Françoise Jacques and Gabrielle Jacques
(*Respondents in the Superior Court and the Court of Appeal*) *Appellants*;

and

Dame Lorraine Allain-Robitaille
(*Respondent in the Superior Court, Appellant in the Court of Appeal*) *Respondent*;

and

L'Assurance-Vie Desjardins.
(*Applicant in the Superior Court, Mise en cause in the Court of Appeal*) *Mise en cause.*

1978: February 13; 1978: June 29.

Present: Pigeon, Dickson, Beetz, Estey and Pratte JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Annuity — Guaranteed term — Beneficiary — Estate — Stipulation for the benefit of a third person — Revocation — Civil Code, arts. 754, 758, 1029 — Supplemental Pensions Plan Act, S.Q. 1965, c. 25, s. 30.

Holograph will — Typewritten letter invalid — Civil Code, schedule to art. 17, para. 12 and art. 850.

Jacqueline Blouin, who was entitled to an annuity for her life, with a guaranteed term of ten years, had appointed her sister, Marie-Paule Blouin, as beneficiary of this annuity upon her death if she died within the guaranteed term. She had also left her estate to her by notarial will. She died on February 12, 1974 having received the annuity for eight months only. Marie-Paule Blouin also received the annuity for a few months only, because she died on September 11, 1974. In the meantime the latter had made two conflicting dispositions of the balance of the annuity. On May 6, 1974, she had sent a typewritten letter to L'Assurance-Vie Desjardins, the debtor of the annuity, appointing as beneficiary [TRANSLATION] "in the event of my death" respondent Lorraine Allain-Robitaille. On the other hand, she had made a notarial will on February 25, 1974 leaving her entire estate to her sister, Marguerite Blouin-Jacques, and on July 18, 1974 she had signed a notarial codicil leaving her entire estate to Françoise and Gabrielle Jacques, the appellants.

In these circumstances L'Assurance-Vie Desjardins applied to the Superior Court for a declaratory judgment stating who was entitled to the annuity. The Superior Court held that appellants were entitled to the annuity as universal legatees. The Court of Appeal reversed this decision on the ground that the designation of a beneficiary contained in the letter of May 6, 1974 was a stipulation for the benefit of a third person, the validity of which was not disputed, and that the codicil could not be interpreted as revoking this designation. Hence the appeal to this Court.

Held: The appeal should be allowed.

When her sister died Marie-Paule Blouin became the creditor of a vested annuity payable unconditionally. This was a debt, a property she could dispose of. Under art. 754 *C.C.* a person cannot dispose of his property by gratuitous title, otherwise than by gift *inter vivos* or by will. The appointment of a beneficiary was made by a stipulation for the benefit of a third person, which is permitted by art. 1029 *C.C.* "when such is the condition of a contract which he makes for himself . . .". In the case at bar, Marie-Paule Blouin had made no contract for herself with L'Assurance-Vie Desjardins. The contract was made by her sister when she became a member of the pension plan. The issue is therefore whether in light of the agreement governing the pension plan Marie-Paule Blouin enjoyed the right her sister had to appoint a beneficiary. An examination of the wording of this agreement reveals that the right to designate a beneficiary is a right granted to a "member" of the plan, a right the latter can exercise only while he is alive. Since Marie-Paule Blouin could thus not exercise this right either as heir or as beneficiary, nothing permitted her to dispose of the annuity payments due after her death by making an appointment of a beneficiary.

If the letter of May 6, 1974 had been entirely handwritten, it could have been a valid holograph will. However, a typewritten letter, even though signed by the testator, does not fulfill the essential requirements of a holograph will.

Hallé v. Canadian Indemnity Co., [1937] S.C.R. 368; *Dansereau v. Berget*, [1951] S.C.R. 822; *Abbott et al. v. Beaudry*, [1973] S.C. 982; *Bégin v. Bilodeau*, [1951] S.C.R. 699, referred to; *Canada Life Assurance Company v. Giroux*, [1973] S.C. 897, doubted; *Aird et vir.* (1905), 28 S.C. 235, disapproved.

APPEAL from a decision of the Court of Appeal of Quebec[1] reversing a declaratory judgment of the Superior Court[2]. Appeal allowed.

Léonce Roy, for the appellants.

Laurent Trudeau, for the respondent.

The judgment of the Court was delivered by

PIGEON J.—This appeal is from a decision of the Court of Appeal of Quebec reversing the judgment of Maurice Jacques J. of the Superior Court on a motion for a declaratory judgment.

Jacqueline Blouin was a member of the pension plan of Mouvement Coopératif Desjardins. Under written agreement contract, these pensions were insured by L'Assurance-Vie Desjardins. By the option she had made, Jacqueline Blouin was entitled to an annuity for her life, with a guaranteed term of ten years. She had appointed her sister, Marie-Paule Blouin, as beneficiary of this annuity upon her death if she died within the guaranteed term. She did die on February 12, 1974 having received the annuity for eight months only.

Marie-Paule Blouin also received the annuity for a few months only, because she died on September 11, 1974. Unfortunately, she had made two conflicting dispositions of the balance of the annuity. On May 6, 1974, she had sent a typewritten letter to L'Assurance-Vie Desjardins appointing as beneficiary [TRANSLATION] "in the event of my death" respondent Dame Lorraine Allain-Robitaille. On the other hand, she had made a notarial will on February 25, 1974 leaving her entire estate to her sister, Marguerite Blouin-Jacques, and on July 18, 1974, she had signed a notarial codicil leaving her entire estate to her nieces Françoise and Gabrielle Jacques, the appellants in this Court.

In view of this situation L'Assurance-Vie Desjardins made in the Superior Court a motion for a declaratory judgment requesting the Court to determine who was entitled to the annuity. The judge hearing the motion received all the oral and written evidence submitted by the parties as

[1] [1976] C.A. 617.
[2] [1975] S.C. 654.

allowed under art. 545 of the *Code of Civil Procedure*. However, the record thus constituted did not include the text of the contract and regulations governing the pension plan. At the hearing in this Court the parties agreed, at the suggestion of the Court, to remedy this omission, and the document is now in the record of the case.

The judgment of the Superior Court was that Françoise and Gabrielle Jacques were entitled to the annuity as universal legatees of Marie-Paule Blouin. After quoting a long extract from the judgment of the Superior Court in *Canada Life Assurance Company v. Giroux*[3], the trial judge said:

[TRANSLATION] Furthermore, there is no evidence that Dame Lorraine Allain-Robitaille did accept the benefit of the annuity. Moreover, such acceptance would be of no assistance to Dame Robitaille since, under s. 30 of the *Supplemental Pension Plans Act*, S.Q. 1965, c. 25, the designation of a beneficiary of a pension may be revoked by will notwithstanding any acceptance.

In the Court of Appeal, Owen J.A. concurred with Lajoie and Bélanger JJ.A. in ruling in favour of Dame Robitaille. Lajoie J.A. said in particular:

[TRANSLATION] The question is whether the codicil of July 13, 1974, Exhibit R-2, amending the will of February 25, revoked the previous designation of a beneficiary of the annuity. In my view, it did not: it merely substituted Françoise and Gabrielle Jacques for Marguerite Blouin-Jacques as universal legatees. In order to constitute a revocation of the designation of a beneficiary of the annuity, the codicil would have had to state this intention of the testatrix explicitly.

Bélanger J.A. said:

[TRANSLATION] It is not disputed that after the death of Jacqueline Blouin her sister Marie-Paule, upon becoming the beneficiary of the annuity, was also entitled to designate a beneficiary for the payments falling due after her death, during the guaranteed term. There is no doubt that the designation of a beneficiary made by Marie-Paule Blouin constituted a stipulation for the benefit of a third person concerning property that did not form part of her estate.

Unlike ordinary stipulations for the benefit of third persons, the one that concerns us could be revoked notwithstanding acceptance in view of s. 30 of the

[3] [1973] S.C. 897.

Supplemental Pension Plans Act, cited above. It must be kept in mind, however, that if Marie-Paule Blouin failed to make such a revocation before her death, the designation could be accepted by the beneficiary after the said death.

In clause 5 of her original will Marie-Paule Blouin merely designated the legatee of "the whole of my movable and immovable property" with vulgar substitution in favour of her nieces, respondents Françoise and Gabrielle Jacques. The beneficiary of the annuity was designated some two months later. Then came the codicil, the only effect of which was to abrogate the vulgar substitution and leave "the whole of my movable and immovable property" directly to the two respondents. I am of opinion that this codicil cannot be interpreted as revoking the designation of a beneficiary. The revocation could be made by will because the legislation authorized it, not because the future annuity disposed of by the stipulation for the benefit of a third person effected by the designation of a beneficiary, formed part of the estate of the testatrix. In my view an express revocation was required and the universal legacy made by the codicil and expressed in the same terms as in the original will, could not be the equivalent of such a revocation.

What Bélanger J.A. said was not disputed, is, as it appears to me, the crucial point of the case. At the hearing, counsel for the appellants denied having conceded the point and there is no mention of such a concession in the record. To make sure that nothing was overlooked, the Court requested at the hearing that the text of the contract and regulations governing the pension plan be produced. An examination of these documents has shown no special provision for the appointment of a beneficiary for the balance of an annuity with a guaranteed term. The clause that provides for the selection of such an annuity says simply:

[TRANSLATION] Instead of the regular annuity, a member may choose one of the following options:

1. an annuity without guaranteed term;
2. an annuity with a guaranteed term of 10 years; . . .

The option was exercised by a letter dated March 3, 1964, reading:

[TRANSLATION] I would be interested in having the annuity with a guaranteed term of 10 years at the rate of $51.61 a month, such monthly payments to be made during that term, in the event of my death, to my sister MARIE-PAULE BLOUIN . . .

The motion shows that the actual amount of the annuity to which Jacqueline Blouin was entitled was much higher than the sum mentioned in this letter. In fact it is stated that the actual value of the annuity was $40,438.28 at the beginning of the guaranteed term and $26,176.20 at the time of Jacqueline Blouin's death, because it would terminate at the end of the ten-year guaranteed term.

It is important to note, first of all, that this case does not involve a decision on the rights of a beneficiary upon the death of a member of the pension plan. What is involved is the devolution of the rights of the beneficiary of a member. Perhaps it would be more accurate to speak of the rights of the legal representative of a member. Since Marie-Paule Blouin was not only the beneficiary named by the letter of March 3, 1964 but also the universal legatee of Jacqueline Blouin under an authentic will dated December 27, 1973, it may be that it was in the latter capacity that she became the creditor of the annuity for the nine years and four months of the guaranteed term that remained at the death of her sister. This was not a "future annuity" but a vested annuity payable unconditionally: in other words, a debt payable on a monthly basis for a fixed term.

There is no doubt that Marie-Paule Blouin could dispose of this property. However, I do not think she could do so by an appointment of a beneficiary.

The general rule regarding the disposition of property by gratuitous title is stated as follows in art. 754 of the *Civil Code*:

754. A person cannot dispose of his property by gratuitous title, otherwise than by gift *inter vivos* or by will.

A disposition by the appointment of a beneficiary is possible in the case of a stipulation for the benefit of a third person which is permitted by art. 1029 in the following terms:

1029. A party in like manner may stipulate for the benefit of a third person, when such is the condition of a contract which he makes for himself, or of a gift which he makes to another; and he who makes the stipulation cannot revoke it, if the third person have signified his assent to it.

Jacqueline Blouin had made a contract for herself by becoming a member of the pension plan of Mouvement Coopératif Desjardins and by exercising the option above mentioned, but Marie-Paule Blouin had made no contract for herself with L'Assurance-Vie Desjardins, and nothing in the contract made by her sister could be regarded as a condition allowing Marie-Paule Blouin to appoint a beneficiary. In the contract with L'Assurance-Vie Desjardins, the clause providing for the appointment of a beneficiary reads as follows:

[TRANSLATION] 22. BENEFICIARY:

> A member may designate a beneficiary to receive all amounts payable on or after his death. In the absence of any legal restriction, the member may change the beneficiary at any time by sending a request in writing to the head office of the Company, and this change will be made in the Company's records.
>
> If a member dies without having designated a beneficiary or if the designated beneficiary has already died and no other beneficiary has been designated, the amounts payable on or after the death of this member shall be paid to his estate. The Company will not be responsible for any change of beneficiary.

"Member" is defined as follows:

> (f) "Member": an employee, retired employee or former employee who has been accepted as a member of the plan and is entitled to benefits payable under the plan.

I fail to see how these provisions could be interpreted in such a way as to confer upon a beneficiary the rights granted to a member. It is true that a stipulation for the benefit of a third person may give rise to a contract between the promisor and the beneficiary, as this Court held in *Hallé v. Canadian Indemnity Company*[4]. The making of such a contract, even when completed by the acceptance of the beneficiary, cannot, however, alter the terms of the stipulation and give the beneficiary rights that are not stipulated therein. All that the clause in this contract provides for is the right of a "member" to designate a beneficiary, and it is clear that this can only be done while he is alive, since the clause makes provision for

[4] [1937] S.C.R. 368.

what is to happen if death occurs when no beneficiary has been designated.

I also fail to see how the fact that Marie-Paule Blouin was her sister's universal legatee as well as her designated beneficiary could change this situation. As her heir, she was no doubt entitled to exercise all the rights of her deceased sister, but, as we have just seen, her sister's right to designate a beneficiary was one that could be exercised only while she was alive. Neither as heir nor as beneficiary, therefore, could she exercise this right in a situation in which it was inapplicable.

It must, therefore, be said that nothing permitted Marie-Paule Blouin to dispose of the annuity payments due after her death by making an appointment of a beneficiary. There was no condition so providing in a contract that she had made for herself. Moreover, the letter addressed to L'Assurance-Vie Desjardins shows the intention of making a gift in contemplation of death, since it says [TRANSLATION] "in the event of my death". Once it is established that this letter cannot avail as a stipulation for the benefit of a third person, it is invalidated by art. 758 *C.C.* If it were entirely handwritten, it could be a valid holograph will, as held in *Dansereau v. Berget*[5], where Taschereau J., as he then was, wrote at pp. 825-826:

[TRANSLATION] ... There has long been no doubt that a letter may constitute a valid holograph will, which of course is not subject to any formalities. Provided a document is wholly written and signed by the testator, contains a disposition of property not being a mere recommendation, shows its author's intention to make a will and is not merely a draft, it is a genuine will.

In the case at bar, the letter does not fulfil these essential requirements arising from art. 850 *C.C.*, which states:

850. Holograph wills must be wholly written and signed by the testator...

[5] [1951] S.C.R. 822.

The letter in question is duly signed by the deceased, but it is typewritten, and I cannot accept the opinion of some authors who would apply to this article the provision contained in para. 12 of the schedule to art. 17 *C.C.*:

> 12. The words "writing", "manuscript" and terms of like import, include words printed, engraved, lithographed or otherwise traced or copied.

The decision of Mathieu J. of the Superior Court admitting a typewritten will to probate as a holograph will (*Aird et vir.*[6]) has not been followed in recent cases: *Abbott et al. v. Dame Beaudry*[7].

Having come to the conclusion that the appointment of a second beneficiary by a letter from the first is invalid, it is unnecessary to consider whether such appointment may avail as a partial revocation of the universal legacy made by the first will. In order to be entitled to the annuity by reason of the letter, Dame Robitaille must not only show that the first will was revoked, she must also establish a title to the annuity.

For the same reason, it is not necessary to determine whether the universal legacy made to the appellants by codicil effected a revocation of the appointment of a beneficiary. I will say, however, that I incline to the view that the reasoning of this Court in *Bégin v. Bilodeau*[8], should be applied just as if two wills were in question. A universal legacy is not really incompatible with a particular legacy, in fact the universal legacy in clause V of Marie-Paule Blouin's will, the clause that was replaced by the codicil, comes after a number of particular legacies. I am therefore far from certain that the decision on which the trial judge relied was correct. I am rather inclined to think that Bélanger J.A. was right in holding it erroneous. I am, however, unable to share his conclusion because of my finding that he erred in considering as beyond question a crucial aspect of the case, on which he was unfortunately inadequately informed as he did not have before him an essential document, the contract governing the

[6] (1905), 28 S.C. 235.
[7] [1973] S.C. 982.
[8] [1951] S.C.R. 699.

pension plan in question. In my view, the parties were all equally responsible for this situation and, in the circumstances, it appears just not to condemn any of them to pay costs.

I am of opinion that the appeal should be allowed, the judgment of the Court of Appeal set aside and the conclusions of the Superior Court restored without costs in any Court.

Appeal allowed without costs.

Solicitors for the appellants: Dionne, Fortin, Roy & Ass., Quebec.

Solicitors for the respondent: Boily, Rémillard & Henry, Quebec.

Solicitor for the mise en cause: Jacques Bélair, Lévis, Quebec.