JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 31 July, 1897.

PRESENT:—LORD MACNAGHTEN, LORD MORRIS, SIR RICHARD COUCH, SIR HENRY STRONG.

DAME CHARLOTTE DE HERTEL (opposant in first instance), appellant, & DAME EMILY C. GODDARD ET AL. (intervenants continuing suit in first instance), respondents.

Will—Interpretation—Substitution—Suspension by condition.

C. devised certain real estate to R., and after R's death to R's two daughters, M. and A., and to her niece T., conjointly and in equal shares, to be enjoyed by them during their natural life, and after their decease to their children respectively, in full and entire property, share and share alike. If two of the three persons named above should die without children the property was to go and belong to the child or children of the survivor. R. received the property and enjoyed it until her death, when M., A. & T. received it and enjoyed it jointly until the death of M. without children, and then A. and T. continued to enjoy the whole until A. also died without issue. One half of the share of M. (one-sixth of the whole) was now claimed, on the one hand, by the child of T. as her heir, and, on the other hand, by the universal legatee of A.

HELD (*affirming the judgment of the Court of Queen's Bench, Montreal, which affirmed the judgment of the Court of Review, Montreal, R. J. Q., 8 C. S. 72*):—*The will did not create, as between M., A. and T., a gradual substitution, under which the share of any one of them dying without issue would pass to the other two, and upon the death of a second of them, also without issue, the whole would vest in the third; but on the death of M. any further substitution of her share created by the will remained suspended, pending the fulfilment of the condition upon which it was made dependent, namely, that two of the three persons, M., A. and T., substitutes in the first degree, should die leaving no children, which further substitution only took effect upon the fulfilment of the condition by the death of A. without children. Hence no portion of the share of M. ever passed to or was vested in A. as substitute in the second degree, and she was unable to transmit it by her will.*

The appeal was from a judgment of the Court of Queen's Bench, Montreal, 25 February, 1896, affirming a judgment of the Court of Review, Montreal, 19 June, 1895, reported in R.J.Q., 8 C.S. 72. The judgment of the Court of Review reversed the decision of the Superior Court, Montreal, Archibald, J., 8 June, 1894, reported in R.J.Q., 6 C.S. 101.

LORD MACNAGHTEN:—

Having regard to the law of the province of Quebec in refer-