entre vifs or by will, to such of her children or grand-children as he might select, subject to such charges as he might impose. The husband by his will, without referring to his wife's will, appointed three of his grand-children his universal legatees, and substituted to them some of his grand-children. Held, that this was a valid exercise of the power conferred on him by the wife's will, great grand-children being included in grand-children, and the husband, moreover, having power to impose charges.

Julie Michaud, wife of Jean Corriveau, by her will constituted her husband her universal legatee, charging him to return either by *donation entre vifs* or will her real estate to such of her children or grandchildren as he might select, subject to such charges as he might impose.

Corriveau made a will constituting three of his grandchildren his universal legatees of all the real estate belonging to him that day, and to them he substituted some of his great grandchildren. He made no direct mention of his late wife's will, or that he intended to perform the duty imposed upon him by it; but he enumerated the properties he referred to, and they comprised those belonging to his late wife. He also left his present wife the usufruct of one-half of one of these properties, which half he declared to be his, as being part of his share in the *communauté* existing between him and his late wife. The first *appelés*, now *grevés*, neither accepted nor renounced the succession of Jean Corriveau. They were sued by one Hamel, judgment went by default, and the appellant became *adjudicataire* at sheriff's sale of one of the properties coming from Corriveau and Julie Michaud, his first wife. The action is by the *grevés*, defendants in the suit by Hamel, and by the *appelés*, to oust the appellant of one-half of the real estate adjudged to him.

RAMSAY, J. The first question that arises on this appeal is whether Jean Corriveau has exercised the faculty accorded to him by the 4th clause of his first wife's will?

Neither by deed of donation *entre vifs*, nor by will, did Jean Corriveau declare that he intended to exercise the power granted by his wife's will; but he did, in effect, dispose of all the real estate of which he died possessed to certain of the persons indicated as possible *appelés* by the will of his first wife. It might, perhaps, have been a question whether the general disposition of all the "*biens qui m'appartiendront ce jour*," covers any disposition of his late wife's property, but he gives an enumeration of the immovable property which he calls his, and it includes his wife's share of the community. Besides, there is nothing incorrect in his calling it his; for although the legacy to Jean Corriveau was limited by the substitution of some or all of the children, he was a proprietor and not a *usufruitier*. In *Benoit & Marcile*, a case not unlike the present, the majority of the Court held that the bequest to the husband was a usufruct (1 Rev. de Leg., p. 140), but I don't think this is the construction to be put on the will of the first wife in this case Nor do I think it should affect the question if we were to hold it was the bequest of a *usufruit*, for the error of a *usufruitier* calling himself a proprietor is not surprising, and is easily explained. Besides the enumeration of the property, there is also a bequest by Jean Corriveau to his second wife of the usufruct during her life or *viduité*, of the half of the mill belonging to him, as being part of his share of the *communauté* existing between him and his first wife, and all his moveables, over which he had complete control, indicating so far as acts can, that he had fully in view, while making his own will, the obligations imposed by the will of his first wife. I, therefore, think we should hold that Jean Corriveau exercised the faculty conferred upon him, and I think he exercised it rightly although the will only mentions children and grand-children. He was expressly allowed to stipulate charges, and great grand-children should be included in grand-children, just as grand-children are included in children. See the decision of Papinianus, on which Pothier relies. Subst. 4to Ed 515. See also 3 Henrys, p. 76, as to effect of *substitution générale* by testament.

The next question is as to the effect of the *Décret*. It was in a suit of *Hamel & Pineau et al.*, and it is admitted that the suit was against the same *grevés* as those in the present action. Their subsequent renunciation to the succession of Jean Corriveau, even if it were a renunciation to the succession of their grand-mother, would not discharge them of the judgment in the suit which they had not defended, and from which there is no appeal. The principle of the right to renounce at any time until actual