

1944  
\*May 4, 5.  
\*June 22.

ALBERT POULIOT AND OTHERS (DE-  
FENDANTS) . . . . . } APPELLANTS;

AND

DAME ALINA CLOUTIER (PLAINTIFF) . . RESPONDENT.  
ON APPEAL FROM THE COURT OF KING’S BENCH, APPEAL SIDE,  
PROVINCE OF QUEBEC

*International law—Will—Husband and wife—Spouses domiciled and married in the United States of America—Spouses returning to province of Quebec where domicile reacquired—Subsequent death of husband—Statute of State of New Hampshire as to “The rights of surviving husband or wife”—Action by widow under that statute—Whether Quebec testamentary law should be applied.*

The respondent’s husband, born in the province of Quebec, removed in 1926 to the state of New Hampshire, in the United States of America, where he established his domicile. In 1937, he there married the

\*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

respondent without a marriage contract and, therefore, by the law of that state, the spouses were separate as to property. In 1939, they returned to the province of Quebec, where they reacquired domicile. The respondent's husband, on June 26th of that year, made his last will, and he died on April 18th, 1940. He bequeathed \$1,000 to the respondent, out of an estate of about \$15,000. The only immoveable was situated in Quebec; and the balance of his estate were moveables situate some in Quebec and some in New Hampshire. The respondent, in order to claim a greater share of her husband's estate under a statute of New Hampshire, executed a renunciation of the benefits conferred upon her by the will; and she brought an action against the appellants, the residuary legatees under the will, in order to recover the benefits which she alleged were conferred upon her under the New Hampshire statute which contained provisions for a certain share of the property of a deceased husband or wife to go to the survivor whether the deceased dies testate or intestate.

*Held*, reversing the judgment appealed from, that under Quebec law the terms of the New Hampshire statute are not applicable to the circumstances of this case; and, therefore, the respondent's action ought to be dismissed.

*Per* The Chief Justice and Kerwin and Taschereau JJ.—In the absence of a contract, either actual or implied, by which proprietary rights are acquired, the law of the domicile at the time of death should determine whether any limitation was imposed upon the disposing power of a testator as to moveables. The same result follows as to immoveables, as those in this case are situate in Quebec.

*Per* Hudson and Rand.—The New Hampshire statute is one that has to do not with the fact of marriage but with married people; and it is, at most, a law of distribution or succession of property in New Hampshire which is owned at the time of his or her death by a married person. The provisions of that statute are in no sense predicated on marriage within the state nor are they referable only to such a marriage. It is not, therefore, a law creating "a conjugal association" as to property to which the law of Quebec will give effect upon the death of one of the consorts.

*De Nicols v. Curlier* ([1900] A.C. 21), *Stephens v. Falchi* ([1938] S.C.R. 354), and *Berthiaume v. Dastous* ([1938] A.C. 79) disc.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court, Gibsone J. and maintaining the respondent's action, brought against the appellants, residuary legatees under the will of her deceased husband, for the recovery of certain benefits alleged to have accrued to her under the terms of a statute of New Hampshire, in the United States of America, where the spouses had their domicile and were married.

*L. E. Beaulieu K.C.* and *Arthur Bélanger K.C.* for the appellants.

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*Guy Hudon K.C., Ross Drouin and Paul Lebel* for the respondent.

The judgment of the Chief Justice and of Kerwin and Taschereau JJ. was delivered by

KERWIN J.—This litigation gave rise to several questions with which the Court of King's Bench and the Superior Court of the province of Quebec found it necessary to deal but which now are not in issue. This narrows the compass of the present appeal and permits the relevant facts to be shortly stated.

Alphonse Pouliot was born in the province of Quebec but, in 1926, removed to the State of New Hampshire in the United States of America where he established his domicile. In 1937 he there married Alma Cloutier of Quebec, so that New Hampshire was the matrimonial domicile. No marriage contract was entered into and, therefore, by the law of the State the spouses were separate as to property. In 1939 the spouses returned to Quebec where, on June 26th of that year, the husband made his last will and testament in notarial form and died on April 18th, 1940. At the time of the making of his will, and therefore at the time of his death, he had reacquired a Quebec domicile. By his will he bequeathed one thousand dollars to his wife, various sums of money to relatives, and devised and bequeathed the residue of his estate to his four brothers. The value of the estate left by him was about fifteen thousand dollars. The only immovable is situate in Quebec and is valued at \$2,500. The balance of his estate consisted of moveables, some of which were in Quebec and some in New Hampshire.

In this situation there would ordinarily be no question that the law of Quebec would regulate the succession. However, relying upon a statute of New Hampshire and in order to become entitled to the share of her husband's estate according to the terms thereof, the widow executed a renunciation on February 20th, 1941, by which she waived the provisions of her husband's will in her favour and released her right of dower and homestead in his real estate. This renunciation was filed in one of the Probate

Courts of New Hampshire. On March 18th, 1941, she executed before a notary public in Quebec another renunciation of the benefits conferred upon her by the will.

The statute law referred to is chapter 118 of the 1933 laws of New Hampshire by which sections 10 and 11 of chapter 306, "The Rights of Surviving Husband or Wife", of the Public Laws of New Hampshire were enacted as follows:

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10. Widow, Personalty. The widow of a person deceased, testate or intestate, by waiving the provisions of his will in her favour, if any, shall be entitled, in addition to her dower and homestead right, as her distributive share, to the following portion of his personal estate, remaining after the payment of debts and expenses of administration:

I. One-third part thereof, if he leaves issue surviving him.

II. If testate, and he leaves no issue surviving him, five thousand dollars of the value thereof, and also one-half in value of the remainder above said five thousand dollars.

III. If intestate, and he leaves no issue surviving him, seven thousand five hundred dollars of the value thereof, and also one-half in value of the remainder above said seven thousand five hundred dollars.

11. Real Estate. The widow of a person deceased, testate or intestate, by waiving the provisions of his will in her favour, if any, and by releasing her dower and homestead right, shall be entitled instead thereof, in fee, to the following portion of all the real estate of which he died seized, after the payment of debts and expenses of administration:

I. One-third part thereof, if he leaves issue surviving him.

II. If testate and he leaves no issue surviving him five thousand dollars of the value thereof, and also one-half in value of the remainder above said five thousand dollars; and the same shall be assigned to her in the same manner as dower is assigned. But where the inventory value of all his real estate does not exceed five thousand dollars, she shall be entitled to the whole of said remainder and no assignment of the same to her shall be required unless some party in interest shall petition the probate court therefor.

III. If intestate and he leaves no issue surviving him seven thousand five hundred dollars of the value thereof, and also one-half in value of the remainder above said seven thousand five hundred dollars; and the same shall be assigned to her in the same manner as dower is assigned. But where the inventory value of all his real estate does not exceed seven thousand five hundred dollars, she shall be entitled to the whole of said remainder, and no assignment of the same to her shall be required unless some party in interest shall petition the probate court therefor.

The law of 1933 was thus in force in New Hampshire from a date prior to the marriage down to the trial of the action. It was to recover the benefits mentioned therein that this action was brought by the widow against her husband's four brothers, the residuary legatees under his will.

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The terms of the statute are plain. The question is whether by Quebec law they are applicable to the circumstances of the present case. It seems clear that according to Quebec law the domicile of the spouses at the time of marriage fixes their matrimonial status, and they are deemed, in the absence of a marriage contract, to have adopted the law of that domicile for the determination of their property rights. In this respect I think it does not differ materially from the common law. In each system the question is as to what is covered by property rights. The decision of the House of Lords in *De Nicols v. Curlier* (1), greatly relied on by the respondent, is quite distinguishable and is no authority for the respondent's contention that she acquired property rights at the time of her marriage in New Hampshire. What happened in the House of Lords' case was that two French people were married in France without any matrimonial contract so that according to French law their rights as to property were subject to the law of community of goods. They came to England and were permanently domiciled there. The husband died in England, leaving his wife surviving and having made an English will by which he disposed of all his property. It was held by the House of Lords that as to moveable goods, the wife, under French law, acquired a real proprietary right to one-half, just the same as if a contract had been entered into accomplishing the same result. In the present case the wife acquired no proprietary rights whatever but only the hope of a certain distribution upon the husband's death in case he was then domiciled in New Hampshire.

In my opinion the true view of the New Hampshire statute, as well by Quebec law as by the common law, is expressed by J. D. Falconbridge in 12 Canadian Bar Review, 133. Referring to the Dependents' Relief Acts or Family Protection Acts in force in some of the common law provinces, by which a court may give to a testator's dependents a larger share of his estate than he has given them by his will, the author states:

The prevailing view would seem to be that a statute of this kind, in the absence of any clear indication of the legislature's intention, is to be characterized as being in effect a limitation on the testator's disposing

(1) [1900] A.C. 21.

power, and therefore as being testamentary law, applicable to immoveable property situated within the territory of the enacting legislature and to moveable property wherever situated of a testator domiciled in that territory.

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This, I think, not only correctly expresses the law but is a practicable rule that in the absence of a contract, either actual or implied, by which proprietary rights are acquired, the law of the domicile at the time of death should determine whether any limitation was imposed upon the disposing power of a testator as to moveables. In the present case the immoveables are situate in Quebec and the same result follows.

The decision of this Court in *Stephens v. Falchi* (1) was also relied upon by the respondent. In that case there had been a putative marriage in Italy, which, it was found, had been entered into in good faith. The putative husband was domiciled in Italy and the putative wife acquired an Italian domicile in fact. The marriage being bigamous, the wife returned to her domicile of origin in Quebec and, as it was found, reacquired a domicile there in fact. Both by Italian law and Quebec law, a putative marriage produces "civil effects" if contracted in good faith. Following the decision of the Privy Council in *Berthiaume v. Dastous* (2), it was held that the civil effects quoad property would be those rights which were consistent with the real marriage not existing. That is, although the woman had in fact acquired a Quebec domicile at the time of her death, if the putative marriage had been a real one, she would not have been able to do this and it would therefore result that her domicile would be in Italy under the laws of which country the putative husband was entitled to a certain share in her estate. This case has no bearing on the matters under discussion.

The appeal should be allowed and the action dismissed, with costs throughout.

The judgment of Hudson and Rand JJ. was delivered by

RAND J.—This appeal raises a question of the right to real and personal property in the province of Quebec arising upon the death of the husband of the respondent. The parties were married in 1937 in the State of New Hamp-

(1) [1938] S.C.R. 354.

(2) [1930] A.C. 79.

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shire, United States of America, while domiciled there: but later they took up their home and domicile in Levis, Quebec, where the husband died in 1940.

The will of the deceased is challenged on the ground that, under their matrimonial law, such rights were acquired by the respondent widow as call for a distribution of the property in Quebec according to the terms of a statute of New Hampshire passed in 1933. That act provides for a certain share of the property of a deceased husband or wife to go to the survivor whether the deceased dies testate or intestate and it is admitted that, if the law so invoked is, within the contemplation of the law of Quebec, a law forming part of the matrimonial regime, the contention of the respondent is sound. In other words, the law of Quebec, in the distribution of its own property, moveable or immovable, has regard to property rights between husband and wife annexed to the marriage by the law of the matrimonial domicile.

It becomes necessary, therefore, to examine the statute to see if it possesses those characteristics which attach its provisions to marriage within New Hampshire, or whether it provides merely rules of succession which would be irrelevant to the law of Quebec.

The evidence makes it clear to me that the Act is one that has to do not with the fact of marriage but with married persons. The condition of its application seems to be that the deceased person should have been domiciled in New Hampshire at the time of his death, but even if that is not so, it is clearly of no significance where or when he was married. It does not affect or restrict any mode of alienation *inter vivos*. It is, therefore, at most, a law of distribution or succession of property in New Hampshire which is owned at the time of his or her death by a married person.

The decision of the House of Lords in the case of *De Nichols v. Curlier* (1) indicates the essential nature of the matrimonial law to which recognition is to be given

(1) [1900] A.C. 21.

in such a case as the present. It must be a law defining and declaring property rights conceived as terms of the marriage itself, following it through all changes of domicile and susceptible of dissolution or modification only in the events or by the means stipulated; in short, it must be a statutory equivalent to a marriage contract.

But the statute of New Hampshire bears no such characteristic. Its provisions are in no sense predicated on marriage within the state nor are they referable only to such a marriage. It is not, therefore, a law creating "a conjugal association" as to property to which the law of Quebec will give effect upon the death of one of the consorts.

It is contended that the controversy is concluded by the decision of this court in the case of *Stephens v. Falchi* (1), but the facts there were wholly different. The putative marriage had taken place in Italy where the husband was domiciled. A marriage contract specifically submitted the matrimonial affairs to the law of that country and the civil rights enforced were those given by that law. Here there is neither contract nor statutory equivalent to annex to the marriage vinculum rights of property in the terms of the New Hampshire statute.

I would, therefore, allow the appeal and dismiss the action with costs throughout.

*Appeal allowed with costs.*

Solicitor for the appellants: *Arthur Bélanger.*

Solicitor for the respondent: *Drouin, Drouin & Lebel.*

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(1) [1938] S.C.R. 354.