

The will in question establishes and creates an entail, a *substitution* as it is called in the French Law, and the important question hence arises, what is the period to which we must look for the purpose of testing the rights of the Respondent in this case: is it the period at which the will was made, or that at which the Testator departed this life, or are we not on the contrary bound to look to his *Status* or capacity to receive at the period when the entail took effect, *à l'ouverture de la substitution*? That the latter period must govern appears to admit of no doubt, for the Legacy in question was, in contemplation of law, a conditional one, it depended upon a *contingency*, namely, whether the different *Substitués* would not survive, the *grevé*, or tenant in tail, and altho' the *Substitué*, the Devisee, was not competent, when the will was made, or when the Devisor died, to accept such bequest, it was lawful to make the devise, the Testator being presumed to have made the devise a *conditional* one, *foreseeing* that the disqualification might or would be removed, before the entail or substitution took effect in the person of the Respondent. With respect then to the effect of the Provincial Statute 41 Geo. III., ch. 4, decisions of some of the Courts in this province are not wanting, which went the length of considering it to be declaratory of the intention of the Legislature in passing the 14 Geo. III., and as having a retroactive effect, thereby removing *all* the disabilities of the French Law as well with relation to Devisors to make wills, as to Devisees to accept bequests or legacies; but it is not necessary to go that length upon the present occasion, and indeed it would be hazardous to state, that a Provincial Legislature could pass a Law, declaratory of the intention not of its own Body but of that of a totally different and supreme Legislature, namely that of Great Britain in the year 1774.

But in support of the opinion entertained by this Court it will be sufficient to show that the Provincial Statute 41 Geo. III., c. 4., had the effect of removing, (from and after its date,) the incapacities previously existing with respect to Devisees.