

That the resolution and the application upon which it was founded constituted a "contract in writing and a written agreement" within the meaning of article 1033a of the Code of Civil Procedure of Lower Canada, and violation of its conditions was a sufficient ground for injunction to restrain the construction of new works.

Appeal allowed with costs.

*Geoffrion, Q.C.*, and *Belleau, Q.C.*, for the appellants.

*Stuart, Q.C.*, for the respondent.

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1st May, 1897.

Quebec ]

ROBIN v. DUGUAY.

*Will—Construction of—Donation—Substitution—Partition, per stirpes or per capita—Usufruct—Alimentary allowance—Accretion between legatees.*

The late Joseph Rochon made his will in 1852, by which he devised to his two sisters the usufruct of all his estate and the property therein to his children, naming Pierre Dupras, his uncle, as his testamentary executor, and directing that his estate should be realized and the proceeds invested accordingly to the executor's judgment, adding to these directions the words, "enfin placer la masse liquide de ma succession à intérêt ou autrement, de la manière qu'il croira le plus avantageux, pour en fournir les revenus à mes dites sœurs et conserver les fonds pour leurs enfants," and providing that these legacies should be considered as an alimentary allowance and should be non-transferable and exempt from seizure. By a codicil in 1890 he appointed a nephew as his testamentary executor in the place of the uncle, who had died, and declared: "Il sera de plus l'administrateur de mes dits biens jusqu'au décès de mes deux sœurs usufruitières, nommées dans mon dit testament, et jusqu'au partage définitif de mes biens entre mes héritiers propriétaires, et il aura les pouvoirs qu'avait le dit Pierre Dupras dans mon dit testament."

*Held* (affirming the judgment of the Court of Queen's Bench, Q.R., 5 Q.B. 277) Gwynne, J., dissenting, that the testamentary dispositions thus made did not create a substitution, but constituted merely a devise of the usufruct by the testator to his two