

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Her Majesty's Procureur and Advocate-General for Mauritius v. Bruneau, from the Supreme Court of Mauritius; delivered 18th June, 1866.

Present :

LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JAMES W. COLVILLE.
SIR EDWARD VAUGHAN WILLIAMS.

THIS case has come before us upon an Appeal brought on behalf of the Government of the Island of Mauritius from a decision of the Supreme Court of that Island. The question decided by that Court, and which is raised by this Appeal, relates to the right of succession to the property of Pierre Bruneau, deceased.

Pierre Bruneau was a natural child of his father and mother, recognized by them. He had a brother and two sisters, also natural children of the same father and mother, and also recognized by them. His father and mother had no legitimate descendant. His father and mother and his brother and sisters all died in his lifetime. His sisters had no descendants; his brother had two natural children, Virginie Bruneau and Elodie Bruneau, who were recognized by their father, but he had no lawful descendant. Upon the death of the brother, his two natural children, Virginie Bruneau and Elodie Bruneau, went to live with their uncle, Pierre Bruneau, and they continued to live with him down to the time of his death. He had been married, but he had no legitimate descendant, and his wife

had predeceased him. He died intestate, leaving the two natural children of his natural brother him surviving. Elodie Bruneau, one of these children, has since died, having duly constituted her sister, Virginié Bruneau, her universal legatee. Upon the death of Pierre Bruneau the question arose whether the natural children of his natural brother were entitled to succeed to his property, or whether the right to succeed to it belonged to the Government of the Island. This question formed the subject of the proceedings which have led up to this Appeal. It was decided by the Supreme Court of the Island in favour of Virginie Bruneau, the surviving natural child of the natural brother, and it is from this decision that the Appeal before us is brought.

This question is purely one of French law, depending upon the provisions of the "Code Civil," which is in force in the Island of Mauritius and constitutes the law of that Island. It is admitted on all hands to be a question on which there has been no recorded decision in the Courts of France; and as it is one of importance and of great difficulty we cannot but regret that means have not been provided for enabling us to obtain the decision of the French Courts upon it, as they must be more familiar than the Judges of this country can be with the language and provisions of the "Code Civil." We have, however, endeavoured to obtain—and, from our own resources, and through the kind assistance of a gentleman at the French Bar, have, as we believe, obtained—all the materials which can enable us, or which could have enabled the French Courts, to form a judgment upon the subject; and we have given the case our most deliberate and anxious consideration. We proceed, therefore, to state the conclusion at which we have arrived, and the reasons on which that conclusion is founded.

Before entering upon the consideration of the particular Articles of the Code on which this question must ultimately depend, it is, as it has seemed to us, important to consider the general principles by which the Courts are to be governed in the construction of the Code. These principles, as laid down by the Court of Cassation, and the leading text writers of France, are conveniently collected in the 3rd section of Sirey's note upon Article 1 of the Code; and we select the following

Articles of that note as bearing more particularly upon the question before us :—

111. Les tribunaux ne peuvent, là où la loi ne distingue pas, créer des distinctions qui en altèrent le sens.—Ce principe est élémentaire en droit : une foule de décisions en ont fait l'application.

112. Ils ne peuvent non plus, lorsque le sens de la loi est positif et certain, se dispenser de l'appliquer telle qu'elle est : il ne leur appartient pas de la modifier ou restreindre par aucune considération, quelque puissante qu'elle soit.

112 *bis*. Et bien qu'une erreur se soit glissée dans le texte d'une loi, les tribunaux n'en doivent pas moins appliquer la loi telle qu'elle a été publiée : il ne leur appartient pas de rectifier l'erreur.

113. On ne peut se prévaloir des motifs d'une loi contre le texte de sa disposition.

114. L'application spéciale d'un principe général à un cas particulier n'emporte pas dérogation virtuelle à ce principe pour tous les autres cas.

119. Les lois spéciales doivent être entendues selon leur propre système, sans y ajouter les règles du droit commun.

It results, we think, from these principles, that in determining this question we are to be guided by the plain sense of the law which applies to the question ; that we are to make no distinction which can alter that sense ; that, assuming the sense of the law to be positive, we are not to modify or restrict the law ; that we are not to weigh the reasons of the law against the words of it ; and (which, perhaps, is more pertinent in its bearing upon the present case) that if the law applicable to the case be special, we are to understand it according to its particular scheme ("propre système"), without adding to it the rules of what is called the common law.

Guiding ourselves, then, by these principles, let us first consider the Chapter of the Code on Irregular Successions on which this question principally, if not wholly, depends. This chapter, it is to be observed, deals with two distinct subjects—the rights of natural children in the property of their father and mother, and the succession to natural children dying without posterity. Articles 756 to 764, inclusive, apply to the former of these subjects ; Articles 765 and 766 to the latter of them.

We pass by, for the present, the consideration of the Articles 756 to 764, and proceed to consider the Articles 765 and 766, as they stand by themselves. These two Articles are in these terms :—

765. La succession de l'enfant naturel décédé sans postérité est dévolue au père ou à la mère qui l'a reconnu ; ou par moitié à tous les deux, s'il a été reconnu par l'un et par l'autre. [L. 2, § 1, ff. *ad Senat. Tertull.*; LL. 2, 4, 8, ff. *Unde cognati.*]

766. En cas de prédécès des père et mère de l'enfant naturel les biens qu'il en avait reçus, passent aux frères ou sœurs légitimes, s'ils se retrouvent en nature dans la succession : les actions en reprise, s'il en existe, ou le prix de ces biens aliénés, s'il en est encore dû, retournent également aux frères et sœurs légitimes. Tous les autres biens passent aux frères et sœurs naturels, ou à leurs descendants.

We have here, therefore, a distinct and positive law that, in such a case as the present, that of a natural child dying without posterity, and of the father and mother of the natural child having died in his lifetime, the property of the natural child not received from the father and mother shall go to his natural brothers and sisters—"ou à leurs descendants." There is no restriction or limitation on the word "descendants." We are not here dealing with a law which, like our own law, says that an illegitimate child is "nullius filius." The law we have to deal with is a law which admits certain claims of illegitimate children when recognized by their parents, and which acknowledges the relation between illegitimate children and their parents, and between the illegitimate children themselves. *Prima facie*, therefore, it is difficult to see upon what ground a limit ought to be put upon the meaning of the word "descendants," or why those who are recognized by their parents as their children, and whom the law recognizes as their children, should not be held to stand in that character, or be deemed to be "descendants" of their parents within the meaning of these Articles. The context of the Articles does not appear to us to support any such view. It cannot, we think, be disputed that the words "postérité" and "descendants" are used in these Articles as convertible terms; and it cannot surely be denied that recognized illegitimate children, according to the provisions of the French code, fall within the description of posterity of their parents. But what is more remarkable in these Articles is this: that, except as to property derived from the father and mother, legitimate brothers and sisters are wholly excluded from the succession to the property of a natural child, and are so excluded in favour of the natural brothers and sisters of the natural child; and we cannot but

think that it would be a strange construction of these Articles to hold that, although legitimate brothers and sisters are thus excluded in favour of natural brothers and sisters, the word "descendants" should be so construed as to apply only to legitimate descendants, and thus exclude natural descendants in favour of legitimate descendants. Yet this is the length to which the Appellant's argument must be carried in order to maintain this Appeal.

Taking, then, the case to depend upon these two Articles alone, we think there could be little, if any, doubt that natural children ought to be considered as "descendants" within the meaning of these Articles. It was said, indeed, on the part of the Appellant, that the word "descendants" *ex vi termini* signifies those who are capable by law of succeeding; that it of necessity refers to the known legal course of inheritance: but however this may be, when the word is applied to a settled and recognized course of descent, it cannot, we think, be so when it is applied to a line of succession newly created by law, and created in favour of persons not falling within the settled and recognized course of descent. At all events, we think that this position on the part of the Appellant cannot be supported against the opposing indicia of intention to which we have referred. The argument on the part of Appellant, however, was mainly rested upon the other portions of this chapter on "irregular successions," and upon other Articles of the Code. We shall presently refer to these arguments; but before doing so we think it right to observe that, in our opinion, too much weight ought not to be attached to arguments derived from these sources. We are not disposed to go the length of saying that one part of the Code cannot be resorted to for the purpose of explaining another part of it; but Articles 765 and 766 may well be considered to constitute, and, in our opinion, do constitute, a special law for determining the succession to natural children dying without posterity; and looking to the rules laid down for the interpretation of the Code, we think that special laws ought, as far as possible, to be construed according to the terms in which they are expressed, without either the general laws or the terms of other special laws being called in aid for the construction of them. We

should hesitate, however, to dispose of this Appeal upon this ground alone, or without referring to the very able arguments which were urged at the Bar in support of it.

These arguments were partly founded upon Article 756 of the Code. That Article is as follows:—

756. Les enfants naturels ne sont point héritiers; la loi ne leur accorde de droit sur les biens de leur père ou mère décédés, que lorsqu'ils ont été légalement reconnus. Elle ne leur accorde aucun droit sur les biens des parents de leur père ou mère. [Inst. l. 3, t. 4, § 2; L. 2 et 8, ff. *Undé cognati*: Nov. 89, cap. 2.—C. c. 334 et s., 908.]

This Article is relied upon as establishing two points: 1st, that natural children have not the character of heirs; and, 2ndly, that they cannot, by law, take any part of the property of the relations of their father or mother. But although natural children have not the character of heirs, the law nevertheless accords to them certain rights and interests (which are defined by Articles 757 and 758) in the property of their parents, even as against the legitimate descendants of those parents, and still greater rights and interests against the other relations of those parents. It makes a wide and marked distinction between legitimate and natural children, attaching to the former the character of heirs, and refusing that character to the latter, but it by no means treats the latter as having no connection with or no claim upon the property of their parents; and this we think tends much to elucidate the provisions against natural children taking the property of the relations of their father or mother. Such property may well have been considered as family property to which natural children, not being regarded as members of the family, had no right to succeed. We do not, therefore, feel ourselves much pressed with the arguments founded upon Article 756.

The main stress of the Appellant's argument, however, rested upon the 759th Article of the Code, and upon the interpretation put upon it in the case of *Billard v. Billard*, and upon the opinions of the great majority of the commentators upon the Code in conformity with that decision. This Article is in these terms:—

759. En cas de prédécès de l'enfant naturel, ses enfants ou descendants peuvent réclamer les droits fixés par les Articles précédents. [L. 4, ff. *Undé cognati*.]

Looking to the decision in *Billard v. Billard*, and to the opinions of the commentators to which we have referred, it would not, we think, be right for us to suggest any doubt upon the meaning of the word "descendants" in that Article. We think that the word, as used in that Article, must be taken to mean "descendants légitimes," and that natural children could not claim the benefits given by this Article. The argument founded upon this Article is therefore well deserving of consideration; and perhaps it might be held to decide this case if this Article and Article 766 had reference to the same subject and to the same state of circumstances. But not only do these Articles constitute distinct laws, but they refer to wholly different states of circumstances. The one refers to the property which natural children have taken from their parents; the other, to the property of the natural children themselves not derived from their parents. The one deals only with the substitution of the children or descendants of pre-deceased natural children for the natural children themselves: it refers, as we understand it, to property which has never come to the natural children themselves, and involves, therefore, no other question than this—Whether the children or descendants taking by substitution are to be legitimate children or descendants only? The other extends to the disposition, and, as it seems to us, to the complete disposition of the property of the natural children themselves, and gives it to their natural brothers and sisters, "ou à leurs descendants," thus providing for what has not, so far as we can see, been before provided for—the devolution of the property of natural children dying without legitimate or illegitimate descendants. These circumstances are, we think, sufficient to prevent the construction of the word "descendants" in the latter of these Articles being governed by the construction which has been put upon it in the former of them.

The provisions of the chapter on representation were also referred to on the part of the Appellant in support of the argument upon the 759th section; but what we have already said upon the principal argument meets this argument also. It was further attempted on the part of the Appellant to draw some argument from the 767th and 768th Articles

of the Code, but these Articles do not seem to us to refer to irregular successions. They refer, as we think, to the regular order of succession, taking it up after the failure both of legitimate and illegitimate children, and after the exhaustion of the rules applicable to succession in such cases.

Another argument, which was much relied upon on the part of the Appellant, was, that the construction contended for on his part would render the whole Code uniform and consistent; whereas the construction on which the decision appealed from proceeds would, as it was said, render the different parts of the Code conflicting and inconsistent. But this argument in favour of uniformity is, we think, entitled to but little, if any, weight, when it is attempted to be applied to different parts of the Code having reference to wholly different states of circumstances, more especially having regard to the rules of construction to which we have referred. Even upon the construction contended for by the Appellant, the Code would be by no means uniform in its effect; for, supposing legitimate children only to take under the 766th Article (which is what the Appellant contends for), they would not take in the same manner or to the same extent as they would take under the other Articles. They would, as it seems to us, take under the 766th Article only property not received by the natural brother or sister from his parents. The property received from the parents would be subject to the *droit de retour*.

The difficulties which would arise upon the construction which the Courts of the Island have adopted were also much relied upon on the part of the Appellant. We are by no means unaware of these difficulties. If there be legitimate children, the illegitimate children may take nothing, or they may take equally with the legitimate children, or they may take the portions prescribed for them by Article 757. But these are not the questions before us, and we give no opinion upon them. If the natural children are descendants within the meaning of Article 766, they are not less qualified to take because in certain events they may take nothing, or may take equally with the legitimate children, or may take only a portion of the share to which they would have been entitled had they been legitimate. The true question in this case is, whether, as between

them and the State, they are entitled to take ; and we are of opinion that upon the true construction of the Code they are so entitled. We think so both for the reasons which we have assigned and for the reasons which are assigned in the very able Judgment of the Court in the Island, to which the following observations may be added.

It is clear, from Article 723, that in the case of regular succession the State takes only after failure both of legitimate and natural children. It is equally clear that, under Article 766, the natural brothers and sisters, if surviving, would have taken, and the question, therefore, is in fact a question of succession to or substitution for a natural brother or sister. Could it have been intended that the State should be put in a better position against natural children, whose parents would have taken, by a construction to be put upon the word "descendants" confining it to legitimate children? We think that, had there been any such intention in favour of the State, it would have been clearly and definitively expressed. We admit the case to be one of great difficulty, and that the opinions of the commentators upon the question are conflicting, and to such a degree that it can hardly be said to which side the greater weight is due ; but upon the whole we think that the better reasons are in favour of the Respondent, and we agree in the Judgment appealed from. We shall, therefore, humbly recommend Her Majesty to dismiss this Appeal, and to dismiss it with costs.

