

were incapable of providing for her wants, and she could not address herself to her grandson Adelard Mongeau, except where her children were all dead or incapable of aiding her wants: that her children, and especially Pierre Lacroix, and André Lacroix, were well able to maintain her, and that in law, they, and not Adelard Mongeau, were liable to support her.

The plaintiff answered in law that this plea was bad, and that Adelard Mongeau, the grandson, was liable for his share as representing his mother, the daughter of plaintiff.

PER CURIAM. The order in which descendants are bound to their ascendants is precisely that in which they are called to their succession; 4 Demolombe, n. 32. Therefore, when there are children, and grandchildren, issue of a deceased child, the grandchildren are liable with the children even though the latter have means of supplying the aliment by themselves. But as a general rule, the grandchildren are not bound except subsidiarily, when their father and mother cannot fulfil this obligation. The contention of the grandson, Adelard Mongeau, here is that he is not liable so long as there are any children living able to fulfil the obligation. Toull. 2, p. 8, n. 613, appears to support his pretension, but other authors (Duranton, 2: n. 394:) and principle seem to be against him. The answer in law is maintained.

Longpré & Co. for plaintiff.

D'Amour for defendant.

Vide Rogron, C. Civ. Nap. on Art 205, p. 168; also Pothier, Personnes, P. 1, T. VI, p. 607. *Table Générale de DeVilleneuve & Gilbert*, vo. Alimens, no. 20.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1882.

Before TORRANCE, J.

MAGUIRE v. HUOT et al., & ALLARD, opposant.

Alimentary Pension—Usufruct of Moveable Property declared by will to be inalienable.

The usufruct of moveable property inherited by the husband, though declared by the testator to be inalienable, non-assignable and not seizable, may be seized in execution of a judgment of

séparation de corps, condemning the husband to pay to his wife an alimentary allowance.

The sheriff took in execution the enjoyment and usufruct of certain moveables in the possession of the opposant. He opposed the seizure on the ground that he held them under the last will of his father, who declared them to be inalienable, non-assignable and not seizable, in making the bequest.

The plaintiff contested this opposition on two grounds, the second of which only needs attention. She alleged that the prohibition to seize and sell the usufruct of the opposant was not absolute, and that the judgment on which the execution issued, condemned the opposant to provide for the support of his wife and child; but that this prohibition only confirmed and followed the will of the testator, in selling this usufruct, inasmuch as the sale would have the effect of opening the substitution and of thereby vesting the property in the heir of the opposant according to the will. Further, that the property could be sold for her debt inasmuch as the testator had in view, to furnish aliments to the wife and family of the opposant.

It appeared that on the 20th January, 1876, the plaintiff, Dame H. C. Maguire, obtained a judgment of *séparation de corps* against the opposant her husband, who was condemned to pay her an annual alimentary pension of \$240. In virtue of this judgment, an execution issued, and a return of *nulla bona* was made against the opposant. On the 19th April, 1874, the late J. B. Allard, the father of the opposant, made his last will, by which he gave the enjoyment of all his property, to his wife, Dame Elizabeth Eberts, then to go to the opposant after the death of his mother, and after his death to go to his children in proprietorship. The testator died in May, 1874, and his widow died in February, 1881. By the will, Madame Allard and the now defendant T. A. Huot were made testamentary executors. On the 3rd November, 1881, the plaintiff took another action against the surviving executor T. A. Huot, in his quality of executor, to render executory against him the judgment of the 20th January, 1876, and this new action terminated in a judgment on the 30th March, 1882. An execution then issued and seized the usufruct of moveables held by the opposant.

PER CURIAM. The debt due by the opposant