sentants ont été assignés à reprendre l'instance et ont été condamnés à le faire par divers jugements.

Ces incidents ont longtemps retardé tant la demande en déclaration de jugement commun que la demande principale.

Enfin toutes les difficultés résultant du décès ou du changement d'état des parties ayant été surmontées, la cause a été plaidée devant la Cour Supérieure à Montréal, qui a rendu, le 20 Mars 1857, le jugement suivant:

SMITH, J.—This is a case which has been for a long time in litigation, for it stands now in the same position as it did in the year 1822, with the exception only of *reprises d'instances* which have taken place since that time. The action was brought by Etienne, Marie and Hélène Dorion, as Heirs-at-law of Jacques Dorion, in his lifetime a merchant of St. Eustache, against Charles Dorion, Nathaniel Jones and Horatio Gates, the declaration alleging that the Defendants had taken possession of the estate of the deceased Jacques Dorion, who died in 1821, without any legal authority for so doing. Jones and Gates set up, in defense to the action, an olograph will of the deceased, bequeathing his estate to his brother Charles and his children, and appointing them the executors. Charles Dorion also sets up the will, and pleads a bequest to himself and his children of the whole estate. The plaintiffs answer generally that it is not true. The case was submitted for Judgment in 1822, and the Judgment which the Court at Montreal then rendered was in 1824 reversed by the Court of Appeals at Quebec. It then went to the Privy Council, and there both the former judgments were reversed and the case sent back in order that the children of Charles Dorion might be called in, as being interested in the estate, and that the Judgment to be rendered should be common to them. This has been accordingly done. The Plaintiffs contend that as heirs-at-law they are seized of the estate and they demand an account. The Defendants on their side say that they are the universal legatees, and are legally in possession and that no account is due. It is a question of title. At the argument it was contended that the will was bad, as being unintelligible, but this pretention was abandoned. Secondly, it was contended that the legacy was of the usufruct only and not *en propriété*. The Defendants answer that it was a universal legacy, and that it made no difference, so far as this action was concerned, whether it was the usufruct only or *en propriété*. On examination of the will, we find that it embraces the entire succession except the *meubles et effets*. The Testator bequeaths the *jouissance de ses fonds et les revenus de tous ses argents* to Charles Dorion and to his children bearing the name of Dorion. Was this a universal legacy? I think it was. It was contended by the Plaintiffs that the estate could not pass without *délivrance de legs*. I think, however, the question is one merely of title. The Defendants are in possession. Have they a good title in law to the property? Does the will give them one? This is the question raised by the pleadings. The act of 1801 gives a testator the absolute disposal of his property.

In my opinion, therefore, a will under this act is a good title. The old rule was *le mort saisit le vif*. Under this maxim it is said that the heir takes the estate although he must give it up immediately afterwards to the legatee. Now