Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Falle v. *Godfray, from the Royal Court of the Island of Jersey; delivered 1st December* 1888.

Present:
LORD WATSON.
SIR BARNES PEACOCK.
SIR JAMES HANNEN.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

Charles Le Vesconte Godfray, by a will dated the 7th of March 1886, bequeathed several legacies, and amongst them an annuity of 100*l.* to one Thomas Gallop, but made no disposition of his residuary estate. The will was attested by two witnesses, one of whom, Caroline Gallop, was the daughter of Thomas Gallop. On the same day the testator made a codicil to his will, in the following words:—

"7th March 1886.

"Codicil to my will.—All my personal property not left in my left* to go my nephew Bertram Falle, he paying my debts.

"C. LE V. GODFRAY."

* Sic.

This codicil was attested by the same witnesses.

The testator died on the 12th of March 1886, and the will and codicil were proved in the Ecclesiastical Court of the Island of Jersey on the 16th of March 1886. Shortly afterwards the Respondent, Albina Godfray, the sister and one of the co-heiresses of the testator, brought an

action in the Royal Court of Jersey against the executor and legatees, including the Appellant, to have the will and codicil set aside and annulled, on the ground, among others which it is now not necessary to state, that the will and codicil were not duly attested, inasmuch as Caroline Gallop, one of the witnesses thereto, was more closely related to Thomas Gallop, a legatee under the will, than the law allows.

On the examination of witnesses before an officer of the Court, an objection was taken to the admissibility of the evidence of Caroline Gallop, the evidence being admitted and the objection referred by the officer to the Court. On this and other objections which were also referred coming before the Inferior Number of the Royal Court, they decided that inasmuch as by the custom of the bailiwick a relation in a nearer degree than that of cousin-german could not be heard as a witness, and Caroline Gallop was the daughter of Thomas Gallop one of the legatees under the will, she was not a competent witness in the action. On the 19th of May 1887 the Superior Number of the Royal Court, on an appeal from this decision, affirmed it. The action was then proceeded with, and on the 15th of June the Inferior Number of the Royal Court decided that, as Caroline Gallop had been declared an incompetent witness in the action by the judgement of the 19th of May 1887, the will was not clothed with all the formalities required by the law and custom of the bailiwick, and accordingly set aside and annulled it, and, as regards the codicil, decided that, inasmuch as it was only supplementary to the will, and made to supply a blank in the will by appointing a residuary legatee, which the testator had neglected to do in the will, the codicil was an inherent part of the will and had no separate existence; and the will having been declared null,

and the setting aside of the codicil following as of right, the Court also set aside and annulled the codicil.

From this decision several of the Defendants appealed to the Superior Number of the Royal Court, which, on the 13th of October 1887, gave the following judgement :—

"As to the validity of the said will, the Court, by the majority of opinions, adopting the reasons of the Court below, finds that the judgement is good and the appeal bad, and, as regards the said codicil, the Court decides that, in the matter in question, the said codicil is an inherent part of the said will and has no separate existence, and since the Court has declared the said will null, the annulling of the said codicil follows as a matter of course; therefore the Court quashes and annuls the said will and codicil."

The present appeal is from this judgement, and from that of the 19th of May 1887, so far as they relate to the codicil, and, their Lordships being of opinion that Caroline Gallop was a competent witness to prove the codicil in the action to which Thomas Gallop was not a party, the only question is whether the Courts below are right in holding that, the will being declared null, the codicil falls with it.

In the judgement of this Committee in La Cloche *v.* La Cloche, Law R., 3 P. C., 125, delivered by Lord Westbury, it is said (p. 136) that their Lordships had much difficulty in ascertaining what are the recognized authorities on the law of Jersey. Their Lordships have not been referred to any passages in the works there recognized, or the treatises of Le Geyt, or in the authors which he says in his preface are principally quoted in Jersey, which show that by the law of Jersey, as by a rule in the Roman law, a codicil follows the condition of the testament, and is void

if the testament is annulled. That rule is a logical consequence of the limited scope of a Roman *codicillus*, by which an heir could not be instituted or disinherited, but a *fideicomiss* could be imposed upon the testamentary heir or legatee; and it would still be followed when the Roman law respecting codicils prevails. The learned Counsel for the Respondent relied upon passages which he quoted from writers upon the law in the provinces of France where the Roman law prevailed. It did not in the Duchy of Normandy, from which the laws of Jersey were derived. The opinions of those writers cannot have the same value upon this question as they would if they were writing about the law of Jersey. The use which may be made of them is such as is stated in the judgement in La Cloche *v.* La Cloche (p. 138) with regard to the Coutume de Paris and Coutume d'Orleans. They may be legitimately referred to for the purpose of testing the interpretation put on a custom of Jersey, and also for the purpose of explaining the force and effect of particular expressions. In this way they may have been referred to in the Jersey Courts. That is not how they were sought to be used in this appeal. Their Lordships were asked to treat them as showing what is the law of Jersey. The passages relied upon do not profess to be statements of the law or custom of Normandy, or to be founded upon it, and their Lordships cannot accept them as authorities for the law of Jersey.

In the absence of authority their Lordships have to determine whether it is reasonable that as an absolute rule of law a codicil is dependent on the will, and if the will is void the codicil must fall with it. If a testator, by a codicil duly executed, gives a specific legacy, having, in a previous will not duly executed, given other legacies, it does not seem reasonable that his

intention expressed in the codicil should not be given effect to because effect cannot be given to the intention expressed in the will. Domat., in Part 2, Book 4, Tit. 1, Sect. 2, Strachan's translation, in his remarks on Article 4, speaking of the rule of the Roman law, says, "We should "be afraid to trespass against equity if we "should lay it down as a general rule either that "all codicils are valid when there is no testa- "ment, or that they are null when there is a "testament which is found to be null." Their Lordships consider it is a sound rule that when effect can be given to the intention of a testator it should be given; and in the absence of any authority that the rule in the Roman law had become part of the customary law of Jersey, they would rather adopt a rule of law which gives effect to the intention of the testator than one which defeats it.

There remains the question as to what is included in the gift of the residue. It appears to their Lordships that the authorities upon the French law which were quoted do not differ from the English law on this matter, and that on principle, as well as by analogy to those laws, the legacies given by the will fall into the residue.

Their Lordships will, therefore, humbly advise Her Majesty to reverse the decrees of the Royal Court appealed from so far as they affect or annul the codicil and condemn the Appellant Falle in costs, and in lieu thereof to declare that the codicil was duly proved.

The Respondent will pay the costs of this appeal.