

son époux seront absolus à l'encontre de ses héritiers, comme sa volonté et son fait personnel.

Par notre droit le droit du testateur est absolu. De fait, il garde la direction de ses biens après sa mort. Et la remarque suivante de Leibnitz est aussi grande de pensée philosophique que juste d'application judiciaire.

"Testamenta vero meo, nullius essent momenti nisi anima esset immortalis, sed quia adhuc vivunt ideo manent domini rerum." (nova methodus discendæ docendæque jurisprudentiæ.)

Ainsi les morts vivent effectivement, ils demeurent toujours maîtres de leurs biens. Cette testatrice voulait constituer la famille par la direction qu'elle accorde au père.

Cette philosophie de Leibnitz est un fonds de la jurisprudence de l'Angleterre. Elle est davantage empreinte de la forme légale et les juges s'efforcent de la faire prévaloir.

Comme l'enseigne lord Cotenham : "It is the duty to put that construction to the words which seems best to carry the intention into effect. The court will not assume that the testator was ignorant of the consequence and effect of the disposition which he has himself made."

Les opposants ne peuvent pas plus annuler les opérations d'actes de leur père, que les actes de leur mère.

Ce n'est pas un simple état de possession que le testament confère et donne au mari ; mais, au contraire, le pouvoir de vendre et de disposer d'une manière absolue, sans contrôle des cours et des héritiers légaux.

Dans les cas ordinaires le légataire a un commencement de propriété, indépendamment de la volonté de l'exécuteur testamentaire. Rien de tel dans l'espèce. C'est la volonté de ce dernier qui fera le legs de ce qui restera. Ce qui démontre que le père est légataire avec droit de propriétaire, pouvant faire profiter ses enfants de la chose léguée s'il le veut et de la manière qu'il le voudra.

Dans des cas analogues, on décide en Angleterre dans le sens que je viens d'indiquer.

A testator by his will gave realty and personality to his widow for the term of her natural life, to be disposed of as she may think proper for her own use ; and "in the event of her decease should there be anything remaining

"of the said property, he gave said part" to certain persons :

*Held*, that the widow took a life interest with an absolute power of disposition exercisable by her during her lifetime. (Fisher's Annual, 1879.)

A husband gave all his real and personal estate to his wife, "with full power to dispose of the same as she may think proper for benefit of my family, having full confidence that she will do so" :

*Held*, that she took absolutely. (Same, 1878.)

Les opposants ne peuvent intervenir entre la volonté de leur mère, dont ils invoquent les ordonnances et dernières volontés, comme base de leurs droits et de leur titre. "Dicat testator et erit lex voluntas ejus."

Cette volonté a statué entièrement autrement qu'elle le prétendait. La cour doit maintenir cette volonté contre celle des enfants.

Opposition déboutée.

*Barnard, Monk et Beauchamp* pour les demandeurs.

*J. O. Joseph* pour les opposants.

#### GENERAL NOTES.

A magazine article on James Russell Lowell states that he was a lawyer in his youth, but "without a practice, somewhat exquisite in matters of dress, and given to penning odes instead of briefs."

THE STATUTE OF FRAUDS.—In the year 1676, in England, there was enacted Stat. 29 Car. 2, c. 3, entitled: "An Act for the Prevention of Frauds and Perjuries," and it is familiarly known as the Statute of Frauds. Its preamble declares its object to be the "prevention of many fraudulent practices, which are commonly endeavored to be upheld by perjury." Mr. Smith observes: "It is said to have been the joint production of Sir Matthew Hale, Lord Keeper Guilford, and Sir Leoline Jenkins, an eminent civilian. The great Lord Nottingham used to say of it 'that every line was worth a subsidy'; and it might now be said, with truth, that every line has cost a subsidy, for it is universally admitted that no enactment of any legislature ever became the subject of so much litigation. Every line, and almost every word of it, has been the subject of anxious discussion, resulting from the circumstance that the matters which its provisions regulate are those which are of every day occurrence in the course of our transactions with one another." Mr. J. P. Bishop adds: "This statute, while its policy has been doubted by some, has, on the whole, been received with so much favor that its provisions have not only been continued in England; but, with occasional modifications, they have been adopted by legislation in probably every one of our own States."