law recognises as binding, is a bond indissoluble at the will of the parties. "*Non est in conjugum potestate dissolvere matrimonium.*" Men. Ib., No. 10. Some allusion has been made to the law of Scotland, and the well-known case of *McAdam & Walker* was referred to. That was a very striking case. McAdam formally before his servants, called into a room for the purpose of being witnesses, declared his marriage with Walker, who ratified it. He went into the next room and blew out his brains. This was held to be a valid marriage by the law of Scotland, which rejects the rules of the Council of Trent.

In the case before us it seems to me there is no evidence of any such contract. Much has been said of the local custom, but there is not a word of evidence as to what that custom was. Nor am I prepared to accept the proposition that the co-habitation of a civilized man and a savage woman, even for a long period of time, gives rise to the presumption that they had consented to be married in our sense of marriage. "*Requiritur secundo quod vir et mulier pares sint.*"

This brings us to the presumptions arising from Fraser's conduct when he left the wild north-western territory and returned to Lower Canada. Did he give Angelique Meadows his name, did he treat her as his wife, had she the reputation of being his wife? We are told by respondent's witnesses that Fraser, the Indian woman and the half-

breed family came down together, and also that Fraser came down and that they followed. Respondent, by his factum, seems to give credit to the latter story; p. 1, l. 12. We are also told by several of respondent's witnesses that, after they arrived at Rivière du Loup, Fraser and Angelique Meadows did not live in the same house, and that they never lived together there. Towards the close of respondent's *enquête*, a witness, Cyprien Guichard, is produced, who tells us "cette dame de Monsieur Alexandre Fraser restait avec lui dans la grande maison bleue sur la côte; je ne l'ai pas vue ailleurs que là." And he adds: "Personne ne savait si Monsieur Alexandre Fraser était marié." * * * Il était marié, après le dicton du monde, il était marié, pas comme on se marie, nous autres," etc. Giving the fullest weight to this testimony, the witness, when twelve years old had been four or five times to Fraser's house in the early years of his stay at Rivière du Loup and saw the Indian woman there. He never was there after. Now, however these facts may be, it is perfectly certain that shortly after the arrival of the Indian family at Rivière du Loup, a separate house was built for her and her family, and they always afterwards lived apart from Fraser. It is true he provided for all their material wants, he constantly sent them food and he educated the children, but no writer pretends that treatment of that sort indicates *possession d'état*, by the woman, as wife. "*Requiritur quod vir ipse pertractet mulierem honorifice, eo scilicet modo, quo uxores pertractari, et haberi solent.*" "*Requiritur ut habitatio sit in una eadem que domo: non autem sufficeret, quod vir habitaret in solita sua domo, ut puta in paterna, et mulier in domo conductitia.*" "*Requiritur ut ii ita cohabitantes, coram testibus declarent, se cohabitare tanquam conjuges.*" (Men. Ib. Nos. 74, 75, 76.)

The respondent has totally failed to prove that the Indian woman bore Fraser's name. To her face she was called "Madam Fraser," but generally "la sauvagesse" or "la sauvagesse à Mons. Fraser," was the appellation she received. Fraser himself never called her Mme. Fraser; and in no document does he give her his name. In the will in question he gives her an annuity as "Angelique Mea-