restent insaisissables, et ne puissent être saisis, vendus et décrétés ou l'un ou l'autre, que pour les dettes propres de ma succession, c'est-à-dire : celles auxquelles j'ai ou aurai souscrit ou suis ou serai partie, et pour nulles autres dettes.

Cette administration et exécution, mon dit époux les conservera sa vie durante, sans être tenu de donner caution ni de rendre aucun compte de sa gestion et de ses opérations, ce dont je le dispense entièrement tant envers mes héritiers ou aucun d'eux qu'envers toutes autres personnes que ce soit, lesquels ou lesquelles ne pourront aucunement le troubler ou l'inquiéter à cet égard.

Et, en cas de maladie de mon dit époux, durant sa dite gestion, ou d'impossibilité pour une cause ou une autre, d'exercer ses fonctions pendant aucun laps de temps, il pourra nommer et choisir une ou des personnes compétentes pour le remplacer ou lui succéder, en tout ou partie, dans l'exercice de sa charge. Et cette ou ces personnes auront les droits et pouvoirs qu'il plaira à mon dit époux, ès qualités, lui ou leur accorder respectivement, avec ou sans restrictions, à sa volonté, en se réservant, s'il le juge à propos, la direction des affaires et le contrôle de leurs actes, en tout ou partie, ou concurremment avec cette ou aucune de ces personnes, avec pouvoir de la ou les révoquer et d'en substituer d'autres à leur place, à sa volonté."

Under this will Mr. Lionais, in his capacity of executor and administrator, endorsed notes for one of the so-called heirs to assist him in his business. These notes not being paid at maturity the Bank obtained judgment, and seized the property of the estate of Mme. Lionais in execution. The other children opposed the sale on the ground that the property was *insaisissable* except for the debts of the succession.

The respondent has raised a question as to the effect of this will. His argument amounts to this, that it is really a bequest to Mr. Lionais with a suggestion that he should give so much of the property when and as he likes to one, all or any of the children or their descendants. As the will puts it, "*uniquement un droit éventuel sujet aux dispositions libres de mon dit époux, es-qualités.*"

It is unnecessary, I think, for the Court on this occasion to go so far. The learned judge in the Court below seems to me to have put the decision on a perfectly sufficient ground. Whatever may be the general effect of the will, it is perfectly evident that the endorsation of the notes in question was an aid to one of those indicated as heirs in the will, which Mr. Lionais was authorized by the will to give, and which therefore is a debt of the succession. It is idle to try to make a distinction between the power to give money or goods and the power to *cautionner*. By the will he has expressly the power to execute notes to carry out the objects of the will. Can any one, conversant with the principles of the civil law, be found to say that if one be authorized to give out and out, he is not authorized to give under a condition, "*non debet cui plus licet, quod minus est non licet*," § 50, 17, l. 21. "*Minus est actionem habere quam rem.*" § 50, 17, 2.204.

I am to confirm.

Judgment confirmed. Justices Tessier and Cross dissenting.*

Doutre & Joseph for the appellant.

S. Bethune, Q. C., counsel.

Barnard, Monk & Beauchamp for the respondent.

RECENT DECISIONS, P.Q.

Promissory Note—Endorser—Surety.—A Bank, holder of certain promissory notes, discharged the first endorser thereon, in consideration of the payment by him of a composition on the amount, but expressly reserved its recourse against the subsequent endorser, and stipulated that it did not guarantee the first endorser against any claim which might be made upon him by the subsequent endorser; held, that this was not a discharge of the first endorser which had the effect of relieving the subsequent endorser from liability to the Bank for the balance.—*The Merchants Bank of Canada* v. *McDonald, & Whitfield*, opposant, 26 L. C. J. 218.

GENERAL NOTES.

APPOINTMENT—The Honorable the Deputy of the Governor General has been pleased to make the following appointment, viz :—

OTTAWA, 17th October, 1882.

Edward Towle Brooks, of the Town of Sherbrooke, Esquire, one of Her Majesty's Counsel learned in the Law for the Province of Quebec; to be, from the second day of November next, a Puisné Judge of the Superior Court of the said Province.

The precise date of Mr. Justice Mackay's appointment to the bench was 27th August, 1868, (not October, as mentioned in a recent issue.)

*The case has been appealed to the Supreme Court.