Dame Jeanne d'Arc Drouin-Dalpé and Vincent Drouin (*Respondents in the Superior Court*) *Appellants*;

and

Dame Paulette Langlois, widow of Alban Drouin (*Applicant in the Superior Court*) *Respondent.*

1978: March 15; 1978: December 21.

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

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Will — Interpretation — "Liquid funds" — "Funds" — Civil Code, art. 1188.

Alban Drouin (whose widow is the respondent in continuance of suit) applied to the Superior Court by a motion for a declaratory judgment, asking for a ruling on the interpretation of the will of his uncle, for whom he was the universal legatee and executor. The primary issue was as to Clause Three of the will, which created a particular legacy in favour of the sister of the deceased and the two appellants. The wording of the will was as follows: "I give and bequeath, as a legacy by particular title . . . all hypothecary claims, cash in a bank and other liquid funds . . ." . The Superior Court judge and the Court of Appeal, unanimously, held that the bonds and debentures (amounting to a total of $84,566.77) were not "liquid funds", included in the particular legacy, and therefore devolved upon the universal legatee. Appellants disputed this interpretation.

Held: The appeal should be allowed.

The trial judge correctly stated that the intention of the testator is to be ascertained only by interpreting the language of the will, but he had no reason to cite English authorities in the case at bar, which is to be decided under Quebec civil law, especially as the will is written in French.

He erred in saying that a bond cannot be considered as liquid funds before maturity, as the concept of a liquid debt is not to be confused with that of a demandable debt. It is apparent from the wording of art. 1188 *C.C.* that these are quite distinct concepts. Although there is a disparity between the present value of a bond and its par value, this in no way reduces the liquidity of bonds, which may be realized at their present value much more readily than hypothecary claims (some of

which were not due in the case at bar). The words "other liquid funds" coming after "hypothecary claims, cash in a bank" in the will show that in the testator's mind hypothecary claims were "liquid funds". These claims are however certainly less liquid than such securities as the "bonds" and "debentures" which were found in the deceased's safe and were mostly payable to bearer. Because the collective phrase "autres argents liquides" [other liquid funds] is used in the plural, the enumeration cannot be split up so as to relate the word "autres" [other] to "argent en banque" [cash in a bank] only. Once it is determined that "liquid funds" include securities, a restricted meaning cannot be given to the expression "my funds", used in Clause Five of the will. There was therefore no error in the trial judge's interpretation of this clause.

Auger v. Beaudry, [1920] A.C. 1010; *Vaughan v. Glass*, [1963] S.C.R. 609; *Charlton v. Carter* (1937), 75 S.C. 34; *Reynar v. Reynar* (1932), 53 Que. Q.B. 338, referred to.

APPEAL against a decision of the Court of Appeal of Quebec[1] affirming a declaratory judgment of the Superior Court. Appeal allowed and judgment of the Superior Court varied.

Bernard Dorais, Q.C., for the appellants.

Denis St-Onge, for the respondent.

The judgment of the Court was delivered by

PIGEON J.—The appellants appeal, with leave of this Court, from the judgment of the Court of Appeal of Quebec, [1976] C.A. 283, which affirmed the judgment of Rodolphe Paré J. of the Superior Court on a motion for a declaratory judgment concerning the authentic will of Robert Rastoul, a farmer who died, unmarried, on January 8, 1972. The relevant clauses of this will, made on March 9, 1962 before Jean-Marc Richer, notary public, read as follows:

[TRANSLATION] CLAUSE THREE

I give and bequeath, as a legacy by particular title, in full ownership from the time of my death, in equal shares, all hypothecary claims, cash in a bank and other liquid funds that may belong to me at the time of my death.

To my sister Catherine (Mrs. Maxime Drouin) and to my niece Jeanne d'Arc Drouin, but subject to the latter

[1] [1976] C.A. 283.

remitting one-third of her aforesaid half portion to her brother Vincent Drouin. If my sister Catherine shall die before me, however, I give and bequeath the funds intended for her to her two sons in the first degree in equal shares.

CLAUSE FOUR

I give and bequeath the residue or surplus of all property, movable and immovable, without any exception or reservation, which I shall leave and which shall make up my estate at the day and hour of my death, to my nephew Alban Drouin, whom I appoint my sole universal and residuary legatee for him to enjoy and dispose of the residue of my said property in full ownership from the time of my death.

CLAUSE FIVE

Succession duties and all fees payable for the distribution of my estate, and pertaining to the particular legacies above stipulated, as well as the cost of funeral services and masses, shall be paid from my funds before the said particular legacies of money are paid.

Respondent in continuance of suit is the universal legatee and executrix of Alban Drouin, the universal residuary legatee appointed in Clause Four above. The latter was also the executor appointed in Clause Seven of the will. It is in these two capacities that he applied to the Superior Court, by a motion for a declaratory judgment under art. 453 of the *Code of Civil Procedure*, for a ruling on the interpretation of the will. The appellants are two of the three particular legatees in Clause Three, the other legatee having elected to abide by the decision of the court. The issue is as to the content of this particular legacy: does it include the bonds and debentures in the deceased's portfolio? There is also disagreement on the meaning of Clause Five, pertaining to succession duties.

The declaration of transmission made in notarial form by Alban Drouin shows that the estate of Robert Rastoul included property valued as follows:

Real estate:	$40,000.00
Hypothecary claims:	45,172.24
Bonds:	84,566.77
Cash on hand and in bank:	4,168.75
Promissory note:	100.00
Miscellaneous:	1,805.00
TOTAL:	$175,812.76

Succession duties payable amounted to $35,284.36.

The trial judge held that the bonds and securities other than cash on hand and in bank were not "liquid funds", included in the particular legacy made in Clause Three of the will. He correctly stated at the outset that the intention of the testator is to be ascertained only by interpreting the language of the will, in accordance with the decisions of the Privy Council in *Auger v. Beaudry*[2], and of this Court in *Vaughan v. Glass*[3]. However, he then cited Maxwell and Rogers and a judgment of the Superior Court, *Charlton v. Carter*[4], based on English cases.

I see no reason to resort to English authorities in the case at bar, which is to be decided under Quebec civil law, especially as this case concerns the interpretation of a will written in French, not in English as in *Charlton v. Carter*. Even then, resort to English cases is subject to caution, as noted in *Reynar v. Reynar*[5]; the legal system is always apt to affect the meaning of the words and the interpretation of documents.

The gist of the reasoning which led the trial judge to conclude that the securities should be excluded from the particular legacy is in the following passage from his reasons, which were approved and quoted extensively by the Court of Appeal in reasons stated by the Chief Justice:

[TRANSLATION] It may be said, therefore, that an essential aspect of the concept of "liquid funds" is that the amount thereof is exactly determined.

Analysing this concept, I necessarily come to the conclusion that funds are liquid or not depending on the time when this designation is applied thereto, and depending on whether at that time, or at some other time, the assets described as liquid funds are an exactly defined sum.

For this reason, in my opinion, a bond cannot be considered as liquid funds before maturity, because

[2] [1920] A.C. 1010.
[3] [1963] S.C.R. 609.
[4] (1937), 75 S.C. 34.
[5] (1932), 53 Que. Q.B. 338.

prior to that date it does not have the value shown on its face. It does not represent an exactly defined amount before its due date. Before that time it is only worth what it will yield by sale on the floor of a stock exchange or through a private transaction. In both cases the amount realized will result from the operation of the law of supply and demand, and it will not be transformed into an "exactly defined sum" until it is liquidated.

In the case at bar the time when the liquidity of the deceased's funds must be considered is that of his death, as appears from the concluding words "that may belong to me at the time of my death", at the end of Clause Three of the will, Exhibit R-1.

Moreover, although the testator had some education he was undoubtedly using the language of the man in the street. In that language, words do not always have the subtlety and precision found in dictionaries. In the Province of Quebec, the term "liquid funds" is one that is commonly used to refer to sums of money represented by currency in notes or coins.

Let us now consider the words used by the testator in their context. Respondents appear to suggest that the words "all hypothecary claims, cash in a bank and liquid funds" mean that the testator bequeathed his hypothecary claims as liquid funds in the same way as he bequeathed cash in bank and other monies as liquid funds.

In my view this is not the meaning that should be given to those words. I feel that the testator bequeathed, first of all, a specific class of property, consisting of his hypothecary claims. We know from the evidence that both at the time of the making of his will and at a later date he held a sizable sum in hypothecary claims. It is also known that he was in the habit of making up separate lists of the various classes of property owned by him, such as list i-1-C of his hypothecary claims; he designated these as "loans on real estate", which means the same thing. He thus appears to have treated his hypothecary claims as a different class from the money which he subsequently mentions, whether in a bank or elsewhere.

Accordingly, when he spoke of "other funds", he seems clearly to have been referring to these other funds, which were not in a bank and, as the evidence revealed, were concealed in various places in his house and in the farm buildings.

The conclusions of judgment read as follows:

[TRANSLATION] FOR THESE REASONS, THE COURT RENDERS the following declaratory judgment:

A—the bonds and securities listed in the fiscal declaration, Exhibit R-2, other than cash on hand and in a bank, are not "liquid funds" as specified in Clause Three of the will of the late Robert Rastoul; these bonds and securities form part of the residue of the estate devolving upon applicant Alban Drouin;

B—only the succession duties and fees payable for the distribution of the estate corresponding or pertaining to respondents' legacies shall be paid by respondents out of their legacy;

the balance of the succession duties and fees payable for the distribution of the estate pertaining to the residue of the estate shall be paid by applicant;

C—the cost of funeral services and masses shall be paid by respondents out of their legacies;

the whole WITH COSTS to be taken out of the assets of the estate in proportion to the amount devolving on each of the heirs.

I should first mention that the *Civil Code* shows that the concept of a liquid debt is not to be confused with that of a demandable debt. It is apparent from the wording of art. 1188, that these are quite distinct concepts:

Art. 1188. Compensation takes place by the sole operation of law between debts which are equally liquidated and demandable and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality. . . .

Similarly, art. 1291 of the *Code Napoléon* reads:

[TRANSLATION] Art. 1291. Compensation takes place only between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable. . . .

One has to go back to the *Coutume de Paris* to find, in art. 105, "claire & liquide" [clear and liquidated] rather than "liquidated and demandable". Pothier however, in Nos. 627 and 628 of his *Traité des obligations*, gave as distinct conditions that the debt be due and that it be liquidated, when he said:

[TRANSLATION] A debt is *liquidated* when it is established that it is due, and how much is due: . . .

It is true that all these texts refer to "debts", not to "funds"; but at the end of Clauses Three and Five, the testator uses the word "funds" to designate the subject of the particular legacies where "hypothecary claims" are mentioned in the first instance. "Funds" therefore includes claims; as claims are the counterpart of debts, they necessarily have the same characteristics in respect of liquidity and of being demandable.

It is quite true that the value of a term bond must not be confused with its par value. Its value is greater or lower than the par value depending on whether the interest rate is higher or lower than the current rate. It is apparent moreover that this was taken into account by the notary in the declaration of transmission, in which the bonds and debentures are valued not at their par value but at their present value on the day of death, as required by the *Succession Duties Act* (R.S.Q. 1964, c. 70, s. 18). The disparity between the present value and the par value in no way affects liquidity: securities may be realized at their present value, and much more readily than hypothecary claims the present value of which is just as susceptible to fluctuation as that of securities. It can be seen from the declaration of transmission that on the death of the testator some hypothecs were not due.

This brings me to the point which I consider decisive in arriving at a different conclusion from that of the trial judge and the Court of Appeal: the phrase to be interpreted is not "liquid funds" but "other liquid funds". The word "other" coming after "hypothecary claims, cash in a bank" shows that in the testator's mind hypothecary claims were "liquid funds". These claims are transferable, but they are certainly less "liquid" than such securities as the "bonds" and "debentures" which were found in deceased's safe and were mostly payable to bearer. They were largely municipal bonds. There were some corporate bonds guaranteed by hypothec, and all that distinguished them from hypothecary claims was that they were in negotiable form and the hypothec was in favour of a trustee. It may be that, in some other context,

corporate or municipal bonds should not be regarded as "liquid funds", but here the meaning of this expression is determined by the enumeration that precedes it. Because the collective phrase "autres argents liquides" [other liquid funds] is used in the plural, I fail to see how the enumeration could be split up so as to relate the word "autres" [other] to "argent en banque" [cash in a bank] only.

The final point to be considered is the meaning to be given to the expression "mon argent" [my funds] in Clause Five of the will. In my opinion, once it is determined that "liquid funds" include securities, a restricted meaning cannot be given to the expression "my funds". Regarding the word "argent" [funds], moreover, the trial judge very properly observed, in a passage which was adopted in the reasons of the Chief Justice in the Court of Appeal:

[TRANSLATION] In analysing, first, the meaning of the word "argent" [funds] to be found in the dictionaries, it may be seen that in its literal meaning this word includes, first, silver currency, and by extension, all currency.

In the figurative meaning all the dictionaries give to this word—as was in fact noted by respondents—a much wider meaning than that of specie. Thus, the dictionaries give as synonyms for the word "argent" [funds] "wealth", "property", "fortune", . . .

The expression "my funds" has in itself an even more general meaning than that of "liquid funds". It must therefore be held that the trial judge did not err in his finding as to the burden of succession duties and fees payable for the distribution of the estate. As he found, the expression "pertaining to the particular legacies" was indeed intended to limit the burden to what corresponds or pertains to the legacies of those who were the respondents in the Superior Court, namely the appellants, and of their co-legatee who elected to abide by the decision of the court.

Finally, it should be noted that the Superior Court and the Court of Appeal ordered that the costs be paid by the estate in proportion to the amount devolving on each of the heirs, as was agreed by the latter before the Superior Court.

There is no reason to make a different order for the costs in this Court. Alban Drouin was undoubtedly justified to seek a ruling from the Court on the interpretation of the will, seeing that he was both executor and universal residuary legatee. Appellants, on the other hand, had to carry the case to this Court in order to vindicate their rights.

I conclude that the appeal should be allowed, the judgment of the Court of Appeal should be set aside and the judgment of the Superior Court should be varied by replacing paragraph A of the conclusions by the following:

The bonds and securities listed in the declaration for fiscal purposes are like cash on hand and in a bank "argents liquides" within the meaning of the third clause of the will of the late Robert Rastoul.

Costs throughout shall be payable out of the mass of the estate in proportion to each legatee's entitlement.

Appeal allowed.

Solicitors for the appellants: Drouin, Chaurette & Associés, St-Eustache, Quebec.

Solicitors for the respondent: Desjardins, Ducharme, Desjardins & Bourque, Montreal.