Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thomas Phillipe La Cloche v. *Thomas La Cloche, from the Royal Court of the Island of Jersey; delivered 28th June* 1872.

Present:

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN this case, which is an Appeal from the Island of Jersey, their Lordships are of opinion that the judgment of the Royal Court, affirming the judgment of the first Court, must be affirmed.

Three objections were taken to the judgment, which declared a deed of gift made in favour of the Appellant to be void. The case of the Plaintiff, the original Respondent, was that he was the heir-at-law of his father, and that he was deprived of his inheritance by a gift made in the lifetime of his father, a gratuitous donation to his (the Plaintiff's) eldest son, the donor's grandson, and that it was forbidden by the law of the Island so to disinherit a child. Both the Courts in the Island so held. But it was on the part of the Appellant contended that the character of heir was not proved; first, because the alleged heir was, beyond all question, originally the illegitimate child of a woman in the Island of Jersey, and his legitimacy depended upon that rule which applies in the Island of Jersey, namely, the rule that an illegitimate child may be legitimated *per subsequens matrimonium*. It was said that there was no sufficient evidence of the factum of the marriage. It was said that it ought to have been

proved more strictly and more stringently than it was. The evidence of the marriage was first of all a certificate of the marriage, purporting to have been solemnized in London, between a person answering the description of the deceased, and a person answering the description of the woman, with their names, residences, and addresses, and a declaration in writing, purporting to be signed by the alleged husband himself. The Court in Jersey had before them other documents admitted to be in the handwriting of that gentleman; the handwriting must have been well known to a great many persons in the Island, and the genuineness of the document was not really disputed. Their Lordships must therefore hold that document well proved, and that document is a declaration of the father made at the time before the clergyman, and stating the object of the marriage to be for the purpose of legitimating the child.

That being so, it appears to their Lordships that there was sufficient evidence before the Court of the factum of the marriage. It was then contended that although there was the factum of the marriage, there was not that formal recognition of the child which it was contended ought to have been made. It is not easy to see what was the particular character and nature of the recognition which it was alleged ought to have been made to give effect to it. There was no authority cited to their Lordships, and no principle has been suggested to them on which they can hold that there is any particular mode or form requisite to the validity of such a recognition. The principle in all these cases is that where a man marries a woman who has had an illegitimate child, whether that child is thenceforth to be considered the legitimate child of the man must depend on the only evidence which can generally be given of it; that is to say, the man's recognition of his paternity,—if that is sufficiently and abundantly

proved, it does not signify in what particular manner that recognition is effected. In this case the recognition is abundant. First of all there is the declaration of the father at the time of the marriage; the letters to the son, describing him as his son, letters in which the father talks of the woman as his wife; and, above all, and beyond all, there is the deed itself, on which the Appellant's own case proceeds, which is a gift to him as grandson,—as the son of that son. It is difficult to conceive any stronger recognition of paternity than where the son not only is recognised, but the son of that son is recognised as the grandson, in the very deed which is the subject-matter of the suit.

Well then, the character of the Plaintiff being established, the next question is whether the gift to the son of that son is sufficient to deprive the son of his right to his inheritance? It was contended that the law of Normandy, which is the law in the Island of Jersey, does not specifically provide for that case, that that law only deals in terms with a case of competition between heirs, the case where there are two or more heirs, in which case it was admitted that a man could not give a gift to one so as to disinherit another of any part of his inheritance. But it was said that the case of giving away from an only child is nowhere comprehended in anything said in the older books, and it was also contended that we could not look at what was called the Reformed Custom of the Duchy of Normandy. There seems upon that latter point to be a fallacy. These collections of customs are not written laws at all; they are not in any sense Acts within the letter of which persons are to be brought. They are written illustrations and written evidences of what the unwritten common law or custom of the country was, and unless it can be shown that in that to which their Lordships have been referred, —the Reformed Custom,—some new principle

had been introduced by legislative or other sufficient authority in the Duchy of Normandy, subsequent to the separation, the Reformed Custom of the Duchy of Normandy can be looked at as evidence of what the old law was, just as Coke upon Littleton would be looked at as evidence in Maryland or Virginia of what the common law of England was, and just in the same way as the decisions of our courts of common law and equity to this day are admitted as evidence in every country which has derived its law from England of what the old law was. Probably it is not very material for the decision of this case to refer to it, but the Reformed Custom is evidence of what the law was understood to be. In the Reformed Custom it is said that a person of the age of 20 years completed may give the third part of his inheritance, whether acquired or inherited, to anybody he likes *inter vivos*, "*provided that* " *the donee is not an immediate heir of the* " *giver or a descendant from him in the direct* " *line.*" If that applies, of course that proviso would entirely exclude the claim of the Appellant here, who is in a direct line, that is to say, the son of the son of the donor. But in the old books it is said,—(and it is to be borne in mind that this is merely an illustration of the law and an illustration of the principle, and is not intended to be an exhaustive enumeration of all the cases to which the law is applicable,)—it is said, that when the father has several sons he cannot make of his inheritance one better than the other; and no one, be he man or woman, can give of his fief to any of those upon whom it ought to devolve, nor to their heirs who descend from them in direct line; but after his decease the fief that he holds and that which he has given shall be brought in and divided equally amongst the heirs. Now, supposing, in this particular case, instead of there being one son, there had been two sons, A and B, it is quite clear that the donor could not have

given to the son of A, to the exclusion of A and B; and that gift being void, upon his death the property would have fallen, to be divided in the very terms of this rule, not between the son of A and B, but between A and B. It would be very singular if, where he could not give to the son of A, to the disinheriting of A and B, he could give to the son of A, to the disinheriting of A, he being sole heir. The Court of Jersey held that the principle applies to the case of the sole heir and the child of that sole heir, exactly in the same way as it would apply if the gift had been to the son of one of several co-heirs. In all probability the particular case of disinheriting an only son in favour of that son's son was not mentioned in the books, because such a case had never come before the Courts for decision.

Their Lordships are of opinion that upon the true construction of the legal propositions in the older books, and the proper application of the principles of law involved, the Court of Jersey took the right view in saying that a gift to a person in a direct line from the heir was a gift which could not prevail against the descent of the property according to the laws of inheritance. Their Lordships are therefore of opinion, and will humbly advise Her Majesty, that the Appeal be dismissed, and the decision of the High Court affirmed. The Appeal, of course, must be dismissed with costs.