

I did not understand that these propositions were disputed, nor do I understand that the respondent contends that cohabitation alone will create the presumption that there was a marriage. The general doctrine of the civil law is clear. *Matrimonium inter virum et mulierem contractum fuisse non præsumitur et qui ergo asserit inter aliquos contractum fuisse matrimonium probare id debet. Cum autem altero de duobus modis probari solet celebratum matrimonium veris scilicet et præsumptis probationibus etc. Menochius de Præs.—* Libr. 3, Pr. 1, No. 1, No. 10.

Evidently it is one thing to say there was actually a marriage, and quite another to say that a marriage will be presumed from the possession of *status*.

Respondent alleges both. He neither relies wholly on the marriage, which he alleges, and which, to say the least of it, is peculiar, nor on the possession of *status*, which possesses characteristics to some extent unusual; but he says: "There was a marriage between my grandfather and grandmother according to the custom of the barbarous tribes amongst whom they were living; none other was possible. Therefore this marriage was sufficient, and the proof of our cohabitation having the binding effect of marriage is to be found in the possession of the *status* of wife by my grandmother." It is this that gives rise to the sole question of law on which the parties appear to me to be disagreed. Appellant's pretension is that the very nature of the relation between Alexander Fraser and this Indian woman, far from creating a presumption of marriage, destroys such presumption and fully explains his cohabitation with her, and his whole treatment of her. If Mr. Alex. Fraser, being interrogated seriously on the matter, had answered: "I went to the wilds of the North-West a young man and unmarried, I was surrounded by savages, and I cohabited during all the years I was there with this woman; I had several children by her; I treated her well, and when I left I brought her down here with our children; I provided for them both as well, and better perhaps than I could afford, but I never was married to her," the statement would have readily been accepted as a reasonable, if not entirely

a satisfactory account of the relations existing between him and Angelique Meadows. Morally speaking, it is not satisfactory. Is it one the law will adopt? is a question we shall shortly have to examine.

In the meantime, let us turn to the facts. Those sought to be established are the marriage absolutely, or the *possession d'état* from which a marriage may be presumed. It is not disputed that the characteristics which determine the *possession d'état* are name, treatment and repute. There is no evidence of the custom as respects marriage in the tribe to which Angelique Meadows belonged, or indeed any evidence of a marriage at all, except in the alleged declarations or admissions of Fraser himself and of the Indian woman. Fraser's admissions are sought to be proved by nine witnesses. Two of them, Benjamin Michaud and George April, relate stories that Fraser told them as to his marriage; but the stories are totally dissimilar. He was evidently telling these people travellers' tales, which should, to a certain extent, justify his *liaison* with this woman. There was nothing serious in what he said. The respondent also brought up one Paul Morin to tell a story of a conversation with a *commis*, whose name is not given. This does not appear to me to be evidence; but, if the respondent relies upon it at all, it contradicts both the story of Michaud and that of April. Again, we have the statement of a grandchild of this connection, Ignace Beaulieu, who relates that his grandmother told him that she was not like Pauline, but that she was married to Fraser. "C'est les bourgeois qui nous ont mariés," etc. The other testimony on the point is that Fraser called her his wife: *sa sauvagesse, la bonne femme, la grande-mère*, and one witness says he called her "*sa dame*" by way of distinction. In the absence of *possession d'état* does this establish a marriage? We might perhaps be willing to admit that there might be a binding contract by the consent of the parties, where no religious ceremony is practicable, although I very much doubt this, in any country in which the rules of the Council of Trent took effect. Of course, those rules prevail here; for no different law being pleaded, we must presume that our law exists in the North-