

In the case which was decided in the Privy Council on the 13th May 1828, between Alexis Durocher and others, Appellants, and Benjamin Beaubien and Louis Guy, Respondents, the Master of the Rolls, in delivering the judgment of the Court, used the following language:

Upon a former occasion the Lords of the Council were of opinion that the Statute of 14 Geo. III, was meant merely to extend the subject over which the Devisor had rights, and did not affect in any manner the Devisee; from what has passed to day, they are confirmed in the opinion they then formed upon the subject.

The question then is, what was the view of the Provincial Statute of 41 Geo. III, which states that doubts and difficulties had arisen with respect to the construction of the Statute 14 Geo. III.

Those doubts and difficulties could only have been, whether, that Statute did or did not mean to enlarge the capacity of the *Devisor*, and not only to enable the person by his will to give property he was not before capable of devising; but whether it did not mean that he could give to *persons to whom*, by the Law of France, *he could not devise*; and the object of that Statute, when we come to read its enactments, is undoubtedly meant to remove in practice that doubt and difficulty, and to make a *new direct law* upon the subject, and for the very purpose of enlarging the power of the Devisor the words are, "that it shall and may be lawful for all and every person or persons of sound intellect and of age, having the legal exercise of their rights, to devise or bequeath by last will and testament, whether the same be made by a husband or wife in favor of each other." Now the husband and wife could not before this law, according to the *Coutume de Paris*, devise to each other, or in favor of one or more of their children as they then might; and before this law they could not make an unequal distribution of their property between their children except to a certain limited extent, and that proportionate inequality was *limited*. It proceeds to say, they shall devise as they see meet "*to any person whatever*."