

4, 1939

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No. ~~1256~~ of ~~1937~~

In the Privy Council.

ON APPEAL

10 FROM THE COURT OF KING'S BENCH (APPEAL SIDE) OF THE
PROVINCE OF QUEBEC, CANADA

BETWEEN—

20 DAME DIANA MEREDITH, wife of Marcel
Provost, DAME MARGARET M. RAMSAY,
wife of Charles Chambers, DAME CONSTANCE
M. RAMSAY, wife of Jessup Carley, ALEXAN-
DER M. RAMSAY, WILLIAM M. RAMSAY,
and DAME ELIZABETH M. RAMSAY, wife of
George Cumpston,
(Plaintiffs) *Appellants.*

— AND —

30 DAME ISABEL MAGDALENE MEREDITH,
widow of the late James David Thorburn, DAME
CONSTANCE M. R. MEREDITH, widow of the
late George Armstrong Peters, MISS MARY ME-
REDITH, Spinster, THE ROYAL TRUST
COMPANY, es-qualité, administrator of the
Estate of the late EDMUND MEREDITH,
JUNIOR, JOHN STANLEY MEREDITH, and
THOMAS REDMOND MEREDITH,
(Defendants) *Respondents.*

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CASE ON BEHALF OF THE RESPONDENTS

(1) This is an appeal from a judgment of the Court of King's Bench (Appeal Side) of the Province of Quebec, Canada, rendered on the 28th October, 1937, dismissing the appeal of the plaintiffs from a judgment of the Superior Court rendered on the 3rd April, 1937, by which the plaintiffs' action was dismissed.

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p. 67, l. 10
p. 14, l. 30

RECORD

(2) This litigation was instituted by means of a “joint factum or case” (under article 509 of the Code of Civil Procedure of the Province of Quebec) by which the parties submitted to the Court a question of law upon which they were at variance, but in which they agreed upon the facts out of which that question of law arose.

(3) The main facts so agreed upon are: 10

p. 5, l. 46

(a) Dame Elspeth Hudson Angus of Montreal in the Province of Quebec (widow of Charles Meredith of the same place) died at Montreal on the 24th June, 1936.

(b) She left as her last will and testament a holograph will, dated 5th June, 1935, containing the following provisions as to her residuary estate:—

p. 6, l. 19

“The rest of my estate to be divided equally between 20
“my brothers and sisters or their immediate heirs including
“my sister Edith’s family and between my husband’s Charles
“Meredith’s nieces and nephews (immediate heirs)”.

p. 6, l. 34

(c) The residuary estate of the testatrix was thereby divided into two equal halves, one of which halves was to be divided “between my husband’s Charles Meredith’s nieces and nephews (immediate heirs)”.

p. 6, l. 40

(d) The respondents were the only nieces and nephews of 30 Charles Meredith who survived the testatrix.

p. 7, l. 14

(e) The appellants are grand-nieces and grand-nephews of Charles Meredith, (being sons and daughters of a niece and a nephew of his who predeceased the testatrix) and are the only such grand-nieces and grand-nephews who survived her.

(4) The question of law so submitted is the following:—

p. 7, l. 32

“Are the defendants (respondents) the only residuary le- 40
“gatees to whom Dame Elspeth H. Meredith bequeathed the said
“half of her residuary estate, or are the plaintiffs (appellants) also
“entitled to share as residuary legatees par souches as being the im-
“mediate heirs of their parents, the nieces and nephews of the said
“late Charles Meredith who predeceased the said late Dame Elspeth
“H. Meredith?”

(5) The plaintiffs (appellants) asked that:

“it be declared that one half of the residuary estate of the
“late Mrs. Elspeth H. Meredith was by her holograph will divided
“into eight equal parts, which were bequeathed as follows:— one
“part to the plaintiff Mrs. Diana Meredith Provost, one part to the
“other five plaintiffs jointly, and one part to each of the six de-
“fendants, and that the said half of the residuary estate be paid
“and distributed accordingly.”

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p. 9, l. 22

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The defendants (respondents) asked that :

“it be 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 de-
“fendants Mrs. Isabel Magdalene Thorburn, Mrs. Constance M.
“Peters, Miss Mary Meredith, John Stanley Meredith, Thomas Red-
“mond Meredith, and one part to the late Edmund Meredith, junior,
“and that the said half of the residuary estate be paid and dis-
“tributed accordingly.”

p. 9, l. 30

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(6) Greenshields, C.J., (in the Superior Court) decided:—

“.....that the plaintiffs must be denied the relief they seek. In
“consequence their action and demand is dismissed.

p. 21, l. 43

“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, Junior, and that the said half of the residuary
“estate be paid and distributed accordingly.”

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and the five judges of the Court of King's Bench (Appeal Side) unani-
mously affirmed that Superior Court judgment. Reasons for that appeal
judgment were handed down by Sir Mathias Tellier, C.J., and Bond, J.

p. 67, l. 10

p. 67, l. 43

p. 69, l. 9

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(7) By agreement, the taxable costs of both parties in the Superior
Court are to be “paid by and out of the one half of the residuary estate
“which was bequeathed to ‘my husband’s Charles Meredith’s nieces and
“‘nephews (immediate heirs)’ ”, but that agreement applied only to the
Superior Court, and the Court of King's Bench condemned the appellants
to pay the costs in that court.

p. 9, l. 37

p. 67, l. 35

(8) The respondents contend:

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(a) That the rule to be observed in the judicial interpretation of this holograph will is to ascertain the intention of the testatrix by giving the fair and literal meaning to the language of her will.

Auger vs. Beaudry (1920) A.C. 1010, Lord Buckmaster for the Privy Council, page 1014:—

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“But whatever wavering from the strict rule of construction may have taken place in the past, it is now recognized that the only safe method of determining what was the real intention of a testator is to give the fair and literal meaning to the actual language of the will. Human motives are too uncertain to render it wise or safe to leave the firm guide of the words used for the uncertain direction of what it must be assumed that a reasonable man would mean.”

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(b) That the fair and literal meaning of the language used by the testatrix when she bequeathed one half of her residuary estate to be divided “between my husband’s Charles Meredith’s “nieces and nephews (immediate heirs)” is that that half of her residuary estate all goes to the respondents as decided by all the judges in the courts below.

p. 8, l. 20

(c) That when the testatrix used the words: “my husband’s “Meredith’s nieces and nephews (immediate heirs)” she intended the two words “immediate heirs”, which she put in brackets, to be descriptive of his nieces and nephews as occupying in her mind the position of Charles Meredith’s immediate heirs.

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p. 9A, l. 18

p. 9A, l. 37

(d) That the testatrix, in her holograph will, used brackets in two other instances for the same purpose; that is, to indicate that the words in brackets were used descriptively. Those two instances were where she made a bequest “to my niece Peggie daughter of my “brother D. J. Angus (Victoria B.C.)”, and where she made a bequest “to my Godchild Adelaide Cooley (daughter of Dr. E. M. “Eberts)”.

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p. 8, l. 19

(e) That if the testatrix had intended that the appellants’ parents (the predeceased nephew and niece of her husband), would be represented by their respective children (the appellants), she would have so provided, as she did in the case of her own predeceased sister when bequeathing the other half of the residuary estate to be divided “between my brothers and sisters or their immediate heirs including my sister Edith’s family”.

(9) The appellants contend that the courts should alter the phrase: **RECORD**
“my husband’s Charles Meredith’s nieces and nephews (immediate heirs)”,
so as to make it read: “my husband’s Charles Meredith’s nieces and ne-
“phews or their immediate heirs”; that is, that the brackets should be
removed from the words “immediate heirs” and that the words “or their”
should be inserted, so as to create “representation” and bring in the ap-
10 pellants as representing their parents who had predeceased the testatrix.
The respondents submit:

(a) That such an alteration would defeat the clear intention
of the testatrix.

(b) That the courts cannot add to or alter the words or
punctuation used by the testatrix under the circumstances.

20 (c) That the consideration of so-called “justice and equity”
(relied upon by the appellants below) is irrelevant, and is particu-
larly inapplicable in the Province of Quebec where absolute free-
dom of willing prevails, as embodied in article 831 of the Civil Code
of the Province of Quebec, which reads as follows:—

30 “831. Every person of full age, of sound intellect, and
“capable of alienating his property, may dispose of it freely
“by will, without distinction as to its origin or nature, either
“in favor of his consort, or of one or more of his children, or
“of any other person capable of acquiring and possessing, and
“without reserve, restriction, or limitation; saving the pro-
“hibitions, restrictions and causes of nullity mentioned in
“this code, and all dispositions and conditions contrary to
“public order or good morals.”

(d) That article 872 of the Civil Code also confirms the
respondents’ contentions. That article reads:—

40 “872. The rules concerning legacies and the presump-
“tions of the testator’s intention as well as the meaning as-
“cribed to certain terms, give way to the formal or otherwise
“sufficient expression of such intention, given in another
“sense or with a view to different effects. The testator may
“derogate from these rules in all that is not contrary to
“public order, to good morals, to any law containing a prohi-
“bition or some other applicable declaration of nullity, or to
“the rights of creditors and third persons.”

(e) That Mr. Justice Bond, in the Court of King’s Bench,
is correct when he refers to four other articles of the Civil Code in
the following words:—

“It is further contended that the use of the words in
“brackets implies the idea of a representative class, which
“would involve the introduction of the doctrine of ‘repre-
“sentation’.

“Representation is defined by the Civil Code as fol-
“lows:—

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“619. Representation is a fiction of law, the effect of
“which is to put the representatives in the place, in the
“degree and in the rights of the person represented.

“Reference should also be made to the first part of
“article 620:

“620. Representation takes place without limit in the
“direct line descending.

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“also to article 622:

“622. In the collateral line representation is admitted
“only where nephews and nieces succeed to their uncle and
“aunt concurrently with the brother and sister of the de-
“ceased.

“and article 937:

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“937. In substitutions, as in other legacies, represent-
“ation does not take place, unless the testator has ordained
“that the property shall pass in the order of legitimate suc-
“cessions, or his intention to that effect is otherwise manifest.

“In the present case I should say that representation,
“under the provisions of the last-quoted articles, does not
“take place, for the testatrix has not followed the order of
“legitimate successions in an intestate estate but has passed
“over one of the persons who, in the case of intestacy, would
“have inherited, e.g. Mr. T. G. Meredith.

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“Again, this is not the case specified in article 622
“above cited, but is the claim of grand-nephews and grand-
“nieces to succeed to their uncle concurrently with nephews
“and nieces.”

(10) The respondents submit that the judgment appealed from is
well founded and should be affirmed with costs for the following

REASONS

RECORD

(a) Because in the Province of Quebec a testatrix may by her will dispose of her property as she wishes.

10 (b) Because the important rule for interpretation of wills is to give effect to the intention of the testatrix according to the fair and literal meaning of the words used, and considering the document as a whole, and this rule is all the more important where, as in the present case, the will was wholly written by the hand of the testatrix.

(c) Because the fair and literal meaning of the words used is clear and indicates that “Charles Meredith’s nieces and nephews” were intended by the testatrix as residuary legatees for one half of her residuary estate.

20 (d) Because “nieces and nephews” do not include grand-nieces and grand-nephews.

(e) Because the testatrix, when she used the words “(immediate heirs)” after the words “Charles Meredith’s nieces and nephews”, used them for a different purpose from that for which they were used earlier in her will where she bequeathed the other half of her residuary estate to “my brothers and sisters or their immediate heirs, including my sister Edith’s family”. In the one case she was describing “Charles Meredith’s nieces and nephews” as representing in her mind his immediate heirs, while in the other case she bequeathed that half of her estate to her own brothers and sisters or (if they had predeceased her) to their immediate heirs.

30 (f) Because her use of the word “immediate” before the word “heirs” in the expression “Charles Meredith’s nieces and nephews (immediate heirs)” shows her intention to exclude the appellants, who were more remote in their relationship to her husband, Charles Meredith, than the respondents.

40 (g) Because the appellants’ interpretation would lead to an absurdity, as the “immediate heirs” of Charles Meredith’s deceased nieces and nephews would include more than their children, the present appellants. Article 624b of the Civil Code provides (in part) as follows:—

“624b. If the deceased leave a consort capable of inheriting, and issue, the surviving consort takes one-third, and the child or the children, take the other two-thirds, to be divided between them, in case there is more than one child, in equal shares.....”

RECORD

Therefore, the appellants' interpretation would include, as residuary legatees, Mrs. John R. Meredith, the mother of one of the appellants, and Mr. William Ramsay, the father of the other five appellants, if they survived the testatrix, although neither of them was a real relation of the testatrix's husband at all.

Furthermore, article 624a of the Civil Code provides as follows:— 10

“624a. The wife succeeds to her husband, and the husband to his wife, when the deceased leaves no issue and has no father or mother living, and is without collateral relations up to nephews or nieces in the first degree inclusively.”

So that if there be any other predeceased nieces or nephews who left surviving consorts without children, those surviving consorts would also be “immediate heirs” and under the appellants' contentions 20 would share in that half of the residuary estate.

(h) Because if there were any ambiguity in the words used (which the respondents submit there is not) then the provisions of her previous notarial will (exhibit No. 2) executed five years earlier, became important. In that will also she made a distribution between her own relatives and her husband's relatives, although she then chose other relatives of her husband. That notarial will was revoked, but the important fact is that in that will also she provided for representation in connection with her own 30 relatives (the Angus family) and excluded representation in connection with her husband's relatives (the Meredith family). By that notarial will, half of the residue was to go to her own brothers and sisters and the issue by representation of any predeceased brothers or sisters, while the other half was to go to her husband's relatives “or to such of them as may be living at the time of my death”.

(i) Because the provisions of that previous notarial will also serve to indicate that the testatrix knew of “representation” 40 and that, if she had intended to make it applicable, she would have said so, as she did say when bequeathing the other half of her residuary estate to “my brothers and sisters or their immediate heirs including my sister Edith's family”.

(j) Because the judgments of the trial judge and of all the judges in the Court of Appeal are right and should be affirmed with costs.

~~A. R. HOLDEN~~
Geo. A. Campbell.

p. 10, l. 20

p. 12, l. 13

p. 12, l. 9

In the Privy Council.

ON APPEAL

FROM THE COURT OF KING'S BENCH (APPEAL
SIDE) OF THE PROVINCE OF QUEBEC,
CANADA.

BETWEEN :

DAME DIANA MEREDITH,
DAME MARGARET M. RAMSAY,
DAME CONSTANCE M. RAMSAY,
ALEXANDER M. RAMSAY,
WILLIAM M. RAMSAY and
DAME ELIZABETH M. RAMSAY,

(Plaintiffs) *Appellants.*

— AND —

DAME ISABEL MAGDALENE
MEREDITH,
DAME CONSTANCE M. R. MEREDITH,
MISS MARY MEREDITH,
THE ROYAL TRUST COMPANY,
EDMUND MEREDITH, JUNIOR,
JOHN STANLEY MEREDITH, and
THOMAS REDMOND MEREDITH,

(Defendants) *Respondents.*

CASE ON BEHALF OF THE
RESPONDENTS

ALLEN & OVERY,
London Agents.