Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Beaudry v. *Barbeau* et al ès-qual *and Leblanc* et al ès-qual (Mis-en-cause), *and Barbeau* et al ès-qual v. *Beaudry and Leblanc* et al ès-qual (Mis-en-cause), *from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered* 28*th July* 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD LINDLEY.
SIR RICHARD COUCH.
SIR HENRY STRONG.

[*Delivered by Sir Henry Strong.*]

These are two Appeals from a judgment of the Court of Queen's Bench dismissing Appeals by the same parties from the original judgment of the Superior Court. The action was instituted by the Appellant Jean Charles Victor Beaudry against the trustees and executors of the will of his father Victor Beaudry to recover $3,000 being the first half-yearly payment of an annuity of $6,000 bequeathed to him by the will in question.

Victor Beaudry who died in 1888 by his will, made in authentic form, after certain specific bequests in favour of his wife Marie Angelina Leblanc, gave to her an annual life rent of $12,000 to be reduced to $9,000 in the event of her second marriage. This life rent was declared to be by way of a personal provision for

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his wife and for their children until the age of majority or until provided for by marriage.

The testator gave the residue of his property to his children who might be living at the time of his death and in the event of the death of any of them to their respective children, declaring that the children of each of his children should be considered as one root and take the share of their parent. He charges each of his children with a substitution in favour of their respective children, and meantime he places his estate in the hands of trustees who are to administer it until the death of all his children when a division is to be made of the property comprising his estate. He directs that each of his children should only receive from the time of majority or from marriage the revenue derivable from his estate to the amount of $6,000 a year with the proviso however that if his daughters should marry contrary to his wishes as indicated in his will then their annuity should be reduced to $2,000. Finally he authorises his trustees to pay to each of his sons on attaining the age of 25 years the sum of $25,000 for the purpose of enabling them to establish themselves in business, to be taken out of and to diminish their respective shares in the mass of his estate.

The questions arising for decision in the action related exclusively to the proper legal interpretation of so much of the will as has been above stated.

Different pretensions were set up by the Plaintiff by the trustees and executors, and by the testator's widow who, as tutrix of the minor children, was together with the curator to the substitutions, put in cause in the action.

The cause having been heard in the Superior Court by Mr. Justice Tellier judgment was

rendered therein on the 12th of May 1899 whereby it was declared that Jean Charles Victor Beaudry was entitled from the 3rd September 1898 the date of his coming of age to an annual sum of $6,000 to be taken from his share of the net current annual revenue of the estate if sufficient and in case of its insufficiency from the revenue which had accumulated from the death of his father, but only from his share, being one-fifth of such current and accumulated revenue and only so long as his share in the current and accumulated revenue should be sufficient to pay such sum to him annually, and it was further declared that each of the children whether of age or a minor is entitled to an equal share from the death of their father of the net revenue of the estate and the trustees were condemned to pay to the Plaintiff out of his share of the current and accumulated revenue $3,000 for two quarterly payments of his annuity with costs to the other parties to the cause against the trustees.

From this judgment Jean Charles Victor Beaudry as well as the trustees appealed to the Court of Queen's Bench. By the judgment of the latter Court dated the 23rd of June 1899 both appeals were dismissed, that of Jean Charles Victor Beaudry with costs, and that of the trustees with costs to them payable out of the estate.

This judgment was rendered by a majority of the Court consisting of Mr. Justice Wurtele, Mr. Justice Blanchet, and Mr. Justice Bossé two of the learned Judges who heard the appeals (Mr. Justice Hall and Mr. Justice Ouimet) having dissented.

The reasons upon which the majority proceeded are set forth in the opinion of Mr. Justice Wurtele.

The contentions of the parties in the Courts below as well as before this Board at the argument of the present Appeal were as follows:—Jean Charles Victor Beaudry insisted that he was entitled to be paid his annuity of $3,000 a year and that the whole net revenue and accumulated arrears were available for this purpose and that he was not to be restricted to a one-fifth share of the revenue and accumulations. The trustees insist that the claim of the first named Appellant is to be confined to a one-fifth share of the current net revenue and that he is not entitled to resort to the accumulations even to the extent of his own one-fifth share of these moneys.

The tutrix and curator to the substitution whilst conceding that to the extent of a one-fifth share the legatee claiming is entitled to have both the current net revenue and the accumulated revenue applied to the payment of his annuity resist his claim to have the whole of the revenue and accumulations beyond his own one-fifth share so applied in payment of his annuity.

The last position has been maintained by both the Courts below and their Lordships are of opinion that these decisions are in all respects right.

In interpreting a will the intention of the testator which is to be arrived at solely from the language in which he has expressed himself is as Mr. Justice Wurtele has well observed the only guide to be followed. Arguments derived from the assumption that the testator must have intended absolute equality in a disposition in favour of his children are unavailing and inadmissible so far as they are not in accord with the actual words in which the gift is expressed. It is therefore impossible to give effect to the contention raised on behalf of the eldest son that the younger

children who are entitled to be maintained out of the annuity of $12,000 bequeathed to their mother until they attain their majorities, whilst the income of their shares of the residue are accumulating will derive greater benefits under the will than are conferred upon him, and therefore that the arrears of his annuity ought to be paid out of the mass of the estate and not confined to his own one-fifth share. To do this would involve a variation of the terms which the testator has used in the bequest of the residue of his estate. This gift is to all the testator's children of the first degree living at his death without regard to their respective ages or to the benefits they are to receive through their mother or otherwise under other clauses of the will. The judgment under appeal therefore properly rejects the claim of the eldest son to any advantage which would confer upon him more than an equal share with his brothers and sisters and more than the revenue of that share whether current or accumulated. Again to adopt the pretension of the trustees who wish to treat the accumulations of the income of the share of the eldest son during his minority as an addition to his share of the capital and therefore as subject to the substitution would be to offend in another way against the rule of construction referred to. The testator has confined the substitution he has created to the share of the residue which he has bequeathed to his children respectively—that is to say—to the capital of that share; to include the income in the substitution would be to add to the will an additional disposition not warranted by the testator's language and in no way authorised by the provision restricting the annuities payable to the legatees to $6,000 per annum. The result is that the accumulations arising from revenue during minorities belong absolutely to the legatees who can dispose of

them by will as the Court of Queen's Bench has held. For these reasons their Lordships will humbly advise Her Majesty to dismiss these appeals.

As regards costs their Lordships were informed by Counsel that this litigation has been throughout of a friendly character, and was instituted for the purpose of obtaining the opinion of the Courts on the interpretation of the will and this being so their Lordships are of opinion that the costs in both the Courts below as well as those of these Appeals should be paid by the trustees out of the estate and that the last-mentioned costs should be taxed as between solicitor and client.