

Those words are certainly extensive, and we find in the Statute no subsequent words that enable us to give those words a limited meaning. Taking them therefore according to their *common* sense, this act would sanction a *devise to any person*, although previous to the passing of the act, such person was prohibited by the law of France from *receiving* the benefit of *such devise*, and we are to come to the conclusion upon this Statute, that the incapacity of the Guardian, and the incapacity of other persons who stood in the same situation with the Guardian, was by the Statute removed:

It is clear therefore that had the late Gabriel Christie made the will in question, containing the devise in favor of the Respondent, subsequent to the passing of that Statute, it would have been good and valid notwithstanding the previous existing incapacity of the Respondent to take under the said will:

A very material distinction in law however will be found to exist between acts or *donations inter vivos* and *last wills*, which *contain an entail or substitution*, in relation to the period at which the capacity to give and to receive is to be considered:

In *Donations inter vivos*, the acts receiving *their perfection at the time of making them*, it is necessary (at *that time*) that the one be in a capacity to *give* and the other to *receive*; not so in cases of Substitution, for in such Cases the *capacity to receive* is not to be tested, either when the Will was made or when the Testator died; but when the Substitution takes effect.

Les *Donations entre vifs* (says Pothier) recevant toute leur perfection dans le *temps du Contrat*, il s'ensuit, que c'est en ce temps qu'est nécessaire, et la *capacité de donner* dans la personne du Donateur, et la *capacité de recevoir* dans celle du *Donataire*. (1.)

La capacité est tellement nécessaire, lors de la *Donation* et dans le *temps même de la donation*, que si j'ai donné à une personne à qui les loix défendaient de donner pour lors, quoique l'empêchement ait cessé, et que depuis que l'empêchement a cessé, j'ai ratifié la

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1) Pothier. *Donations entre vifs*, p. 455.