

Dame Diana Meredith and others - - - - - *Appellants*

*v.*

Dame Elizabeth Magdalene Meredith and others - - - *Respondents*

FROM

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

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 24TH JANUARY, 1939.

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*Present at the Hearing :*

THE LORD CHANCELLOR (LORD MAUGHAM).

LORD THANKERTON.

LORD RUSSELL OF KILLOWEN.

LORD MACMILLAN.

LORD ROMER.

[*Delivered by* THE LORD CHANCELLOR.]

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This is an appeal from the judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) affirming a judgment rendered by Chief Justice Greenshields in the Superior Court in favour of the respondents. It should be mentioned that the matter came before the trial judge sitting at Montreal, under 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 construction arising therefrom.

Dame Elspeth Hudson Meredith, to be referred to hereafter as the testatrix, the widow of Charles Meredith who died prior to the year 1935, left as her last will and testament a holograph will, dated the 4th June, 1935. It was admitted to probate on the 29th July, 1936. Her estate was of the gross value of about two and a half million dollars, which had been derived approximately as to one-half from the estate of her late father and as to one-half from the estate of her late husband Charles Meredith. The will is very clearly written and betrays no signs of haste. The testatrix begins by making a number of gifts of various kinds, including some large gifts to hospitals and to the Montreal Art Gallery. The residuary clause is in the following words:—

“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's Charles Meredith's nieces and nephews (immediate heirs).”

No question arises in regard to the half of the residuary estate which was to be divided between brothers and sisters of the testatrix or their immediate heirs, including the family of her sister Edith who was dead at the date of the Will. The dispute is as to the meaning of the words in brackets "immediate heirs" following the gift by the testatrix to her husband's nieces and nephews.

The appellants are grand-nieces and grand-nephews of Charles Meredith, the husband of the testatrix. They are sons and daughters of a niece and a nephew of the late Charles Meredith, who had predeceased the testatrix (they were dead long before she made her will), and the appellants are the only grand-nieces and grand-nephews (children of deceased parents) who survived the testatrix. The respondents are the only nieces and nephews of Charles Meredith who survived the testatrix.

It should be added, and the point has some importance, that a brother of Charles Meredith, namely Thomas Graves Meredith, was alive at the date of the will and in fact is still living. He is the father of John Stanley Meredith and Thomas Redmond Meredith, two of the respondents. It is plain that in a succession *ab intestate* Thomas Graves Meredith would have been one of the immediate heirs of Charles Meredith to the exclusion of his two sons. It is also evident that under the terms of the will the testatrix excluded Thomas Graves Meredith from any share in her residue and preferred to benefit his two sons.

Chief Justice Greenshields accepted the contention of the respondents and held that the half of the residuary estate of the testatrix was divisible between the present respondents, and that the grand-nieces and grand-nephews of Charles Meredith took no interest under the will. He was of opinion that the words "immediate heirs" in brackets might well be accepted as words of description and could not properly be construed as indicating an intention that the children of deceased nephews and nieces of Charles Meredith were to be entitled to a share. The same view was taken in the Court of King's Bench (Appeal Side) by a Court of five judges. Mr. Justice Bond, in a careful and elaborate judgment in which the other members of the Court appear to have agreed, was of opinion that the words "or their immediate heirs" in the first part of the residuary gift appeared to have a different meaning from that indicated by the words in brackets "immediate heirs" in the second part of the residuary gift, and he pointed out that in the case of her own family the immediate heirs of a predeceased brother or sister were included in the bequest, whilst in the case of her husband's family the testatrix was making gifts directly to his nephews and nieces, passing over a brother, and describing the nephews and nieces as the immediate heirs, and he suggested as a consequence excluding all those who were not nephews and nieces. The argument of the appellants before their Lordships was necessarily based on the footing

that the words "immediate heirs" ought to be construed as if the words were "or their immediate heirs," that is to say the immediate heirs of the nephews and nieces of Charles Meredith who would take by representation of the deceased nephew and niece. Their counsel, in an able argument, insisted on the difficulty of treating the words as referring to the immediate heirs of Charles Meredith, inasmuch as on the one hand Thomas Graves Meredith, the brother above referred to, was excluded from the description, nephews and nieces of Charles Meredith, and on the other the words appeared to include the two sons of Thomas Graves Meredith, who could in no proper sense be regarded as immediate heirs of Charles Meredith.

In the consideration of this difficult question of construction it is desirable to bear in mind four articles of the Civil Code of Quebec:—

" 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."

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

" 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 deceased."

" 937. 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."

It appears that article 937 has no application in the present case, for, although it refers to representation and to wills, it applies only where the testator has ordained that the property shall pass in the order of legitimate successions, or his intention "to that effect" is otherwise manifest. The words "to that effect" seem to indicate that the intention should be that the property shall pass in the order mentioned and the testatrix not having followed the order of legitimate successions in an intestate estate, since she had passed over Thomas Graves Meredith as already stated, it would seem that the article does not apply.

It is also to be observed, as was pointed out by Mr. Justice Bond, that there is a difficulty in treating the words in brackets "immediate heirs" as indicating that there is to be representation in the technical sense such as might take place in the case of an intestate estate, inasmuch as the descendants of nephews and nieces cannot represent their fathers or mothers in an inheritance from their great-uncle or great-aunt (Art. 622). It would seem, as is pointed out in Mignault Vol. 3, p. 309, that in the view of the Civil Code, the affection of an uncle or aunt is not supposed to extend further than his or her nephews and nieces, and if a testator wishes that his grand-nephews or his grand-nieces should have a share in his succession, "il n'a qu'à faire un testament qui leur reconnaisse ce bénéfice."

It is well established that if on the face of a will the testator or testatrix has omitted certain words, and that those words can be collected without reasonable doubt from the

context and are necessary to effectuate the intention, they can be supplied as a matter of construction. In the present case, however, it is to be noted that the words of the earlier part of the material gift, namely the words "between my husband Charles Meredith's nieces and nephews" are perfectly plain and unambiguous and it is not in doubt that they do not include grand-nieces and grand-nephews, and it is sought by adding words to those in brackets, that is the words "or their," in effect to cut down a plain and unambiguous gift. The words which are missing can scarcely have been omitted by inadvertence, for the testatrix seems to have corrected in her will a trifling error with regard to the writing of the words "immediate heirs" in the first part of the gift in question. The time occupied in writing the words "or their" would not have occupied more than a single second. If there is any real uncertainty as to the missing words the certain words which precede them cannot be controlled by even a probable conjecture.

On this point there is an observation which seems to their Lordships to have considerable weight. In the first part of the gift the testatrix takes care to provide that her sister Edith's family, meaning apparently her children, should be included in the persons to share in that part of the gift under the description "or their immediate heirs." The sister Edith was dead at the date of the will. It seems to be not in dispute (though the testatrix may well have been in doubt on that matter) that, according to the law applicable in the Province of Quebec, the children of Edith would have been entitled to represent Edith upon the true construction of the will, notwithstanding the circumstance that Edith was not in the class of brothers and sisters alive at the date of the will. The testatrix must be taken to have been well aware of the death of J. R. Meredith, one of her husband's nephews and the father of one of the appellants, and of the death of Mrs. William Ramsay, a niece of her husband and the mother of the remaining appellants. It is difficult to understand why, on the hypothesis put forward by the appellants, the testatrix neglected to use the same precaution as that which she had employed in the earlier part of the residuary gift, that is why she did not provide that the children of J. R. Meredith and of Mrs. William Ramsay should be included as part of the class intended to benefit in the second part of the gift. If the point had occurred to her at all, it might also have come to her mind to provide that the representation should be a representation *par souches*.

The precise signification to be attached to the words in brackets must, in the view of their Lordships, be a matter of doubt. It is possible that the testatrix wished to explain that, contrary to the provision for her own family, she was in relation to her husband's family missing a generation and giving the property immediately to the nephews and nieces of her husband. She may have intended to restrict this legacy to nephews and nieces properly so described and to exclude the possibility of its being extended to the spouses

of a deceased nephew or niece. Other conjectures might be made. For example, it seems to their Lordships that there is at least a reasonable possibility, as Mr. Justice Bond indicated, that the testatrix used the words in brackets merely as descriptive words, indicating that in this case the nephews and nieces of her husband, or the survivors of them, were to be the heirs and that no other persons were to share. The appellants' contention involves the addition of words which seem prima facie to have been deliberately omitted, and it affords no explanation of the absence of a special direction with regard to the children of J. R. Meredith and Mrs. William Ramsay to which reference has already been made. On the whole their Lordships must agree with all the learned judges in Canada in concluding that there is no sufficient ground or context from which the omitted words may be supplied, and no sufficient reason for thinking that the addition of the suggested words would carry out the intention of the testatrix as expressed in the will.

Their Lordships must humbly advise His Majesty that the appeal should be dismissed and it seems to them that the ordinary rule as to costs must be followed and the appeal must be dismissed with costs.

In the Privy Council.

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DAME DIANA MEREDITH AND OTHERS

*v.*

DAME ELIZABETH MAGDALENE  
MEREDITH AND OTHERS

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DELIVERED BY THE LORD CHANCELLOR

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