

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Scott v. Paquet and others, from Lower Canada; delivered 10th July, 1867.

PRESENT

At the First Argument :

LORD KINGSDOWN.
JUDGE OF THE ADMIRALTY.
LORD CHIEF BARON POLLOCK.
MASTER OF THE ROLLS.

PRESENT

At the Second Argument :

SIR JOHN COLERIDGE.
SIR JAMES W. COLVILLE.
SIR EDWARD VAUGHAN WILLIAMS.
LORD CHIEF BARON KELLY.
SIR RICHARD T. KINDERSLEY.

THIS is an Appeal from a Judgment by the Court of Queen's Bench for Lower Canada affirming a decision of the Superior Court of that Province in an action brought by the Appellant against the Respondents, and in which the question to be determined was whether a marriage between William Henry Scott, Esq., deceased, and the Respondent, Marie Marguerite Maurice Paquet, on the 16th December, 1851, was valid or void.

Several questions were raised (but disposed of during the argument) upon the alleged non-compliance with the formalities essential to the validity of a marriage by the law of France, which prevails in Lower Canada. The objections to the marriage

upon these grounds (which appeared when duly considered to be unsupported by the authorities) were abandoned by the Counsel for the Appellant. Two questions alone remain: The first, whether this marriage was contracted while Mr. Scott was "à l'extrémité de la vie," within the meaning of the 6th Article of the Ordinance of 1639; the second is, whether, at the time when the marriage was so contracted, Mr. Scott was of sound mind and in possession of his faculties.

Both these questions have been decided in favour of the Respondents, unanimously by the three Judges of the Superior Court, and by three Judges out of four of the Court of Queen's Bench in Lower Canada. And we think that this Court ought not, unless there be manifest error in the Judgments under appeal, to overrule these decisions, so pronounced, in the country in which the law of France, by which the first question must be determined, prevails, and must be known and continually acted upon by Courts of Law; and in which also the witnesses on both sides reside, and may have been more or less known to or seen, when under examination, by the Judges or some of them, who likewise are familiar with the usages and customs of the place in which all the circumstances which formed the subject of the evidence occurred.

The language of the Ordinance is this:—

"Voulons que la même peine (de la privation des successions) ait lieu contre les enfants qui sont nés de femmes que les pères ont entretenues, et qu'ils épousent lorsqu'ils sont à l'extrémité de la vie."

Pothier (No. 430) says: "Il faut que ceux qui attaquent ces mariages prouvent deux 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 Ordinance, the effect of which is well expressed in Merlin's "Répertoire," *verbo* Mariage, sec. 19, par. 1, No. 3, p. 47, vol. viii, in quarto:—

"Le véritable, l'unique cas d'appliquer l'Ordon-

nance est lorsqu'un homme se marie dans un tems 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 December, and found him suffering under erysipelalous 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 later 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 excite-

ment 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 2 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 of the truth, who depose to a series of acts done by the deceased, which, if truly narrated and described, prove incontestably that Mr. Scott was during the space of an hour and more, within which the marriage was solemnized and the marriage contract prepared under his instructions and executed by himself, in a perfect state of capacity, memory, and intelligence. We may pass by the communication between Ancey, the Roman Catholic priest, and Mr. Scott on the afternoon of the 15th, merely observing that the deceased upon this occasion expressed himself rationally while informing the priest of his having had an altercation with his

sister, that he was desirous that he should marry him to Mademoiselle Paquet, that he had sent to him for that purpose, and when told that a dispensation was necessary, he desired that the Bishop should be written to immediately in order that it might be obtained. The following day, the 16th, upon the arrival of the dispensation, the priest proceeded again to the house of Mr. Scott, and found him, as he positively and distinctly swears, in perfect possession of his understanding; and here begins a series of acts on the part of the deceased, which, if really done, prove to demonstration a state of perfect mental competence and capacity. He received the priest's explanation of the oath or engagement required, that his wife should be left to the free exercise of her religion, and that the children might be brought up in the Roman Catholic faith; he observed that at a former period (and in this statement he is confirmed by Père Martin) he was about to marry Mademoiselle Paquet, but objected to this engagement on the ground that he was required to pledge himself that the children should be so brought up, and not merely that he would permit them to use their own free will as to their religion; he gave the necessary information as to the names of his relatives and the ages of his children, in order that the usual registration should be made; he took the pen in his hand and wrote the name of one of his parents, because the priest was unable to spell it; he sent for a notary and his clerk; he gave instructions for the marriage contract, informing the notary that his wife was to be required to give up the "communauté de biens," and that in consideration of this renunciation he conferred upon her and her heirs all his immoveable or real estate, which he described as situate in the several parishes of St. Eustace and St. Martin; he gave also to his wife, but in trust only, in equal thirds, for two of his sisters, Anne Scott and Jane Scott, and his daughter by Paquet, Caroline Scott, a large sum of compensation money to which he was entitled by reason of losses sustained in the rebellion of 1837; and, besides disposing of the remainder of his property under this marriage contract, it is sworn upon the evidence of Archambaud, the notary, that upon a suggestion that he should dispose of his property by will, he himself

declared that he had determined to do so by a marriage contract; and the contract was drawn up and executed accordingly. All this, together with the celebration of the marriage itself, is confirmed by the independent testimony of M. Féré, a friend of the deceased residing at St. Eustache. It is impossible, unless these witnesses are guilty of deliberate perjury, that the deceased was at this time otherwise than in perfect possession of his mind, memory, and understanding, and of perfect capacity to contract a lawful marriage. It is true that, during this proceeding, upon a noise being heard from the agitation of the shutters by the wind, he is proved to have cried out, "They are coming, they are coming." If this were, as suggested by the Respondents, an expression uttered under an idea that the intelligence of the result of his election had arrived, it requires no comment. But if it were, as insisted by the Plaintiff, the manifestation of a delusion created by delirium tremens, it appears to have been dispelled, and to have ceased upon his being convinced, a few moments afterwards, that the noise was occasioned by the wind.

We think, therefore, on the whole, that whatever degree of suspicion may naturally arise from the very cogent and circumstantial evidence of Dr. Jamieson, coupled with the testimony of the witnesses who spoke to the wildness and excitement of his demeanour during certain portions of the three days in question, that all this together is insufficient to outweigh the positive and distinct evidence of so many witnesses to the whole scene of the solemnization of the marriage, and the preparation and execution of the marriage contract, or to warrant us in setting aside the united decisions of the Superior Court and the Court of Queen's Bench in Lower Canada, by which the Judgment in favour of the Respondents, and now under appeal, has been pronounced.

Their Lordships will, therefore, humbly report to Her Majesty as their opinion that the Judgments of the Court of Queen's Bench of Lower Canada and of the Superior Court ought to be affirmed, and this Appeal dismissed; but under all the circumstances of the case without costs of this Appeal on either side.
