

choses:—1. *Le mauvais commerce qui a précédé le mariage.* 2. *Que la personne était in extremis lorsque le mariage a été contracté. Le mariage est censé contracté in extremis lorsque la personne était au lit, malade d'une maladie qui avait un trait prochain à la mort, quoiqu'elle ne soit morte que quelques mois après.*" Several cases appear to have been decided upon this *Ordonnance*, the effect of which is well expressed in Merlin's "*Répertoire*," verbo "*Mariage*," sect. 19, par. 1, No. 3, p. 47, vol. VIII. in quarto:—" *Le véritable, l'unique cas d'appliquer l'Ordonnance est lorsqu'un homme se marie dans un temps où il se sent frappé de mort, ou la violence du mal et l'impuissance des remèdes lui fait sentir que la vie est prête à lui échapper.*" It seems from this commentary upon the law, that the patient must himself feel that he is dying, or that the violence of the disease, and the inefficacy of all remedies, impress him with the belief that life is about to depart. There is nothing in the evidence to show that Mr. Scott thought he was a dying man. Neither Dr. Jamieson nor Mademoiselle Paquet thought so—at least, until after the day of the marriage. Dr. Jamieson himself says:—"From the beginning of his disease, I expected that he would recover from his disease." "On the first, second, and third day, I did not look upon the disease as a decidedly mortal one."—"I never conveyed to Scott the idea that he was or might be in danger." And in another part of his deposition he says: "On the morning of the 17th, the defendant, Miss Paquet, inquired of me as to the state of the late Mr. Scott. I informed her that he was in a dangerous condition, and she appeared surprised that the disease was at all connected with danger." Besides, this law is in restraint of natural liberty, and it must, therefore, be clear, beyond doubt, that it is applicable to the particular case, before a Court of Justice can hold it to be of force and effect to avoid a marriage.

The great question in the case, however, is, whether Mr. Scott was in a state of mind, memory, and understanding, to enable him lawfully to contract marriage. On the one

hand, we have the evidence of Dr. Jamieson who visited him first on the afternoon of the 15th of December, and found him suffering under erysipelatous inflammation in the face, arising, as it appears, from his having come in contact with a heated stove while dozing or sleeping in a chair. Strong aperients were administered, and at a late period of the afternoon, the Doctor concluded that *delirium tremens* was approaching. At this time he quitted the house in which he resided with his sister, and proceeded to the house of the respondent, Paquet, showing signs of great excitement and irritability, with delusions, as he went along. At a later hour he was again visited by the Doctor, who remained with him during the greater part of the night; saw him again the next morning, and left him about two in the afternoon, when, as he says, he was labouring under *delirium tremens*, developing itself by mental hallucinations. He then again left him in the house of the respondent for some hours, and returned in the evening; and from this time until the morning of the 18th, it is asserted he was wholly incapacitated by this disease from doing any act whatever requiring the exercise of his faculties; and in the night of that day, the 18th, he died. If Dr. Jamieson be correct as to the existence of *delirium tremens*, and the consequent incapacity of Mr. Scott, although he does not expressly declare that it was impossible he should have been competent to exercise his faculties in a rational manner, either on the afternoon of the 15th, or during an hour or more on the 16th, it is certainly to be inferred from the whole of his evidence, taken together, that no such intervals of capacity could have existed, and that it was only during the time necessary to answer one or two questions, or some other very short period of tranquillity, that he can be said to have been capable of exercising his reason and understanding.

On the other hand, we have the testimony of at least three witnesses of unimpeached character, and having no interest whatever in the perpetration of a fraud, or in the misrepresentation or suppression