

Connolly
vs.
Woolrich and
Johnson et al.

cording to the customs of the Cree nation; that there is no contract, verbal or written, proved; no solemnization of any marriage established; that the connection of the plaintiff's parents was fugitive, temporary, dissolvable at pleasure, and had none of the legal or religious characteristics of marriage; that polygamy is one of the incidents or privileges of barbarian life, and that a law in regard to marriage which sanctions such an anti-Christian usage, cannot be regarded as a foreign law deserving of recognition by this Court; that no presumption of a marriage can result from the connection of the plaintiff's parents because it was broken off by Connolly and was not persisted in till his death: and this argument is urged with double force in this case, as it is proved that by the Indian law marriage was dissolvable at the will of either party; that the *status* of husband and wife between Connolly and Julia Woolrich is undoubted, is beyond all question, by a marriage of 30 years; that Susanne and the plaintiff, her child, acquiesced in this marriage, and that by general repute, and by his baptismal certificate, it is shown that his *status* was that of illegitimacy; that before he could bring this action he should have established a *status* of legitimacy; that the marriage with Julia Woolrich was solemnized according to law, that it is and was legal, and must be so considered till the contrary is judicially declared; that this marriage is an effectual bar to the plaintiff's pretensions, and finally, that there is not and cannot be by law any community of property resulting from this Indian marriage, evidently not to be regarded as valid by this Court; and if legal, that none exists by the law of England, which prevailed at Rat River in 1803. There is also another difficulty of a technical character. It was urged that this action should have been brought by all the children issue of Connolly's first marriage, and could not be instituted by the plaintiff alone.

These are succinctly the chief grounds taken by the defendant; they will be more fully explained hereafter.

Proceeding now to a more minute and lengthened examination of this case, the first question to be disposed of, is whether the law of England in regard to marriage prevailed at *Rivières-aux-Rats* in 1803, or whether the law of France or of her contiguous colonies, or the Canon law, or the decrees of the Council of Trent, were in force; or finally, whether the Indian customs and usages constitute the only rule by which this Court can be guided in determining the validity of this marriage between Connolly and the Cree maiden.

Mr. Justice Aylwin and Mr. Justice Johnson have been examined in this cause as witnesses. The former gentlemen, produced by the defendant says: "At the time of the birth of the plaintiff at Rat River, in 1803, the English law prevailed in the Hudson Bay territory, and has done so ever since—that is to say, it has prevailed since the Patent of King Charles, which regulated that country."

Judge Johnson, witness for plaintiff, in cross-examination, says: "The laws which prevailed throughout the Hudson Bay territories are the laws of England, with such modifications as have been made by the local Councils having authority under the Charter to pass such laws. The English common law was introduced into the country at the date of the granting of the Charter to the company by King Charles."