Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of De Quetteville v. *Hamon* (*Perrée*), *from the Royal Court of the Island of Jersey; delivered* 22*nd July* 1893.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD SHAND.
HON. GEORGE DENMAN.

[*Delivered by Lord Shand.*]

The Appellant in this case claims right to the character of "principal heir," and as such entitled to the "*saisine*" of the personal estate and acquired real estate of his aunt, Marie Nicolle, who died on the 9th August 1891, a widow without issue, possessed of both real and personal estate in Jersey. The Royal Court of Jersey, by a judgment of the 14th September 1891, sustained the Appellant's claim, but this decision was reversed by a judgment of the Superior Number of that Court on the 26th May 1892 by which it was decided that the Respondent is the principal heir of Marie Nicolle, who was her grand-aunt. The matter in controversy between the parties is, which of these decisions is in accordance with the law of Jersey; or in other words, which of the two parties is the principal heir of the deceased.

The Appellant being the nephew of the deceased Marie Nicolle, the "*de cujus*," as she is called throughout the proceedings, which relate

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entirely to her estate, is one degree nearer in blood to her than the Respondent who is a grand-niece; but, on the other hand, the Respondent is a grand-daughter (and the eldest grand-daughter) of Marie Nicolle's eldest sister, while the Appellant is a son of her second sister. She had four sisters, all of whom pre-deceased her. Three of them left issue, and her estate real and personal according to the law of succession in Jersey falls to be divided amongst the descendants of the three sisters.

There is no doubt that the Respondent as the nearest heir in the line of collateral succession is the "principal heir" of the *de cujus*, as regards her inherited real estate (*propres*), taking by representation through her mother and grand-mother. It is equally clear that but for the legislation of the States of the Island in 1851 and 1873 the Appellant in the circumstances which here occur would have been the principal heir of the *de cujus* in personal and acquired real estate, taking not by way of representation through his mother but in his own right as the nearest in blood. But by the enactment of 1851 representation in regard also to personal and acquired real estate (*meubles, prises, conquêts et acquêts*) was introduced in the case of collaterals; for it was thereby provided in reference to such estate that the sons and daughters of brothers or sisters of a person deceased should represent them in the division of the estate, and that the persons thus called to the succession should take *per stirpes*. The words of the enactment on which the question to be now determined really turns, as contained in the Réglement passed by the States of the Island on the 13th February 1851 and confirmed by an Order in Council of the 14th April 1851, are these :—

Art. 2. "*Dans les successions collatérales de* "*meubles et acquêts, les fils et filles des frères ou*

" *sœurs du défunt décédés les représenteront dans* " *le partage de sa succession. Le partage de ces* " *successions, où les fils et filles des frères ou* " *sœurs seront appellés, aura lieu par souche.*"

It is unnecessary to quote the terms of the enactment of 1873 at length. The law is thereby extended beyond nephews and nieces to the case of grand-nephews and grand-nieces of the deceased :—" *Aux petits-neveux et petites-nièces* " *du défunt, les appellant au partage par voie* " *de représentation de leur grand-père ou grand-* " *mère décédé.*"

The Appellant's argument involves the proposition that by these enactments a peculiar and limited, and not a complete and general right of representation was introduced in the case of collateral succession to *meubles et acquêts*. It is not disputed that if the enactment of 1851 conferring on nephews and nieces the right of representation of their parents had used the words " *les représenteront dans sa succession,*" the Respondent must succeed in the present controversy. But it was said the words " *dans le* " *partage*" preceding the words " *de sa succession*" limit the right of representation, so that the Respondent does not take the right of principal heir entitled to the *saisine* of the estate in question, which her grand-mother would certainly have done had she survived the *de cujus*.

The sole question then is, whether the expression " *dans le partage*" includes or excludes the claim to be principal heir, and for the purpose of answering that question it is necessary to enquire what was the position of principal heir when the law of 1851 was passed. The principal heir was selected by the law to represent the estate of the deceased. He took possession of the whole estate, received the income until partition was sought, and after a time, if no partition (by *clameur de partage*) was sought, became

absolute owner. In the partition which took place, certain valuable preferences were accorded to him, such as a prior choice among indivisible parcels of the property, and other privileges which need not here be particularly specified.

At the same date the succession to the *meubles et acquets* of the *de cujus* would have devolved upon those who stood nearest to her in degree or blood, so as to give the whole to the surviving members of the generation nearest to her and to exclude the issue of others who had predeceased her.

The law of 1851 makes an alteration in favour of issue so excluded, and it does so by providing that nephews and nieces of the deceased shall represent their deceased parents in the *partage* of the succession, and that the *partage* shall take effect *per stirpes*. The law of 1873 does the same in favour of grand-nephews and grand-nieces.

It is very difficult to suppose that, when effecting this great change from a division *per capita* to one *per stirpes*, and so assimilating the successions in question to lineal successions and to successions of *propres*, the Legislature did not intend to affect every kind of beneficial or proprietary right which successors take from their predecessor; but did intend that as to one class of benefits or rights representation should take effect, and as to another it should not. Such a result can only be arrived at by limiting the meaning of the word "*partage*" in a way which appears to their Lordships very strained and artificial, and for which no reason has been assigned to them.

Their Lordships, agreeing with the Court of the Superior Number, are unable to construe the enactment of 1851 as introducing any such limited right of representation as that for which the Appellant contends. They do not

think it is a sound interpretation of the words of the enactment "*les représenteront dans le par-* "*tage de sa succession*" to limit their effect to the rights of parties only after a "*clameur de* "*partage*," or demand for partition, has been made, thus excluding representation as regards the title to the estate, and with the effect of creating a principal heir to take the title only with such advantages as this might possibly give. In their Lordships' opinion the words of the enactment are to be taken in their natural meaning as referring to the whole estate and succession of the deceased, and as providing that the parties called shall represent their parents in the division or distribution of that estate, which must include the rents or income accruing from the time of the death of the *de cujus*, so that the nephews and nieces, or grand-nephews and grand-nieces, shall in all respects take the succession as their parents or grand-parents would have done. The language used is in itself apt and fitted to convey this meaning, for the "*partage*" of the succession means simply the division or distribution of the succession, that is, of the whole succession or estate, and not the succession *minus* a portion of the income as to which representation shall not occur. It cannot be truly said that the issue of one who would have been principal heir if he had survived the *de cujus*, represents his ancestor in the "*partage*" unless he also becomes principal heir.

If the French law be looked at for an explanation of the word "*representer*" the same conclusion is arrived at.

In the French Code Civil, Article 739, the right of representation is thus clearly described:— "*La representation est une fiction de la loi, dont* "*le effet est de faire entrer les representans*

" *dans la place, dans la degrè et dans les droits du* " *répresenté.*" There is no reason to suppose that the Jersey legislators used the word in any different sense. But the Appellant's contention here is that the person having the right of representation does not take the same place nor the same rights as his or her ancestor would have done. If such an exception had been intended it appears to their Lordships that the general terms used would have been expressly qualified by a provision that the representation should not include representation in title with its resulting advantages.

The decision of the Inferior Number of the Court of Jersey in this case was rested entirely on the authority of the judgment in a case of *Mourant* v. *Gaudin*, decided by the Court of the Superior Number on the 13th May 1877, which the Inferior Number in this case held to have determined that the enactments of 1851 and 1873 did not confer the right of *saisine* and the quality of principal heir in moveables and acquired real estate on the descendants of brothers and sisters of the *de cujus* by way of representation, where the succession had opened in the collateral line. If this case could properly be represented as a judgment to that effect their Lordships would be prepared to hold that the decision was wrong, but an examination of the case shows that it cannot rightly be so regarded.

In the case cited the Court of Inferior Number gave no decision, but in view of the importance of the question raised referred the cause on the pleadings to the *Cour d'Assise d'Héritage*. The action was raised by one Jean François Mourant to set aside a deed granted by Jean Touzel, the *de cujus*, in favour of his widow, which it was said he had no power to grant to the prejudice of his principal heir. The widow maintained success-

fully that the Plaintiff had no title to maintain the suit because he had not the quality of principal heir. The Plaintiff was a grand-nephew of the *de cujus* by the half-blood only, while the *de cujus* had been survived by a sister by the full blood, who was still alive when the action was pending. The Defendant in that case did not by her pleadings dispute the right of the Plaintiff to represent his grand-mother to the fullest extent, by virtue of the enactments of 1851 and 1873, but maintained that even his grand-mother would have been herself excluded, being a sister of the *de cujus* by half-blood only, by the surviving sister by the full blood; and this appears to have been the sole question as to the right of succession before the Court when the case was referred to the *Cour d'Assise d'Heritage.* In the result the Court held that the Plaintiff had not the character or quality of principal heir, but the grounds of the judgment are by no means clearly stated. In its concluding paragraph, which seems to be the operative part of the decree, it professes in terms to give effect to the second part of the Defendant's argument, that is the argument rested on the objection to the title of the Plaintiff as being connected with the *de cujus* by half-blood only while a sister-german was still alive. In an earlier paragraph it no doubt bears that the enactments of 1851 and 1873 did not by representation confer on the Plaintiff the quality of principal heir, a defence not raised on the pleadings; and the two points, either of which was sufficient for the decision, were mixed up in the judgment. The case is for that reason not satisfactory, and it cannot be accepted as a decision of the point now in controversy, for the argument on the distinction between a sister consanguinean and a sister german was sufficient as a ground of judgment against the Plaintiff.

Their Lordships will humbly advise Her Majesty to dismiss the present appeal and to affirm the judgment complained of, and the Appellant must pay the costs of the appeal.