

The facts relating to the marriage in question are involved in no little obscurity. It appears that Sir Richard lived with Mary McAdam, and that she bore him three children. He recognized her as his wife, and by a will written in 1772 made her and the children his heirs. There appears to have been no formal marriage until shortly before his death, in 1772, when it is claimed the ceremony was performed by the rector of Trinity Church. But as the records of the church were destroyed by fire, there is no documentary evidence of the marriage.

Assuming that he took her as his wife by verbal agreement, that they lived together and recognized one another as husband and wife, the question is whether this, without any formal ceremony in the presence of minister or magistrate, constitutes a valid marriage by the laws of New York in force at that time. That it would constitute a legal marriage by the law as construed at the present time is clear. It is now settled in this State that a man and a woman may contract a valid marriage without any ceremony and without the presence of minister, magistrate or witness, "merely by words of present contract between themselves," and by living together in the married relation. The law on this point was thus laid down by the Court of Appeals in a recent opinion:—

"By the law of this State a man and a woman who are competent to marry each other, without going before a minister or magistrate, without the presence of any person as a witness, with no previous public notice given, with no form or ceremony, civil or religious, and with no record or written evidence of the act kept, and merely by words of present contract between them, may take upon themselves the relations of husband and wife, and be bound to themselves, to the State and society as such; and if after that the marriage is denied, proof of actual cohabitation as husband and wife, acknowledgment and recognition of each other to friends and acquaintances and the public as such, and the general reputation thereof, will enable a court to presume that there was in the beginning an actual and *bona fide* marriage."

This is the interpretation that the highest

court of the State now gives not to the statutory but to the common law. The common law prevailed in New York prior to the Revolution. Whether on this point it was then governed by statute, whether the common law of that time is the same as that of to-day, is the question the House of Lords has to decide in the Lauderdale peerage case. On the unexpected claimant rests the burden of proving the invalidity of a marriage which for more than a century has been regarded as valid."—*New York Herald*.

#### GARON & LAMONTAGNE.

In the case of *Garon & Lamontagne* decided at Quebec during the May Term of the Court of Queen's Bench, Mr. Justice Ramsay delivered the following opinion, which differed in some respects from that of the majority of the Court. The points of difference are noticed in the opinion itself.

RAMSAY, J. This is a very unfortunate piece of litigation. Respondent obtained a franchise for a toll-bridge in the District of Beauce. Within the limits of this franchise some of his neighbours built a bridge. Respondent sued several persons for the penalty for using this bridge. They hurried off to Quebec, it seems, for we have little information on this point of record, and obtained in Chambers a judge's fiat for writs of prohibition against the magistrates. It does not appear that respondent was notified of this proceeding; but when it came to his knowledge that these writs had issued, he instituted proceedings against a number of other persons who, he contended, had violated his privilege.

Again the defendants betook themselves to a judge in Chambers in Quebec, without any kind of notice to respondent, and on the 17th July obtained the following order:—

"Vu la requête ci-dessus et l'affidavit, il est ordonné et enjoint au dit Joseph Morin, juge de paix, dans et pour le district de Beauce, et à tous autres juges de paix, de suspendre et arrêter toutes procédures en vertu des sommations mentionnées en la dite requête, émanées à la poursuite du dit David Lamontagne, contre les requérants mentionnés en la dite requête, en date du 8 juillet courant et rapportables le 18 juillet