

stantial evidence of Dr. Jamieson, coupled with the testimony of the witnesses who spoke to the wildness and excitement of his demeanour during certain portions of the three days in question, that all this together is insufficient to outweigh the positive and distinct evidence of so many witnesses to the whole scene of the solemnization of the marriage, and the preparation and execution of the marriage contract, or to warrant us in setting aside the united decisions of the Superior Court and the Court of Queen's Bench in Lower Canada, by which the judgment in favor of the respondents, and now under appeal, has been pronounced. Their Lordships will, therefore humbly report to Her Majesty as their opinion that the judgments of the Court of Queen's Bench of Lower Canada and of the Superior Court ought to be affirmed, and this appeal dismissed; but under all the circumstances of the case, without costs of this appeal on either side. Law Rep. 1 P. C. 552.

MONTHLY NOTES.

SUPERIOR COURT.

Oct. 5.

LEPROHON v. McDONALD, *et al.*
Action for Compensation—Title.

MONK, J. This was a case of rather an extraordinary nature. It appeared that Mr. Leprohon, the father, owned a bridge. He died leaving five heirs, and one of these heirs, the present plaintiff, on the 4th November, 1864, sold one-fifth part of this bridge to the defendant. The consideration was \$1000 and certain lands. On the 22nd of December, the parties entered into a written agreement, and in this the price was stated to be \$2000, without any mention of lands. But the plaintiff immediately proceeded to say in his declaration that this was not the true consideration at all; that the real consideration was \$1000 and lands which were worth \$1200. Then he proceeded to say that McDonald was unable to convey these lands, because on the 12th October, 1864, previously, he had sold them to Col. Ermatinger. This was a fictitious sale for the purpose of qualifying Ermatinger to

defend the frontier as a Police Magistrate.—The latter gave a *contre lettre* explaining it all. There was a sale from McDonald to Ermatinger, and from him to the plaintiff. But the latter now said that neither McDonald nor Ermatinger could give him a valid deed to the lands, as they belonged to the Land Company, and he now brought his action against McDonald and Ermatinger, claiming the value of the lands. In the first place His Honour had to determine what was the real consideration. He thought it was fair to say that it was probably \$1000 and the land. The defendants pretended that it was \$900 and the land; that the land was worth only \$100, and that even if the plaintiff was entitled to be compensated to the amount of this \$100, they held a note against him for \$180. The next consideration was, could the Court determine upon the validity of the Land Company's title? Could it declare to the parties, you can never give a title, because it belongs to the Land Company? The Court could not do that. There was another difficulty; the plaintiff did not say that the deeds held by McDonald and Ermatinger were null and void, nor did he pray that they should be set aside. Therefore upon the one hand, His Honour could not adjudicate upon the validity of the Land Company's title, and on the other hand could not annul these deeds, but must leave them in force. It might be that the title of the Land Company was worthless; His Honour had some doubts of it. The Court therefore was in an embarrassing position. But, further, coming to the real consideration for the sale; supposing it was \$1000 and the lands: What were these lands worth? Some of the witnesses said they would not take them as a present, and even if the Court could award compensation there was no real value proved. Of the \$1000 notes for \$900 had been paid; against the balance, the defendants had a note for \$180, which was due before the plea was put in.—The Court upon the whole must dismiss the action, the plaintiff having titles which the Court could not annul.

Day & Day, for the Plaintiff.

J. J. C. Abbott, Q. C., for the Defendants.