The Legal News.

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Kentucky has had a curious will case. A person by the name of Likefield seems to have been under the impression that if he died at all he would die away from home, and he made his will in these terms: "If any accident should happen to me that I die from home, my wife shall have everything I possess." He lived for many years and finally did not die "from home." But he had preserved the old will and read it within a year of his decease. The Court of Appeals, (*Likefield* v. *Likefield*) holds that the testator's dying away from home was not a condition precedent, and that the wife was entitled to the estate under the will. There were some adjudged cases which seemed to point to a different conclusion. Thus in *Parsons* v. *Lanoe*, 1 Ves. Sr., 190, the words "If I die before my return from my journey to Ireland," were held to constitute a contingent will, and an inoperative one because the maker returned home. "In case I die before I join my beloved wife," shared a like fate in *Sinclair* v. *Hone*, 6 Ves. Jr. 607. The Kentucky Court say: "The will in this instance fixes no limit or time, as during a particular journey, or for a particular length of time. It refers to no particular expected calamity, and the words are general in their character. It is shown that the testator carefully preserved the paper, and that he examined it the year prior to his death."

Of the case of a cabman receiving a sovereign for a shilling, and keeping it (noticed on pp. 105, 122 of this volume), the *St. James' Gazette* says: "If a sovereign is given to a cabman by his fare, both parties believing it to be a shilling, and an hour later the cabman discovers the mistake and keeps the sovereign, has he stolen it? The argument of this question before the Court for Crown Cases Reserved last week afforded excellent entertainment to a professional audience. The difficulty is, that to 'take and carry away *animo furandi*' is an essential part of the common-law definition of larceny, and that in this case the cabman did not form a felonious intention about the sovereign when he took it and carried it away, because he then believed it to be a shilling. On behalf of the Crown it was argued that either he took it when he knew it was a sovereign, or the felonious intention which he subsequently formed relates back to the time when he took it. Before the argument had gone far it was apparent that the five judges who were hearing the case were not agreed, and while Lord Coleridge had no doubt that the sovereign was stolen, Mr. Justice Stephen was equally positive that it was not. Mr. Justice Cave further complicated matters by throwing out a suggestion that the cabman might have committed the statutory offence called larceny by a bailee. In the result the Lord Chief Justice announced that the Bench was so seriously divided in opinion that there must be a further argument before the full court—that is the whole Queen's Bench Division; so that the frequenters of the law courts will again be gratified by the most impressive legal spectacle left to us in these prosaic days, that of twelve or fourteen judges all sitting together to decide a question of criminal law."

At a late dinner of the Boston Bar, Judge Oliver Wendell Holmes (son of the Professor) grew enthusiastic over the work and scope of the profession. "The court and the bar," he said, "are too old acquaintances to speak much to each other of themselves or of their mutual relations. I hope I may say we are too old friends to need to do it. If you did not believe it already, it would be useless for me to affirm that in the judges' half of our common work the will at least is not wanting to do every duty of their noble office; that every interest, every faculty, every energy, almost every waking hour is filled with their work; that they give their lives to it, more than which they cannot do. But if not of the bench, shall I speak of the bar? Shall I ask what a court would be, unaided? The law is made by the bar, even more than by the bench; yet do I need to speak of the learning and varied gifts that have given the bar of this State a reputation throughout the

whole domain of the common law? I think I need not—nor of its high and scrupulous honor. The world has its fling at lawyers sometimes, but its very denial is an admission. It feels what I believe to be the truth, that of all secular professions this has the highest standards."

"And what a profession it is!" he continued. "No doubt every thing is interesting when it is understood and seen in its connection with the rest of things. Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life —so share its passions, its battles, its despair, its triumphs—both as witness and actor? But that is not all. What a subject is this in which we are united! This abstraction called the Law, wherein as in a magic mirror we see reflected, not only our own lives, but the lives of all men that have been. When I think on this majestic theme my eyes dazzle. If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be wooed with sustained and lonely passion—only to be won by straining all the faculties by which man is likest to a god. Those who, having begun the suit, turn away uncharmed, do so either because they have not been vouchsafed the sight of her divine figure, or because they have not the heart for so great a struggle. To the lover of the law, how small a thing seem the novelist's tales of the loves and fates of Daphnis and Chloe. How pale a phantom even the Circe of poetry transforming mankind with intoxicating dreams of fiery aether and the foam of summer seas and glowing greensward, and the white arms of women! For him no less a history will suffice than that of the moral life of his race. For him every text that he deciphers, every doubt that he resolves, adds a new feature to the unfolding panorama of man's destiny upon this earth. Nor will his task be done until, by the furthest stretch of human imagination, he has seen as with his eyes the birth and growth of society, and by the furthest stretch of reason he has understood the philosophy of its being."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, May 8, 1885.

Before DORION, C.J., MONK, RAMSAY, CROSS, and BABY, JJ.

FRASER (plff. contesting in court below), appellant, and JONES (opposant below), respondent.

Legacy—Sale of object bequeathed—Marriage in North West Territory

1. *The sale of the object bequeathed under pressure of urgent necessity did not, prior to the Code, imply an intention to revoke the legacy.*
2. *Evidence of long cohabitation of a white man and an Indian woman in the North West Territory, the woman never having received the title of wife, will not establish a valid marriage.*

Connolly v. Woolrich (11 *L. C. J.* 197) *distinguished.*

RAMSAY, J. The appellant brought an action against the curator to the vacant estate of the late Alex. Fraser to render an account to appellant, a special legatee under the will of Alex. Fraser, of the sum of £9,600, being the balance of the price of sale of two seigniories, Temiscouata and Madawaska, portions of which had been bequeathed to appellant, but had been subsequently sold by the testator. The respondent, Jones, was made a party to this suit, and he specially pleaded, that he was the legitimate son of Marguerite Fraser, who was the legitimate daughter of the late Alex. Fraser and Angelique Meadows, an Indian woman to whom Fraser had been married according to the Indian custom in the North-west Territory; that the legacy to appellant was revoked by the sale of the seigniories, and that in right of his mother he, the respondent, was entitled to one half of the balance of the price of sale.

On these issues the parties were heard before Chief Justice Meredith, who dismissed the exception on the ground that under the law of Canada as it stood when Alex. Fraser's will was made, and at the time of his death,—and indeed until the alteration of the law by the Civil Code, the sale of the object bequeathed was only a presumption that the testator had changed his intention, which

presumption might be and has been rebutted. The judgment, therefore, ordered Pouliot to account, and he deposited in Court $50,015.07. A project of distribution was then made collocating Fraser. To this respondent filed an opposition, setting up the same grounds as he had raised by his defence to the action, with the further allegation that by the Indian marriage, A. Fraser being a domiciled Lower Canadian, community of property was established by law between him and Angelique Meadows, and that therefore Jones had a right through his mother, to one-fourth, that is one-half of Angelique Meadows' share of the community.

There is also another question to which it is unnecessary for the moment to refer.

This contestation, so far as explained, was met by several counter pretensions. It was said that the whole matter had been litigated between the parties, that a judgment had been rendered against the opposant from which no appeal had been taken, and that there was *chose jugée* between them on the whole contestation. It was further contended, as before, that the bequest was not revoked, that there had been no marriage between Alex. Fraser and the Indian woman, and that if there had been such a marriage it could not give rise to community.

We have therefore to inquire, (1) whether under the circumstances, the sale of the object bequeathed, by the law of Canada prior to the Civil Code, implied the intention to revoke the legacy. (2) Whether there was a valid marriage between Alexander Fraser and Angelique Meadows. (3) Whether, admitting there was a marriage, it gave rise to community of property between them. (4) Whether all or any of these questions could be again argued by respondent against appellant.

I shall take the last of these questions first. Our law is expressed in general terms in Art. 1241, C. C. It would have avoided perplexity if the article had not been drawn with a view to originality. It differs from the article 1351, C. N., and also from Pothier's analysis, Ob. No. 888. As it appears to be the old law the legislature intended to embody, I shall take Pothier's version as the expression of that intention. We have first the principle, that to invoke successfully *res judicata* the new demand must have the same object as the former demand, of which the defendant has been absolved. The constituents of this requirement are three in number: 1. The same thing. 2. The same cause of action. 3. And the same qualities both of plaintiff and defendant. If any one of these three things is lacking, there is no *res judicata*. In the case before us do they all exist? With regard to the first question it seems to me that the decision of Chief Justice Meredith, from which there has been no appeal, is final, so far as it goes. It was contended that it was not a final, but an interlocutory judgment, because it was not absolutely the last judgment to be rendered in the case. This, however, is not the real distinction between final and interlocutory judgments. To avoid repeated and unnecessary appeals, judgments final by their nature are considered as interlocutory, although they are improperly so called; but no judgment on the merits, on which there has been a full hearing is interlocutory in the sense that it can be modified by the Court later. The difference between a final judgment and an interlocutory is that the former is a sentence determining the right, whereas the latter only prepares the way for its determination; 2 Cujas, 491 D. The latter can be altered, not the former, and so it has always been held, that a judgment deferring the oath cannot be altered, while a simple ruling at enquête can be altered. Toullier X, 116, 7. I think that the judgment of the Superior Court was a sentence, and therefore that the Superior Court had no authority to hear the question anew on the opposition.

Chief Justice Meredith, however, did not adjudicate on the second point, because, as it stood, it was of no importance whether Alex. Fraser and Angelique Meadows were married or not. Not having adjudicated on the point, in fact the issue not being fully before the Court, I don't think it possible to hold that there is any *res judicata* as to the question of legitimacy and the effect of the Indian marriage, if it took place.

But if I had to decide upon the merits of the first point, I concur in the able argument of the learned Chief Justice in the Court below so fully, that I should have only one

remark to add to what he has said. It seems to me that the institutes state the abstract principle of the old law precisely. It is this, the intention of the testator in disposing of the thing bequeathed is to be gathered from all the circumstances, and the digest gives as an instance, not exclusively, a sale by urgent necessity.

It does not follow that this necessity was necessarily starvation or personal discomfort and distress. In a sense Fraser was a rich man; but a large part of his property was unprofitable, and likely to remain so for years, and he was hampered by his debts. Unexpectedly this property rose immensely in value, and he was offered a great price for it which would clear him of all embarrassment, and he sold. That is to say, he sold owing to a change of circumstances, which did not in the least affect any motive he had in making his will. The will shows a careful provision for all his children, all of whom he evidently believed to be illegitimate. He was himself illegitimate, and he had no heirs but the Crown. Is it to be presumed that he intended to make the Crown the heir of this windfall? I think not, and I attach great weight to the presumption arising from his having disposed of all his property by his will, and from his knowing that what he did not bequeath would go to the Crown, that he did not intend to alter his will as regards these seigniories.

As to the condition of financial distress in which Alexander Fraser was before the sale of the seigniories, it is hardly necessary to go very minutely into the examination of the accounts he owed, for on the 2nd April, 1862, the respondent, his brother and sister found it their interest to address a petition to the Governor-General relative to this succession of their father, and very particularly referring to the £9,600 in question, and they distinctly enunciate the fact that "le dit Alex. Fraser avait des dettes considérables, et était même considéré comme pauvre"; and they then go on to say that, by the sale of the seigniories of Temiscouata and Madawaska for £15,000, "il put ainsi libérer ses seigneuries de la Rivière du Loup, Villeraie, Terrebois et LeParc d'une partie des dettes dont elles étaient grevées." This was intended to convey to the Governor-General the idea of a sale under the pressure of urgent necessity, and it appears the representation was effectual. The Solicitor-General for Lower Canada gave an opinion in which he says: "1st, that the sale by the said Alex. Fraser, took place under circumstances of urgent necessity, that is to say, at a moment when he was greatly involved in debt, and that as there appears no indication of the intention of the testator to revoke the bequest made of the property so sold, the legacy has not lapsed, but remains in full force and virtue, and that consequently the £9,600 cannot be claimed by the Crown." The committee concurred in this opinion and advised that the same be approved and acted on. Having thus obtained the abandonment of the claim by the Crown, on the ground that the legacy had not lapsed, the sale having been made under the pressure of urgent necessity, the repeated attempt to have the legacy declared void, on the ground that the sale of the seigniories was without necessity, and that Fraser was, at the time, a rich and an unembarrassed man, looks a little audacious. We have also Alex. Fraser's own declaration that the payment of his debts with part of the money coming from the sale was "a great relief" to him. (Letter, 3rd Sept., 1835.)

We next come to the question of the alleged marriage, which becomes of importance, as the respondent claims one-fourth as heir of his mother. I take it, this is a question principally of fact. There appears to be no serious difference of opinion between the parties as to any proposition of law, save one. Respondent does not contend that the burthen of proof is not on him; but he argued that it was not necessary to produce a register of marriage, that the absence of any such register being established, the marriage could be proved by witnesses, and that it was sufficient, to establish a marriage, to show possession of the *status*—that is, that the wife bore the name of the husband, that he treated her as his wife, educating and bringing up the issue as his lawful offspring, and repute. It was also contended that the declarations of the man and woman are evidence of the marriage, or, at all events, of these facts.

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 soleat 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 pretention 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-

west. Now our law is composed of the public law of England, and the municipal law of France; and the public law of England and France in these matters being almost identical, it is unimportant to inquire whether this is to be governed by public or by municipal law. If we were to presume that any other law than that of this Province existed in the North-west, we should be obliged to say it was that of England, which no more than ours recognizes a natural marriage. If, however, we were to give the fullest effect to consent, as being the one thing essential to marriage, for that is really the doctrine relied on, to what must the consent extend? Certainly to something more than co-habitation. Although evidence of co-habitation may go to establish status, it is not marriage.

The marriage, which the law recognises as binding, is a bond indissoluble at the will of the parties. "*Non est in conjugum potestate dissolvere matrimonium.*" Men. Ib., No. 10. Some allusion has been made to the law of Scotland, and the well-known case of *McAdam & Walker* was referred to. That was a very striking case. McAdam formally before his servants, called into a room for the purpose of being witnesses, declared his marriage with Walker, who ratified it. He went into the next room and blew out his brains. This was held to be a valid marriage by the law of Scotland, which rejects the rules of the Council of Trent.

In the case before us it seems to me there is no evidence of any such contract. Much has been said of the local custom, but there is not a word of evidence as to what that custom was. Nor am I prepared to accept the proposition that the co-habitation of a civilized man and a savage woman, even for a long period of time, gives rise to the presumption that they had consented to be married in our sense of marriage. "*Requiritur secundo quod vir et mulier pares sint.*"

This brings us to the presumptions arising from Fraser's conduct when he left the wild north-western territory and returned to Lower Canada. Did he give Angelique Meadows his name, did he treat her as his wife, had she the reputation of being his wife? We are told by respondent's witnesses that Fraser, the Indian woman and the half-breed family came down together, and also that Fraser came down and that they followed. Respondent, by his factum, seems to give credit to the latter story; p. 1, l. 12. We are also told by several of respondent's witnesses that, after they arrived at Rivière du Loup, Fraser and Angelique Meadows did not live in the same house, and that they never lived together there. Towards the close of respondent's *enquête*, a witness, Cyprien Guichard, is produced, who tells us "cette dame de Monsieur Alexandre Fraser restait avec lui dans la grande maison bleue sur la côte; je ne l'ai pas vue ailleurs que là." And he adds: "Personne ne savait si Monsieur Alexandre Fraser était marié." * * * Il était marié, après le dicton du monde, il était marié, pas comme on se marie, nous autres," etc. Giving the fullest weight to this testimony, the witness, when twelve years old, had been four or five times to Fraser's house in the early years of his stay at Rivière du Loup and saw the Indian woman there. He never was there after. Now, however these facts may be, it is perfectly certain that shortly after the arrival of the Indian family at Rivière du Loup, a separate house was built for her and her family, and they always afterwards lived apart from Fraser. It is true he provided for all their material wants, he constantly sent them food and he educated the children, but no writer pretends that treatment of that sort indicates *possession d'état*, by the woman, as wife. "*Requiritur quod vir ipse pertractet mulierem honorifice, eo scilicet modo, quo uxores pertractari, et haberi solent.*" "*Requiritur ut habitatio sit in una eadem que domo: non autem sufficeret, quod vir habitaret in solita sua domo, utputa in paterna, et mulier in domo conductitia.*" "*Requiritur ut ii ita cohabitantes, coram testibus declarent, se cohabitare tanquam conjuges.*" (Men. Ib. Nos. 74, 75, 76.)

The respondent has totally failed to prove that the Indian woman bore Fraser's name. To her face she was called "Madam Fraser," but generally "la sauvagesse" or "la sauvagesse à Mons. Fraser," was the appellation she received. Fraser himself never called her Mme. Fraser; and in no document does he give her his name. In the will in question he gives her an annuity as "Angelique Mea-

dows." In the registry of baptism, the name given to the mother is her maiden name. It is said that this is all the law requires, and that the officiating clergyman has no right to insert anything he is not obliged to insert. It certainly would not have been a trespass had he given to the wife her husband's name, which he did not do, because it was not given to him, we must presume. This, then, is a very solemn occasion on which F. refused this woman his name.

As to repute, common report, rumour or fame, call it which you will, there is a great distinction to be made. Rumour or fame may be words spread abroad without any authority, owing its origin to malice, and its acceptance to credulity; or, it may be, a common opinion made known by words, and arising out of some grounded suspicion or indication. Now it appears to me that it is impossible to read the deposition of the witnesses produced by respondent without being struck with its artificial and unauthoritative character. It is based upon no indication but that Fraser and Angelique Meadows had lived together and had children, and the hearsay marriage, according to the unproved Indian custom. In other words, the witnesses begged the whole question. Here, then, are people who avowedly know nothing of the marriage, and who saw no conclusive signs of the existence of a marriage, seeking to impose their idle and irrelevant gossip on the court under the guise of evidence. This is the rumour which the jurisconsults call, "*falsus sermo*," "*et qui certum nuntium atque auctorem non habet.*"

By the testimony produced by the respondent, opposant in the Court below, it appears to me that there is no evidence of the three characteristics of *possession d'état* now insisted upon by him. Leaving aside, for the moment, the question of prescription, let us add to what precedes the fact, that the respondent has allowed the intermediate generation almost to pass away, before he comes to claim as a novelty, in right of his mother, this *status* which, if the testimony of his witnesses means anything at all, she always enjoyed. It seems incredible that anyone could believe such a pretention.

But now let us turn to the evidence adduced by the appellant. The general repute of the illegitimacy of all Fraser's children, and that he never was married at all, is attested by Henry Davidson, Telesphore Michaud and Xavier Laforest, in quite as positive a manner as any of the witnesses who have testified to the marriage, and it is supported by indications which it is not easy to explain away. We have seen Fraser never called Angelique Mme. Fraser to anybody that can be produced; that he did not give her his name before the Presbyterian minister at Quebec in 1801. Before her death she had become a Roman Catholic, and she was buried at St. Patrice, where a regular register was kept, and no one thought of saying the deceased was the wife of Fraser. She is described as "Angelique, sauvage, native des pays du Nord-Ouest." To pretend that this was the certificate of burial of the Seignior's recognized wife is to presume on unbounded credulity.

Fraser died in 1837. The difficulty as to the will, owing to the sale of the seigniories, was perfectly known. The opinion of counsel was taken, and on his opinion a *partage* was agreed upon without any one dreaming of contending that Angélique Sauvage, native des pays du Nord-Ouest," was the legitimate wife of the testator. But respondent says he is not bound by this *partage*, to which he was not a party. That may be, but that is not the question for the moment. Whether it binds the respondent or not, it is at all events an act of all the persons who could act, and it assumes as incontrovertible that Fraser was never married. As to the pretention that respondent never acquiesced in this, it is not exact. Over and over again, he took money under this arrangement and gave receipts. Of course this may be error, and he may be relieved from it; but that is not what he seeks. If he has acquiesced in this *partage*, he should have it set aside. He has no right to hold to the bad title and get another incompatible with it.

But did he make a mistake about the share falling to him? On the 2nd April, 1862, the respondent, his mother and sister, made the petition to the Governor-General, already mentioned, praying him to renounce, on the part of the Crown, to any pretention that the alienation of the seigniories annulled the

legacies. In that document the petitioners thought it necessary to set up what they then, having arrived at majority, considered was their *status* and that of their grandmother, and they allege:

"Que pendant son séjour dans le Territoire du Nord-Ouest il contracta *alliance, suivant les usages de ce pays, et vécut maritalement avec une femme de ce pays,* nommée Angélique Meadows, de laquelle il eut cinq enfants savoir; Angélique, plus tard la femme de Sieur Ignace Beaulieu, Alexandre, Marguerite, mère de vos petitionaires, John et Mary qu'il amena avec lui, ainsi que leur mère à la Rivière du Loup, en Canada."

"Que la dite Angélique Meadows, ayant, à son arrivée en Canada, été instruite des vérités et de la doctrine de la religion Chrétienne et *des lois du pays,* cessa de vivre avec le dit feu Alexandre Fraser, et se sépara de lui."

"Que le dit feu Alexandre Fraser vécut alors avec une autre personne, de laquelle il eut plusieurs *autres enfants naturels,* dont cinq sont encore vivants."

* * * * * * *

"Que le dit feu Alexandre Fraser ne s'est jamais marié."

"Que lors de son décès, le dit Alexandre Fraser n'avait, soit dans ce pays ou ailleurs, aucun héritier ou représentants légaux."

In the absence of any evidence of marriage, this is decisive. It is an unqualified admission, and it is a subject about which the respondent could not be in error.

If conversations of fifty years ago were to be relied upon (they are the whole of respondent's evidence), it would seem that Angélique had a husband according to some custom when, it is pretended, she married Fraser.

Commentary is useless. I do not think it necessary to examine the question of prescription. The law is laid down in Art. 236, C. C. It has been contended that this article does not express the old law, and that respondent was not seeking to regain his *status,* but to take advantage of it; that this could not be prescribed, and that his title was the certificate of baptism. It seems to me that these interesting speculations can only arise on facts very different from those submitted for our consideration.

Great importance has been attached to the case of *Connolly* and *Woolrych.* That case seems to me to be very easily distinguished from this one. The judge found, as a fact, that there was a marriage, there was cohabitation for a considerable period of time in Lower Canada, and there was a formal declaration by the deceased Connolly that he was married to the Indian woman, made to the priest who baptised his children. It is sufficient to say this to explain the opinion at which I have arrived in the case before us, without any special reference to that case; and although I have read the report of it with great care, I do not feel called upon to express either approbation or the reverse of the long and able opinion of the learned judge who delivered the judgment in the Superior Court.

The remaining question is as to the distribution to the legatees under the will. Respondent claims on the whole $60,000, and he contends further, that, in so far as he represents his mother, he is not liable for the debts of the testator; or, in other words, that his share of the sold seigniories should be represented by so much of the price of sale, and not of the balance. I have only to say that I entirely concur with the learned Chief Justice on this point.

Judgment reversed, Monk, J., *diss.*

Larue, Angers & Casgrain, for appellant.

Geo. Irvine, Q.C., counsel.

Tessier & Pouliot, for respondent.

GENERAL NOTES.

The Supreme Court of the United States, from October, 1884, to May 4, 1885, delivered 272 opinions. Number of cases affirmed 199; reversed 97; dismissed 39. Number of cases remaining undisposed of 861.

Life Insurance is the great American fraud; and the only difference between the two systems—the regular and the co-operative—is the difference between two frauds. In both of them a fool trusts his cash to a man of whom he knows nothing, without security.—*Central Law Journal.*

The *Law Times* (London) criticizes the use of the phrase "pass upon," in the sense of decide or adjudge, and calls it an "unpleasant American phrase." On which the *Albany Law Journal* observes: "And yet it is used by Shakespeare and Jeremy Taylor, and we venture to say never until now has been condemned except by some philological pedant."