

4, 1939

In the Privy Council

No. 32 of 1938.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE
PROVINCE OF QUEBEC (APPEAL SIDE)
CANADA

BETWEEN

Dame Diana Meredith et al.,

wife of Marcel Provost, of Cancorneau in the Department of Finistere in the Republic of France; DAME
10 MARGARET M. RAMSAY, wife of Charles Chambers in the City of Toronto, in the Province of Ontario,
Canada; DAME CONSTANCE M. RAMSAY, wife of Jessup Carley of the said City of Toronto;
ALEXANDER M. RAMSAY of the said City of Toronto, Stockbroker; WILLIAM M. RAMSAY, of the
City of Calgary in the Province of Alberta; and DAME ELIZABETH M. RAMSAY, wife of George
Cumpston of the said City of Toronto;

(Plaintiffs in the Superior Court and Appellants in the Court of King's Bench)
APPELLANTS

and

Dame Elizabeth Magdalene Meredith et al.,

20 of the said City of Toronto, widow of the late James David Thorburn in his lifetime also of the said City
of Toronto; DAME CONSTANCE M. R. MEREDITH of the City of Brussels in the Kingdom of Belgium,
widow of the late George Armstrong Peters in his lifetime of the said City of Toronto; MISS MARY
MEREDITH, Spinster, of the City of London in the Province of Ontario; THE ROYAL TRUST COMPANY,
es-qualite, administrator of the Estate of the late EDMUND MEREDITH, JUNIOR, in his lifetime of the
City of London, in the Province of Ontario; JOHN STANLEY MEREDITH of the City of London in the
Province of Ontario, Gentleman, and THOMAS REDMOND MEREDITH of the City of London, in the
Province of Ontario, Gentleman,

(Defendants in the Superior Court and Respondents in the Court of King's Bench)
RESPONDENTS

CASE FOR APPELLANTS

RECORD

1. This is an Appeal from the judgment of the Court of King's Bench
30 for the Province of Quebec (Appeal Side) dated the 28th day of October, 1937,
affirming a judgment rendered by The Honourable Chief Justice Greenshields
in the Superior Court dated the 3rd day of April, 1937, in favour of the
Respondents. p. 67, l. 1.
p. 21, l. 45.
2. The matter came before The Honourable Chief Justice Greenshields
in the Superior Court sitting at Montreal, in the Province of Quebec, under p. 5, l. 38.
the provisions of Article 509 of the Code of Civil Procedure, upon a joint
Factum of the Appellants and Respondents setting out an agreed statement
of facts and a question of law arising therefrom.
3. The late Dame Elspeth Hudson Meredith, the widow of the late
40 Charles Meredith, died on the 24th of June, 1936, and at the time of her death
her estate was of the gross value of about \$2,500,000 which had been derived p. 5, l. 45.
p. 6, l. 1.

approximately as to one-half from the estate of her late father R. B. Angus and as to one-half from the estate of her late husband Charles Meredith. She left as a last Will and Testament a holograph Will dated the 4th of June, 1935, which was duly admitted to Probate on the 29th day of July, 1936, and the question to be decided arises from the residuary clause of the Will which is as follows:—

Exhibit 1.
p. 9A, l. 1.

Exhibit 1 (4).

“The rest of my estate to be divided equally between my brothers and sisters or their immediate heirs, including my sister Edith’s family and between my husband Charles Meredith’s nieces and nephews (immediate heirs).”

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4. No question arises in regard to the half of the residuary estate bequeathed to the brothers and sisters of the testatrix—the sole question in this appeal being in regard to the half of her estate bequeathed to the nieces and nephews of her late husband, Charles Meredith.

p. 7, l. 13.

5. The Appellants are grand-nieces and grand-nephews of the late Charles Meredith, husband of the Testatrix, being children of a nephew and niece of the said Charles Meredith, such nephew and niece having died in the lifetime of the testatrix.

p. 6, l. 39.

6. The Respondents are the nephews and nieces of the said Charles Meredith, who survived the testatrix.

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p. 8, l. 10.

7. The contention of the Appellants is that the words in brackets “immediate heirs” can, under the circumstances, only be held to mean or include the immediate heirs of such of the nephews or nieces of the late Charles Meredith as had died during the lifetime of the testatrix.

p. 8, l. 25.

8. The contention of the Respondents advanced by Counsel on their behalf, is that the words (immediate heirs) are merely descriptive—in other words that they describe those nephews and nieces who would have been his immediate heirs had the late Charles Meredith died intestate, and this view has been accepted by the Courts below.

9. The Appellants have never contended and do not contend on this Appeal that if the words (immediate heirs) had been omitted they would have been entitled to a share in the residuary estate of the testatrix, but they do submit that those words cannot be ignored, and that they are words of extension not of limitation or description.

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p. 14, l. 20.

10. The Honourable Chief Justice Greenshields in the Superior Court denied the interpretation placed upon these words by the Appellants, and accepted the contention of the Respondents, holding that the words (immediate heirs) are merely descriptive, being of opinion that those words had a distinct legal meaning and that they might well be accepted as descriptive of legatees

p. 20, l. 39.

whose names were not mentioned and were not otherwise identified than as being the nephews and nieces of the late Charles Meredith. He says:— p. 20, l. 44.

“One thing is certain, they were nephews and nieces of Charles Meredith; and another thing is equally certain, they were the immediate heirs in law of Charles Meredith had he left an ab intestate succession.”

11. It is submitted The Honourable Chief Justice was in error in the statement of facts above referred to, as he overlooked the fact contained in the admitted statement of facts that Thomas Graves Meredith, a brother of the late Charles Meredith and father of John Stanley Meredith and Thomas Redmond Meredith, two of the Respondents, survived the testatrix and consequently would in an ab intestate succession have been one of the immediate heirs of Charles Meredith to the exclusion of his two sons, above mentioned. p. 6, l. 44.

12. It is submitted the Chief Justice erred in holding that the words “immediate heirs” were sufficiently clear to identify the nephews and nieces of the late Charles Meredith who were entitled to take, as the two sons of Thomas Graves Meredith not falling under the description of “immediate heirs” would be excluded although nephews of the late Charles Meredith.

13. The judgment of the Honourable the Chief Justice in the Superior Court was as follows:—

30 “And it is by this judgment declared, that one-half of the residuary estate of the late Mrs. Elspeth H. Meredith was by her holograph Will divided into six equal parts, which were bequeathed; One part each to the Defendants Mrs. Isabel Magdalene Thorburn, Mrs. Constance M. Peters, Miss Mary Meredith, John Stanley Meredith, Thomas Redmond Meredith, and one part to the late Edmund Meredith, Jr., and that the said half of the residuary estate be paid and distributed accordingly.” p. 21, l. 45.

and this judgment was affirmed on appeal. p. 67, l. 1.

14. It is submitted that this judgment is inconsistent with the reasoning on which the judgment was based as it gives a share of the residuary estate to each of the two Respondents, John Stanley Meredith and Thomas Redmond Meredith, who would be excluded from any benefit under the construction placed on the words in question by the Honourable the Chief Justice. 30

15. The Appellants do not contend, neither is it contended by the Respondents, that it was the intention of the testatrix to exclude these two nephews of her late husband, but such would be the necessary result if the meaning attributed to the words (immediate heirs) by the Honourable Chief Justice was given effect to.

16. The judgment of the Chief Justice Sir Mathias Tellier in appeal is in effect that under a testamentary gift to nephews and nieces simpliciter, 40 grand-nephews and grand-nieces would not be entitled to take, which proposition, as already mentioned, has never been contested by the Appellants. He, p. 67, l. 40. p. 68, l. 20.

however, it is submitted, falls into the same error as Chief Justice Greenshields, when he states that the nephews and nieces whom the testatrix named in the Will would have inherited if her husband had died intestate, and adds further that it is unnecessary to say that if the husband of the testatrix had died without a Will, the Respondents, that is all of the Respondents, would have inherited from him, overlooking in the same way as Chief Justice Greenshields, that two of the Respondents were not the immediate heirs of the late Charles Meredith.

p. 68, l. 34.

p. 68, l. 40.

p. 69, l. 1.
p. 77, l. 10.
p. 77, l. 29.
p. 73, l. 1.

17. The Honourable Mr. Justice Bond with whom Mr. Justice Latourneau and Mr. Justice Walsh agree, in his notes of judgment cites certain articles of the Quebec Code in regard to representation, but, it is submitted with the exception of Article 937 C.C. these articles are only applicable to cases of ab intestate succession, and have no bearing upon the construction of a Will. Article 937 C.C. reads as follows: 10

p. 73, l. 20.

“In substitutions, as in other legacies, representation does not take place, unless the testator has ordained that the property shall pass in the order of legitimate successions, or his intention to that effect is otherwise manifest.”

18. In dealing with this Article, the learned Judge discusses only one of the two alternatives and omits to deal with the second alternative that the testator's intention to that effect is otherwise manifest. It is submitted that where, as here, the testatrix selected the legatees Meredith not on personal grounds but as representing a family, her intention that representation should take place was so manifested. 20

p. 74, l. 1.

p. 75, l. 28.

p. 74, l. 13.

19. The Learned Judge admits that some meaning must be given to the words (immediate heirs) but arrives at the same conclusion as the Honourable the Chief Justice in the Superior Court. He is of opinion that there is a clear distinction between the gift to the brothers and sisters of the testatrix and the gift to the nephews and nieces of her late husband, and that in effect the words (immediate heirs) in the gift to the nephews and nieces has a different meaning from the words immediate heirs in the gifts to the brothers and sisters, and consequently they are to be read in a different sense. In support of this view he states:— 30

p. 74, l. 37.

“Considerable colour is lent to this view by the fact that when the testatrix made the Will in question in 1935 and expressly provided for the case of the family of her predeceased sister Edith, or any other brother or sister who might predecease her, she must be taken to have been aware of the death, long before, (1916) of Mr. J. R. Meredith, one of her husband's nephews and the father of one of the Appellants, and she must also be taken to have been aware of the death of Mrs. William Ramsay, a niece of her husband who died in 1928 and was the mother of the remaining Appellants. Notwithstanding this, the testatrix avoided the use of 40

the words that she had already used in the earlier part of the clause, and which would have included the Appellants.”

20. It would also follow that the testatrix must have been aware that Thomas Graves Meredith, a brother of her late husband, was still alive, and was the father of two sons who were therefore nephews of her late husband and if the words (immediate heirs) were intended by her to be descriptive it would also follow that she added these words with the intention of excluding those two nephews from any benefit under the Will.

10 21. It is common ground, however, that the testatrix intended at least to benefit all the nieces and nephews who survived her, and by construing the words as descriptive of the nieces and nephews to be benefited, that intention would be defeated.

20 22. It is submitted that, as is contended for by the Respondents and admitted by the Appellants, the testatrix intended to benefit at least all the nephews and nieces of her late husband who survived her and not to limit the gift to those who would have been entitled as heirs on the death of her late husband without a will. In other words that the six Respondents and not merely four of them were intended to share in the gift, and therefore the only meaning that can be given to the words (immediate heirs) is that it refers to the immediate heirs of such nephews and nieces of her late husband as had predeceased her and consequently includes the Appellants.

23. The Will is holograph and it is submitted it would be quite natural for the testatrix after expressing her intention to benefit the immediate heirs of her brothers and sisters, and making that intention clear by adding the words “including my sister Edith’s family,” to think she had sufficiently expressed a similar intention to benefit the immediate heirs of her late husband’s nieces and nephews by adding the short words (immediate heirs) in the place and stead of the longer form of bequest previously used in the same paragraph in regard to her brothers and sisters.

Exhibit 1,
p. 9A, l. 1.

30 24. The Honourable Mr. Justice Bond did not overlook the fact that Thomas Graves Meredith, being alive at the time of the death of the testatrix, was therefore one of the immediate heirs of the late Charles Meredith to the exclusion of two of the Respondents, but the only answer he makes to this argument is to quote the contention of Counsel for the Respondents that the words “immediate heirs” are merely words added by way of description of the nephews and nieces as being amongst Charles Meredith’s immediate heirs.

p. 72, l. 39.

p. 75, l. 20.

40 25. It is difficult to appreciate this contention as such a construction would necessarily exclude nephews and nieces who were not immediate heirs of the late Charles Meredith since they could not be included “amongst” his immediate heirs.

26. It is submitted that in none of the judgments below has the contention of the Appellants in this respect been met or answered.

27. It is to be presumed that the testatrix used words in her Will to which she intended some meaning to be given and as the words immediate heirs cannot under the facts and circumstances here be construed as descriptive or as words of limitation, they must be taken to be words of extension or enlargement and as expressing an intention of the testatrix to benefit the immediate heirs of such nieces and nephews as had predeceased her as well as all nephews and nieces who survived her.

Exhibit 2
p. 10, l. 1.
p. 7, l. 44.
p. 16, l. 4.
p. 74, l. 8.

28. A former Will of the Testatrix prepared by a Notary of the Province of Quebec, is included as an Exhibit in the Statement of Facts. Counsel for the Appellants contended that this document was not admissible, and this contention was upheld by the Courts below and the former will was not relied upon by any of the Judges in those Courts in support of the reasons for judgment they respectively delivered. 10

29. The Appellants submit that the judgment of the Superior Court in Quebec and the judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) should be reversed and that judgment be entered declaring that the Appellants are entitled to share per stirpes with the Respondents, and that one-half of the residuary estate should be divided into eight equal parts not six, as declared in the judgment below. 20

REASONS

- (1) BECAUSE it is a rule of law in regard to the interpretation of Wills, that the testator intended some meaning to be given to the words and phrases used by him in his Will.
- (2) BECAUSE it is a rule of law that it is not to be imputed to a testator unless the context requires it, that he uses additional words except for some additional purpose; that you are not to suppose he uses additional words for no purpose.

ODDIE VS. WOODFORD 3 My and C.R. 584 at p. 614.
IN RE TYHURST (1932) S.C.R. 713, at p. 717.

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- (3) BECAUSE it is a rule of law that the words are in all cases to receive a construction which will give to every expression some effect rather than one that will render any of the expressions inoperative and that words may be supplied if without them other words are inoperative.
- (4) BECAUSE the words (immediate heirs) in the residuary clause are clearly not words of description or limitation but words of extension or enlargement of the class to be benefited.

- (5) BECAUSE the words (immediate heirs) cannot be construed as descriptive of the nephews and nieces, as two of the nephews, John Stanley Meredith and Thomas Redmond Meredith were the sons of Thomas Graves Meredith, a brother of the late Charles Meredith, and therefore himself an immediate heir of the husband of the Testatrix, to the exclusion of his two sons.
- (6) BECAUSE the proper meaning to be attached to the words (immediate heirs) is the immediate heirs of the nephews and nieces and not the immediate heirs of the late Charles Meredith.
- 10 (7) BECAUSE the words (immediate heirs) should be given the same meaning as the words immediate heirs in the gift to the brothers and sisters contained in the same clause of the Will.

RE TYHURST (1932) S.C.R. 713 at p. 717.

- (8) BECAUSE no valid reason existed for the testatrix to differentiate between the gift to her brothers and sisters and to the nephews and nieces of her late husband.
- (9) BECAUSE the words (immediate heirs) in the bequest to the nieces and nephews of the late Charles Meredith were intended by the testatrix to bear the same meaning in a shorter form as the words used by her in the bequest to her brothers and sisters.
- 20 (10) BECAUSE if the words (immediate heirs) are construed as words of limitation or descriptive of the nephews and nieces to benefit under the Will, the evident intention of the testatrix would be defeated.
- (11) BECAUSE the testatrix, by selecting the legatees Meredith not on personal grounds but as representatives of a family, manifested her intention that representation should take place.
- (12) BECAUSE of the reasons set out in the Factum of the Appellants on the Appeal to the Court of King's Bench.
- 30 (13) BECAUSE the judgment declared by the Superior Court and affirmed on appeal is erroneous and should be reversed.

I. F. HELLMUTH.

E. C. CATTANACH.

In the Privy Council

No. 32 of 1938.

On Appeal from the Court of King's
Bench for the Province of
Quebec (Appeal Side)
CANADA

BETWEEN

Dame Diana Meredith et al.,
(Plaintiffs) APPELLANTS

AND

Dame Elizabeth Magdalene
Meredith et al.,
(Defendants) RESPONDENTS

CASE FOR APPELLANTS

LAWRENCE JONES & CO.,
Lloyd's Building,
London, E.C. 3.