

In the Privy Council.

No. 28 of 1931.

DAME CAMILLE ROLLAND
LIBRARY

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

BETWEEN

DAME CAMILLE ROLLAND épouse
contractuellement séparée de biens de
SIDNEY HILDER, et ledit SIDNEY
HILDER pour autoriser sa dite épouse aux
présentes

(Plaintiffs) Appellants,

AND

STANISLAS JEAN-BAPTISTE ROLLAND,
HENRI ROLLAND, PIERRE ROLLAND,
VICTOR ARCHAMBAULT, LEON
ROLLAND, DAME LUDIVINE ROLLAND,
ARTHUR LETONDAL, DAME ALEXINA
ROLLAND, OSCAR F. MERCIER, DAME
ESTHER ROLLAND, LOUIS PHILIPPE
TURGEON, DAME ALICE LAROCQUE,
J. M. SAVIGNAC, MARCEL ROLLAND,
DAME NISIDA LEMIEUX JOSEPH-
HENRI DESROCHERS and LA SOCIETE
D'ADMINISTRATION ET DE FIDUCIE

(Defendants),

AND

LEON ROLLAND, DAME LUDIVINE
ROLLAND, ARTHUR LETONDAL, DAME
ALEXINA ROLLAND, OSCAR F.
MERCIER, PIERRE ROLLAND, DAME
ESTHER ROLLAND, LOUIS P. TURGEON
HENRI ROLLAND, JEAN ROLLAND,
DAME ALICE ROLLAND, CHARLES E.
MARCHAND, OLIVIER ROLLAND,
ACHILLE ROLLAND, DAME MARGUER-
ITE ROLLAND, PIERRE BEAUDRY,
EUPHROSINE ROLLAND, DAME GEOR-
GINE ROLLAND and the HONOURABLE
T. RINFRET

(Mis-en-cause) Respondents,

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Vacher—86980.

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DAME CAMILLE ROLLAND
LIBRARY

AND BETWEEN

STANISLAS JEAN BAPTISTE ROLLAND
 et al (Defendants),

AND

LEON ROLLAND et al (Mis-en-cause) Appellants,

AND

DAME CAMILLE ROLLAND épouse
 contractuellement séparée de biens de
 SIDNEY HILDER, et ledit SIDNEY
 HILDER pour autoriser sa dite épouse aux
 présentes (Plaintiffs) Respondents.

CASE FOR DAME CAMILLE ROLLAND ET VIR
the Appellant in the first Appeal and Respondent in the Cross-Appeal.

Record.
 p. 129.

p. 77.

1. This is an appeal from the judgment of the Court of King's Bench (Appeal Side) of the Province of Quebec (Dorion, Tellier, Howard, Bernier and Galipeault JJ.) dated the 15th January, 1931, maintaining with a modification the judgment of the Superior Court (Demers J.) which upheld certain of the Appellant's contentions and dismissed others. The Appeal judgment also dismissed the cross-appeal taken by both classes of Respondents.

p. 20, l. 43.

2. The question involves the Appellant's rights under the Wills of her grandfather the Honourable J. B. Rolland, and of his wife, and particularly whether the Defendants are bound to account to her for the proceeds of certain shares in the Rolland Paper Company originally established by her 10 grandfather.

3. The Appellant is a daughter of the late Donatien Rolland who was one of the eight children of the Testators, four of whom were male and four female.

~~p. 167, l. 19.~~
 p. 168, l. 8.
 p. 169, l. 23.

4. In 1882 by the Quebec Statute, 45 Vict. Ch. 77, the Honourable J. B. Rolland caused the incorporation of the Rolland Paper Company to take over his private paper manufactory. The Deed transferring the properties was passed on 23rd December, 1882. The properties sold were valued at \$100,000 and the price payable to Mr. Rolland was expressed to be \$100,000 cash, of which \$40,000 is stated to have been paid on the 15th 20 October 1882, and two sums of \$20,000 each on the 15th of November, and December 1882. The balance of \$20,000 was to be paid on the 15th January 1883.

5. The capital of the Company was \$300,000 divided into 3,000 shares of \$100 each. Of these shares 1,000 were issued and subscribed for in the names of J. B. Rolland for 400—200 for himself and 100 each for his children Donatien and Euphrasie, J. D. Rolland a son for 100, S. J. B. Rolland a son for 100, Octavien Rolland a son for 100, J. L. Archambault for Ernestine Rolland a daughter 100, R. Prefontaine for Hermentine Rolland a daughter for 100, A. A. Foucher for Lumina Rolland a daughter for 100. The shares were to be paid for by instalments falling due on the same dates as the instalments of the purchase price of the property. The ostensible liability of the children for the shares was met, according to a statement proffered on behalf of the defendants, by the children giving cheques or notes to the total amount of \$80,000. These cheques, according to the former Secretary of the Company, must have been given to him but were never cashed or deposited in the bank but were handed by him to Mr. Rolland senior who destroyed them. The cheques for the two minor children were given by Mr. Rolland himself. In fact no money passed from the Company to Mr. Rolland for the property, from Mr. Rolland to his children to put them in funds to pay for the shares, or from the children to the Company.

Record.

p. 162, l. 1
et seq.

p. 164, l. 25.

p. 165, l. 26.

p. 46, l. 23.

p. 62, l. 20.

6. Mr. Rolland and his wife, with whom he was in community of property took from their children on various dates in May and June, 1885, acknowledgments all in similar form as follows :—

pp. 184-191.

p. 184, l. 9.

Je, soussigné, reconnais avoir reçu de M. J. B. Rolland et de Dame Esther Bouin dit Dufresne, mes père et mère, en avancement d'hoirie sur leurs successions futures, la somme de Dix mille dollars en cinq paiements de Deux mille dollars chacun, étant pour cinq versements au fonds capital souscrit dans la Compagnie de Papier Rolland, dont le premier paiement a eu lieu le trente septembre mil huit cent quatre-vingt-deux 1882. Le second, le quatorze octobre 1882. Le troisième, le quinze novembre 1882. Le quatrième, le quinze décembre 1882. Le cinquième, le quinze janvier mil huit cent quatre-vingt trois 1883.

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Sujet aux dispositions testamentaires de mes dits père et mère.

The acknowledgment for Euphrosine Rolland, who was still a minor, was made by her father. These acknowledgments were deposited by the Testator and Testatrix on the 13th November, 1885, before a Notary, accompanied by a statement to the following effect :—

p. 191, l. 1.

Lesquels déclarent avoir fait un avancement d'hoirie de leurs successions futures, de la somme de Dix mille piastres cours actuel à chacun de leurs enfants en cinq paiements de deux mille piastres chaque, étant pour cinq versements au fonds capital souscrit dans la Compagnie de Papier Rolland dont le premier paiement a eu lieu le trente septembre mil huit cent quatre-vingt-deux, le second paiement le quatorze d'octobre suivant, le troisième paiement le quinze de novembre suivant, le quatrième paiement le quinze de décembre suivant et enfin le cinquième paiement le quinze de janvier suivant le tout sujet aux dispositions testamentaires des dits Mr. and Dame Jean Bte. Rolland.

p. 182, l. 23.

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Record.
p. 171, l. 21.

Mr. and Mrs. Rolland made their Wills in similar form on the 13th November, 1885, before J. E. O. Labadie, Notary, this being the same date as that of the deposit just above mentioned.

7. By his Will Mr. Rolland left the usufruct of his property firstly to his wife and at her death to his children then living by the following clause :—

p. 172, l. 46.

Et apres l'extinction de la dite jouissance et usufruit, de mes biens donnés et légués ci-dessus à ma dite épouse, je veux et entends que ces mêmes jouissances et usufruit retournent et appartiennent à mes enfants qui seront alors vivants, par parts et portions égales entre eux, en par chacun d'eux faisant rapport à la masse de ma succession 10 du montant qu'ils auront reçu en avancement d'hoirie de ma succession, attendu que mon intention est de conserver une parfaite égalité entre mes dits enfants ; et ces jouissance et usufruit seront sujets aux mêmes charges et obligations imposées à ma dite épouse.

8. As for the property of his estate he provided as follows :—

p. 174, l. 30.

Quant a la propriété de mes biens, je la donne et legue à mes petits enfants nés et à naître en légitimes mariages de mes enfants au premier degré ; pour par eux en jouir, faire et disposer en pleine et absolue propriété comme bon leur semblera et de chose . . . à eux appartenant, et en faire le partage entre eux par parts et portions égales par têtes 20 et non par souches, voulant et entendant que mes petits enfants partagent les biens de ma succession, et telle est ma volonté expresse ; mais sous la condition que mes petits enfants ne pourront pas faire ce partage ni vendre, transporter ou aliener leurs parts dans mes biens qu'après le décès de tous mes enfants au premier degré ; auquel temps seulement mes petits enfants auront des droits acquis dans mes biens ou dans les biens qui les représenteront.

Si aucun de mes enfants mourait sans laisser d'enfants légitimes, ou s'il laissait des enfants qui mourraient en minorité sans enfants légitimes, alors je veux et entends que la part de mon dit enfant ainsi 30 décédé retourne et appartienne à mes autres enfants au premier degré en jouissance et usufruit pendant leur vie comme de leur propre part, et ensuite retourne et appartienne en pleine propriété à mes petits enfants par parts et portions égales entre eux, et ce par têtes et non par souches, entendu toujours qu'après le décès de tous mes enfants au premier degré comme le partage de mes autres biens.

p. 175, l. 10.

He appointed as his Executors his wife and his four sons providing in the death of any one of them the survivors should replace him as follows :—

p. 175, l. 29.

Le bureau de direction de mes exécuteurs testamentaires, administrateurs et fidéi commissaires devant se composer de cinq, mes quatre 40 fils devront s'adjoindre un de mes gendres, et ensuite ce même bureau se composer de mes petits fils qui seront arrivés en charge par tour de rôle et choisis par la majorité de mes Exécuteurs testamentaires, administrateurs et fidéi commissaires.

9. He then made the following declaration :—

Record.
p. 176, l. 19.

10 Je declare par mon présent testament avoir fait un avancement d'hoirie de ma succession future et de la succession future de ma dite épouse, de la somme de dix mille piastres, dit cours, à chacun de nos enfants en cinq paiements de deux mille piastres chaque, étant pour cinq versements au fond capital souscrit dans la Compagnie de Papier Rolland, dont le premier paiement a eu lieu le trente de Septembre mil huit cent quatre vingt deux, le second paiement le quatorze d'octobre suivant, le troisième paiement le quinze de novembre suivant, le quatrième paiement le quinze de decembre suivant et enfin le cinquième paiement le quinze de janvier suivant, le tout sujet à mes dispositions testamentaires de mon présent testament ainsi qu'à celles du testament de ma dite épouse.

Duquel avancement d'hoirie une reconnaissance a été donnée par chacun de mes enfants, savoir :—

He then bequeathed his own share in the capital of the Company as follows :—

20 Je veux et entends que les vingt mille piastres que j'ai dans le fonds capital de la Compagnie de Papier Rolland soient divisées en quatre parts égales de cinq mille piastres chaque, à mes quatre fils, leur faisant quinze mille piastres de parts à chacun d'eux dans la dite Compagnie, sans par eux être tenus de faire rapport des dits cinq mille piastres que je leur donne et lègue à titre d'indemnité pour la part d'activité et services par eux déjà rendue et qu'à l'avenir ils devront rendre à la dite Compagnie de Papier Rolland pour le maintien et succès d'icelle. p. 177, l. 17.

10. His will concluded as follows :—

30 Je veux et entends que les dites parts en avancements d'hoiries soient incessibles et insaisissables, comme mes autres biens provenant de ma succession, vu que les dividendes de la Compagnie de Papier Rolland devront servir comme revenu alimentaire à mes dits héritiers, qui ne pourront vendre, ni transporter leurs parts du fonds capital de la dite Compagnie, sans le consentement de mes dits Exécuteurs testamentaires, administrateurs et fidei commissaires afin qu'ils puissent juger de l'opportunité d'un changement de placement du montant ou partie des dites parts ; mais en cas de vente ou transport des dites parts par ceux de mes héritiers ou légataires qui en obtiendront la permission de mes exécuteurs testamentaires, administrateurs et fidei commissaires, elles ne pourront être vendues ou transportées qu'à la Compagnie de Papier Rolland pour elle-même. p. 177, l. 27.

40 11. The Honourable J. B. Rolland died on the 22nd March 1888, and his wife on the 26th October 1892.

12. All the eight children survived the Testator and Testatrix and accepted the succession as appears from the subsequent document of the 5th May, 1905. pp. 196-202.

Record.

13. In 1902 by the Statute 2 Edward VII, Ch. 84, the original Statute governing the Company was amended at the instance of the Company by providing that :—

The heirs mentioned in the said Wills . . . as being the owners each of 100 shares in the Rolland Paper Company are declared to be absolute owners of the said shares with power to dispose of the same.

The preamble to this Statute refers to the two Wills, quotes the paragraph to the effect that the Testators had made an advance, omits any reference to the clause in the Will quoted in paragraph 10 above, and says :—

The heirs of the said late Jean-Baptiste Rolland and of Dame 10
Esther Rolland Bouin dit Dufresne were owners of the shares mentioned in the said Wills long before the date of the said Wills through having subscribed for and paid for the same : That the Company had existed since 1882 and the heirs mentioned in the Will were then owners of the shares mentioned in the said Wills : That in view of the aforesaid clauses of the Wills doubts might arise as to the rights of the said heirs regarding the shares therein mentioned : That it is important to remove all doubts on the subject and that it is urgent to declare that the heirs mentioned in the said Wills are absolute owners of the shares therein mentioned, and it is urgent to change the qualification required of the 20
Directors.

14. Donatien Rolland died on the 3rd June, 1907, leaving three children, one of whom is the present Appellant, the issue of his marriage with Dame Henriette Wilson. The children were minors and the widow personally and as tutrix to them renounced succession of Donatien Rolland.

15. None of the eight children of the Testator and Testatrix made any return of the property given in advance of succession, and Donatien Rolland and his estate, after the passing of the Statute, purported to dispose of his shares from time to time to other shareholder members of the family.

p. 253.

16. In 1908 an agreement was entered into whereby all the issued shares 30
of the old Company, except those of Euphrosine, were transferred to two branches of the family, namely those of Damien and Jean-Baptiste Rolland, the other branches to receive for their shares bonds issued out of the reserve.

p. 205, l. 30.

Instead of this transaction being carried out in its terms, a new Company was formed with a capital of \$100,000, all the shares of which were issued to the branches of Damien, Jean-Baptiste and Euphrosine Rolland, the remaining persons interested in the old Company being given bonds.

pp. 213 and
214.

17. In 1928 the shareholders of the new Company sold all their shares to the Royal Securities Company Limited for the sum of \$4,000,000 being at the rate of \$533 for the 7,500 shares to which the capital of the Company 40
had been increased. The holders of the shares so purchased, or their legal representatives are the Respondents, Mis-en-cause.

18. In November, 1928, the Appellant took action naming as Defendants the original and replacing Executors and the heirs of the predeceased Executors, and as Mis-en-cause the other interests under the two Wills. The pleadings consist of the Declaration, Pleas by the Defendants and the Mis-en-cause, replies to these pleas, and an answer by the Mis-en-cause.

Record.
p. 5, l. 20;
p. 22, l. 20;
p. 25, l. 1;
p. 28, l. 29;
p. 30, l. 1;
p. 31, l. 30.

19. The principal contentions of the Appellant were that by the death of her father Donatien Rolland the usufruct in his favour came to an end, and that the substitution (if it were such) created by the grand-parents opened in favour of his children who became proprietors of an undivided part of the two estates, including the property given in advance of succession; that this property included the shares which should have been returned to the estate; that the shares never having been returned she was entitled to have the purchase price thereof handed back to the estate. She asked therefore that she be declared proprietor of a share in the estate including the property subject to return; that the Executors and representatives of deceased Executors should be jointly and severally condemned to return their shares or the \$4,000,000 being the proceeds thereof, and to give an account to the estate for all the revenues of the shares from the death of Donatien Rolland on the 3rd June 1907 up to the sale and subsequently for the revenues of the proceeds; that she be declared to be entitled to one-third of one-eighth of all the revenues; and that the Defendants be ordered to give an account of the administration of the two estates.

20. The Respondents of both classes contended that the Plaintiff had no present rights against the estates, and would not have any until the death of the last of the children of the Testator and Testatrix; that the revenues of the Appellant's father accrued to his brothers and sisters and that there was no obligation to return the shares.

21. The case came on for hearing before the Superior Court (Demers J.) on the 23rd December 1929.

30 22. The judgment of the Superior Court was delivered on the 14th January, 1930. It maintained the pretensions of the Appellant as to her right to revenues from the date of the death of her father, and condemned the Defendants to render an account of the estates. It found, however, that the Appellant was not entitled to the proceeds of the shares. It did not in terms order any return of the property given in advance of succession even on the view that it was \$10,000 cash to each child rather than shares. The condemnation apparently did not cover the heirs of deceased Executors.

23. Mr. Justice Demers gave the following among other reasons for his judgment.

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1. That the right of the Appellant was that of usufructuary rather than that of substitute.
 2. That not shares but sums of \$10,000 each were given by the Testator and Testatrix.

Record.

3. That it was to be presumed that Donatien Rolland had sold his shares with the consent of the Executors.

4. That the Appellant having renounced the estate of her father, could not complain of this alienation.

p. 81, l. 3.

5. That the rules of the Code relating to returns in ab intestate successions applied, and that accordingly the returns provided by the Will were to be made not in fact but by taking less.

24. From the decision of the Superior Court the Appellant appealed to the Court of King's Bench (Appeal Side). The Respondents also appealed from that part of the judgment ordering an accounting. 10

p. 129.

25. The Court of King's Bench (Dorion, Tellier, Howard, Rivard and Galipeault JJ.) gave judgment on 15th January, 1931, confirming the judgment and dismissing all appeals but specifying that with regard to the account to be rendered of the properties subject to return, the property held by the Court to have been given in advance of succession, namely \$80,000, should be returned and made part of the capital of the estate, and that the revenues of this sum since the death of Donatien Rolland should be shewn with the other revenues as part of the receipts. The formal judgment gave no reasons.

26. In addition to the formal judgment the learned Judges constituting the Court of King's Bench (Appeal Side) gave the following among other reasons for their decision. 20

Mr. Justice Dorion held :—

p. 130.

(1) That the Wills created usufructs rather than substitutions.

(2) That until the total extinction of any one of the eight branches of heirs the usufructs would continue in favour of the grandchildren.

(3) That the grandchildren could not lose their rights under the Wills through renouncing the succession of their father, and that accordingly the Plaintiff had a right to her share of the revenues of the property subject to the usufruct of her father. 30

(4) That what the Testator advanced to his children was money, not shares.

(5) That while in one of the clauses of the Will he says that the shares given in advance of succession were unsaleable and unseizable in order that the dividends of the Paper Company should serve as alimentary revenues for the heirs who could not alienate them, this provision was not incompatible with the clause stating that he had given in advance a sum of money. (The learned Judge does not say how the two clauses were reconciled.)

(6) That the rules of the Code as to returns in case of ab intestate successions applied to the returns due by the heirs. 40

(7) That, however, the returns in this case should be made not by taking less, but actually so that the grandchildren might enjoy the revenues, reversing on this point the judgment of Demers J.

(8) That, however, it was not necessary to reverse the judgment on this point but merely to declare that the revenues of the several sums of \$10,000 should be shewn. Record.

Mr. Justice Tellier held :—

(1) That the final partition could not be made until after the death of all the original children of the Testator, up to which time the grandchildren had no vested rights that could be alienated, and that accordingly the final property was bequeathed to those of the grandchildren, by heads and not by branches, who might survive the last of the children of the Testator. This latter holding was an obiter dictum and was not represented in the formal judgment. p. 135, l. 11.

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(2) That the Wills created usufructs rather than substitutions.

(3) That what the Testator advanced to his children was money, not shares.

(4) That the Appellant was entitled to one-third of one-eighth of the revenues of the properties comprised in the universal legacy, including the property to be returned, as being entitled to one-third of the usufruct of her father from the date of his death.

(5) That getting her rights from her grand-parents' Wills her renunciation of her father's succession could not deprive her of them.

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(6) That an actual return of \$80,000 should have been made, and that the Appellant as usufructuary, had a right to exact the return which became due upon the death of the original testatrix as usufructuary of her husband's estate, and which was due not by the grandchildren but by the children.

(7) That the accounting was to be by the present Executors only and not by the heirs of deceased Executors. This also was an obiter dictum and is not represented in the formal judgment.

(8) That the judgment should be clarified by adding that the account to be rendered by the Executors should include the \$80,000 and the revenues thereon from the 3rd June, 1907.

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Mr. Justice Howard concurred in the suggestion made by Mr. Justice Dorion, that the Respondent Executors be directed when making up the account to take due account of the \$10,000 which ought to have been returned to the successions by Donatien Rolland and the revenues therefrom. p. 143, l. 30.

Mr. Justice Bernier held :—

(1) That the Wills created usufructs rather than substitutions. p. 143, l. 40.

(2) That money not shares was advanced to the children.

(3) That as between the children and the grandchildren the obligation to return could not be discharged by taking less. This reversed the holding of the Trial Judge.

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(4) That the grandchildren were entitled on their father's death to the usufruct enjoyed by him.

(5) That the provision in the Will to the effect that they had no vested rights until the partition applied to the right to get shares or to alienate but not to the right to enjoy the shares.

Mr. Justice Galipeault gave no reasons.

p. 156, l. 24.

Record.

27. On the present appeal the Appellant has no interest in challenging the finding of the Court that the Wills created usufructs rather than substitutions.

28. The Appellant submits that the Court of Appeal in reality reversed the Superior Court on the obligation to make an actual return of what was given in advance of succession and that the Court of Appeal should have made the costs payable by the Respondents. If not then it is submitted that the costs of these proceedings for the interpretation of the Wills should have been borne by the estate and not by any individual.

29. The Appellant submits that the obligation to return found by the 10 Judgment of the Superior Court and of the Court of King's Bench (Appeal Side), and the accounting should be of four-fifths of the shares or four-fifths of the proceeds of the sale of the shares of the Rolland Paper Company, Limited, and of the revenues thereof.

30. It is submitted that the Testator and Testatrix had in mind throughout the interests of the children in the Company. When they referred to money in the admissions obtained from the children, it was as representing five instalments in subscription to the capital of the Company. When they bequeathed their own interest in the Company, each spoke of the "\$20,000 which I have in the capital of the Company," identifying 20 the amount originally subscribed with the shares. When they gave their own shares to the four sons, they spoke of the consequent holding as "\$15,000 of shares each in the said Company." The four sons regarded this provision as giving them 50 further shares each and not a mere further sum of \$5,000 each. If the language of the testator referring to the advances is to be held to apply to money not shares then the four sons should have taken \$5,000 each and should not have divided the 200 shares of the testator.

31. It is submitted that while it was impossible to ascertain in detail all the facts surrounding the subscriptions for the shares, enough appears to shew that the gifts made by the Testator and Testatrix to their children were 30 not money but shares. The consideration for the shares was not money but the property transferred to the Company by Mr. Rolland for \$100,000. The Company paid no money to Mr. Rolland but in effect issued its shares to himself and his nominees. The payments for the shares were fictitious. There is no proof that any money passed from the father to the children, and the cheques were never cashed by the Company which got, as consideration for the shares, not cash by property.

32. The Appellant attempted to make evidence that the children of the Testator had no moneys wherewith to pay for shares and no bank accounts but this evidence was disallowed. It is submitted that this evidence should 40 have been allowed, and that without it it is impossible to say that the Testator and Testatrix advanced money to their children.

p. 64, l. 22.

p. 67, l. 38.

33. It is submitted that the Testator and Testatrix regarded the Rolland Paper Company as the capital from which would come the revenues of which the children and grandchildren were to be the usufructuaries. The Directors of the Company and the Executors were, after the death of the Testatrix, the same. The Testator and Testatrix even refer to the Executors as the "Bureau de Direction," and provide that the dividends of the Company shall serve as the alimentary revenues of the heirs and that therefore the shares given in advance of succession shall be unsaleable and unseizable together with the rest of the properties of the estate. The shares could not be made
 10 unsaleable and unseizable except by ceasing to be the property of the children and by being brought back into the estate and treated as part of a common capital to be eventually divisible among the grandchildren. Consequently the Testator in so providing for the inalienability of the shares necessarily intended that what was to be returned was the shares themselves.

Record.

p. 164, l. 39.

p. 197, l. 20.

p. 175, l. 29.

p. 177, l. 27.

34. It is submitted that the Court of Appeal and the Superior Court have failed to give effect to this Clause in the Will.

35. It is further submitted that the Superior Court directly and the Court of Appeal indirectly by confirming the judgment of the Superior Court,
 20 erroneously assumed that the Executors had in compliance with this clause consented to the particular sales by the legatees when in fact there is not only no evidence of such consent, but by the terms of the clause there could have been no consent without the Executors seeing to a reinvestment of the proceeds of the shares when sold.

36. It is further submitted that this clause in the Will referring to a sale of the shares with the consent of the Executors as a "changement de placement" shews that the Testator and Testatrix considered the shares as an investment which they had already made for the children and that the value of this investment at any time was the amount which should be
 30 reinvested until the partition. It is further submitted that this confirms an intention to treat the shares themselves as part of the capital of the estate, and the provision for returns as merely the means for accomplishing this.

p. 177, l. 35.

37. It is submitted that even if what was advanced by the Testators was money and not shares, this clause in the Will shews that they considered that they had made in their life-times an investment for their children and that they wished to control this investment until the time of the partition of their estates.

38. It is submitted that the Statute of 1902, which was not referred to by the Court of Appeals, and which the Superior Court did not think it
 40 necessary to pass on, must be treated as relating only to the qualifications of Directors in order that the latter might, under the Quebec Joint Stock Companies General Clauses Act 1868, 31 Vict., Ch. 24, be considered as owning stock absolutely in their own right; and not as affecting the rights

of third persons or as altering the effect of the Will. See *McCormick v. Grogan*, 1868, 4 English and Irish Appeal Cases, p. 82 at p. 97; *Rose v. Peterkin*, 13 Supreme Court Reports (Canada) p. 677 at p. 706.

39. It is further submitted that by confirming the judgment of the Superior Court, the Court of Appeals condemned to an accounting only the present Executors, whereas it is submitted that the heirs of the deceased Executors are bound to render an account of the administration of those represented by them and this under Article 920 of the Civil Code of Lower Canada reading as follows :—

The powers of a testamentary executor do not pass by mere operation of law to his heirs or other successors, who are however bound to render an account of his administration, and of whatever they may themselves have actually administered.

40. The Appellant therefore respectfully submits that the Judgment of the Court of King's Bench (Appeal Side) for the Province of Quebec, is wrong in part and ought to be modified for the following among other

REASONS.

1. Because what actually was given by the Testator and Testatrix to their children and what should have been returned was not money but shares.
2. Because the original transaction was in reality the exchange of the property of the Honourable J. B. Rolland for shares in the Company created by him and, however set up, involved no money consideration whatever.
3. Because the father never gave his children any money and the children gave no money to the Company, their shares, together with their father's shares, being issued and paid for by the property.
4. Because even if the Testators gave money and not shares they made themselves an investment of that money in shares of the Rolland Paper Company and made the whole subject to the terms of their Wills which ordered the control of the investment until the partition.
5. Because in view of the sale of these shares contrary to the terms of the Wills an accounting should be made by all the Defendants either of the shares or of the proceeds of their sale and of the revenues arising therefrom.
6. Because the costs should be borne by the Respondents or at least by the estate as a whole.

THE CROSS-APPEAL.

41. The Respondents' cross-appeal on the grounds that the present Appellant has no property-rights and no right to the revenues and an accounting therefor.

42. As to the property rights it is submitted that the Wills contemplate in the first instance a vesting subject to the restrictions that the Plaintiff cannot demand the partition of the estate, or sell or alienate her interests therein, such restrictions continuing from the opening of the right (which takes place as regards each child of the testators who dies leaving issue who attains twenty-one years of age) until the death of all the testators' children ; and thereafter a vesting as absolute owners without such restrictions which only takes place when the testators' original children are all dead. Record.
p. 171.

The words "droits acquis" are to be construed in the sense that the vesting was not absolute, seeing that the grandchildren could not at that juncture demand partition of the estate or alienate their rights therein. See article 962 C.C., paragraph 2, reading as follows :—

The substitute, by the opening of the substitution in his favour, becomes immediately seized of the property in the same manner as any other legatee ; he may dispose of it absolutely and transmit it in his succession, if he be not prohibited from doing so, or if the substitution do not continue beyond him.‡

It is submitted that this article contemplates not only an absolute vesting with a full right of disposal but also a vesting subject to a prohibition restricting alienation.

In the present case the prohibition only ceases to be effective upon the death of all the children of the testators.

It is further submitted that if this clause of the Wills was construed as providing for a vesting only after the death of all the children of the Testator and Testatrix, then the words by which they prohibited partition and alienation would have no *raison d'être*, as there would never be any period of time during which any grandchildren would be vested subject to that restriction.

It is therefore submitted that the Appellant whose father is dead and who is now more than twenty-one years of age is vested with the property rights in the estate but subject to the restriction that she cannot demand the partition of the estate nor alienate her rights therein. Such property-rights, it is further submitted, would be transmissible to her heirs under Article 902 C.C. reading as follows :—

Conditions which are intended by the testator to suspend only the execution of a disposition, do not prevent the legatee from having an acquired right transmissible to his heirs.

Accepting the views expressed by the Courts below that the Wills created no substitutions of property but usufructs, it is submitted that they are to be interpreted as containing a bequest of property direct to the grandchildren born and to be born, so that the Appellant was vested in her property rights from the date of her birth.

43. As to the Appellant's rights to the revenues and to an accounting it is submitted that she became entitled to receive directly under the Wills of her grand-parents from the 3rd of June 1907 (the date of her father's death)

Record. one-third of the revenues that he would have received from that date if he was still living.

It is further submitted that the revenues accruing under the Wills to the Appellants' father do not belong to the surviving children of the testators, but that the testators intended that the children or any child leaving issue should receive their father's share in the revenues of the estate.

It is further submitted that the intention of the testators was that the revenues should belong to the children of a deceased child from the time of each child's death. This results from the general tenor of the whole Will and particularly from the two following clauses therein :—

p. 173, l. 18.

Je fais le dit legs de jouissance et usufruit de mes biens a mes enfants pour leur servir et tenir lieu d'aliments a eux et a leurs enfants. . . .

p. 174, l. 44.

Si aucun de mes enfants mourait sans laisser d'enfants légitimes, ou s'il laissait des enfants qui mouraient en minorité sans enfants légitime, alors je veux et entends que la part de mon dit enfant ainsi décédé retourne et appartienne a mes autres enfants au premier degré en jouissance et usufruit pendant leur vie, comme de leur propre part, et ensuite retourne et appartienne en pleine propriété a mes petits-enfants par parts et portions égales entre eux, et ce par têtes et non par souches, entendu toujours qu'après le décès de tous mes enfants au 20 premier degré, comme le partage de mes autres biens.

The Appellant respectfully submits that the cross-appeal should be dismissed for the following, among other—

REASONS.

1. Because she has a vested though temporarily restricted right of property.
2. Because until the partition she had an usufructuary and alimentary right to her share of the revenues.

PAUL ST.-GERMAIN.
WARWICK CHIPMAN.

In the Privy Council.

No. 28 of 1931.

*On Appeal from the Court of King's Bench
the Province of Quebec (Appeal side).*

BETWEEN

DAME CAMILLE ROLLAND épouse
contractuellement séparée de biens de SID-
NEY HILDER, et ledit SIDNEY HILDER
pour autoriser sa dite épouse aux présentes
(Plaintiffs) Appella

AND

STANISLAS JEAN-BAPTISTE ROLLAND,
HENRI ROLLAND, PIERRE ROLLAND,
VICTOR ARCHAMBAULT, LEON ROL-
LAND, DAME LUDIVINE ROLLAND,
ARTHUR LETONDAL, DAME ALEXINA
ROLLAND, OSCAR F. MERCIER, DAME
ESTHER ROLLAND, LOUIS PHILIPPE
TURGEON, DAME ALICE LAROCQUE,
J. M. SAVIGNAC, MARCEL ROLLAND,
DAME NISIDA LEMIEUX, JOSEPH-
HENRI DESROCHERS and LA SOCIETE
D'ADMINISTRATION ET DE FIDUCIE
(Defendants),

AND

LEON ROLLAND, DAME LUDIVINE ROL-
LAND, ARTHUR LETONDAL, DAME
ALEXINA ROLLAND, OSCAR F.
MERCIER, PIERRE ROLLAND, DAME
ESTHER ROLLAND, LOUIS P. TURGEON,
HENRI ROLLAND, JEAN ROLLAND,
DAME ALICE ROLLAND, CHARLES E.
MARCHAND, OLIVIER ROLLAND,
ACHILLE ROLLAND, DAME MARGUE-
RITE ROLLAND, PIERRE BEAUDRY,
EUPHROSINE ROLLAND, DAME
GEORGINE ROLLAND and the HON-
OURABLE T. RINFRET *(Mis-en-cause) Respon*

AND BETWEEN

STANISLAS JEAN BAPTISTE ROLLAND
et al *(Defendants) Appe*

AND

LEON ROLLAND et al ... *(Mis-en-cause),*

AND

DAME CAMILLE ROLLAND épouse con-
tractuellement séparée de biens de SIDNEY
HILDER, et ledit SIDNEY HILDER pour
autoriser sa dite épouse aux présentes
(Plaintiffs) Respon

CASE FOR DAME CAMILLE ROLLAND ET
the Appellant in the first Appeal and
Respondent in the Cross-Appeal.

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