



CHAPTER 104

An Act respecting the succession of the late Malcolm William Mitchell

[Assented to, the 20th of March, 1941]

WHEREAS Isabel Brooks Call (née Mitchell) wife ^{Preamble.} separate as to property of Russell Burton Call, presently of Knowlton, in the Province of Quebec and the said Russell Burton Call for the purpose of authorizing his said wife; Louise Weldon (née Mitchell), wife separate as to property of Frederic Weldon, of the city and district of Montreal, and the said Frederic Weldon for the purpose of authorizing his said wife; James Simpson Mitchell, of the city and district of Montreal; Isabel Winnifred Mitchell (née White) widow of the late Malcolm William Mitchell, in his lifetime of the city of Sherbrooke, both personally and as tutrix to her minor children, issue of her marriage with said late Malcolm William Mitchell, viz—Malcolm William Mitchell and John White Mitchell; Sherbrooke Trust Company and Clinton E. Soles, manager of the Canadian Bank of Commerce at Sherbrooke, in their quality of executors of the estate and under the will of said late Malcolm William Mitchell; Dame Ann Low Mitchell (née Fuller) wife separate as to property of said James Simpson Mitchell and the said James Simpson Mitchell for the purpose of authorizing his said wife; and Douglas L. Ross, of Montreal aforesaid, chartered accountant, in his quality of judicial adviser to said James Simpson Mitchell; have by their petition represented:

That Malcolm William Mitchell, in his lifetime of the said city of Sherbrooke, died at the said city of Sherbrooke on the 11th of June 1935, leaving his last will and testament dated September 14th, 1926,

probate whereof was granted by the Superior Court, St. Francis, at Sherbrooke, on the 26th of June 1935, and a codicil thereto passed before Worthington, notary, and colleague, on October 1st, 1926;

That the said Malcolm William Mitchell was twice married, viz:

First, to Dame Louise Brooks Lugsdin, who predeceased him leaving three children her surviving, issue of her marriage with said Malcolm William Mitchell, viz: Isabel Brooks Call (née Mitchell) Louise Weldon (née Mitchell) and James Simpson Mitchell;

Second, to Dame Isabel Winnifred Mitchell (née White) with whom he was separate as to property and who survived him together with two minor children issue of her marriage to said Malcolm William Mitchell, viz: Malcolm William Mitchell, now of the age of thirteen years, and John White Mitchell, now of the age of ten years, to whom the said Isabel Mitchell (née White) was appointed tutrix by the Superior Court, St. Francis, on the 22nd day of June 1935;

That the last will and testament of said late Malcolm William Mitchell and codicil thereto were made by him subsequent to his second marriage, but prior to the birth of said two minor children, Malcolm William Mitchell and John White Mitchell, and he made no testamentary or other provision for his said two children; the three children by his first wife, Isabel Brooks Call, Louise Weldon and James Simpson Mitchell and their children, receiving under said will and codicil the entirety of his estate subject to certain special legacies in favour of his said wife;

That under said last will and codicil thereto the said Isabel Brooks Call, Louise Weldon and James Simpson Mitchell were to receive one-half of the revenue on their respective shares from the ages of twenty-one years to thirty years, and, upon reaching the age of thirty years, to receive in capital and accrued interest their one-third of the entire estate, but, should any of them die prior to attaining the age of thirty years, their share would devolve upon their children;

That all of said Isabel Brooks Call, Louise Weldon and James Simpson Mitchell have attained the age of twenty-one years, and one only has attained the age of thirty years;

That the said Isabel Brooks Call, Louise Weldon and James Simpson Mitchell, expressing their desire to make provision for their two half-brothers, made

and executed certain donations in their favour; the said Isabel Brooks Call and Louise Weldon by deed of donation before Worthington, notary, dated August 15th, 1935, as amended by deed dated December 14th, 1935, before said notary, and the said James Simpson Mitchell by donation before Worthington, notary, the 19th of May, 1936, all of which were in favour of said Isabel Winnifred Mitchell as tutrix and duly registered, wherein and whereby they each donated to their half-brothers, the said minors, sufficient of their interests in capital and revenue of said estate so that each of said Isabel Brooks Call, Louise Weldon, James Simpson Mitchell, Malcolm William Mitchell and John White Mitchell might each receive and have from their father's estate an equal one-fifth portion thereof in capital and revenue;

That even if the said donations were to be considered as forming a basis for the determination of the one-fifth interests of the beneficiaries contemplated herein, doubts have arisen as to the efficacy of said donations should any one of said Isabel Brooks Call, Louise Weldon and James Simpson Mitchell die before attaining the full age of thirty years, and it is necessary to make other provisions to attain equality in the division of said estate among the five children of said Malcolm William Mitchell;

That said James Simpson Mitchell is married, and is separate as to property with his wife Ann Low Mitchell (née Fuller) under antenuptial contract, executed before William Manly Bourke, notary, wherein said James Simpson Mitchell donated fifty thousand dollars (\$50,000.00) to the said Ann Low Fuller, which he promised to pay her either in money or other property and, in furtherance thereof, by transfer executed on the 14th of April, 1939, before Gravel, notary, as amended by deed of agreement before the same notary dated May 19th, 1939, he assigned to her his interests in capital and accumulated revenues of the estate of the said late Malcolm William Mitchell to the extent of fifty thousand dollars (\$50,000.00) in settlement of her said claim, and it is necessary that such transfer be validated and confirmed;

That the financial affairs of the said James Simpson Mitchell through his inexperience have become involved and it is necessary that about twenty thousand dollars (\$20,000.00) be taken from the 50% of revenue

accumulated and to accumulate in his favour to pay and settle his liabilities;

That Sherbrooke Trust Company and Clinton E. Soles, of Sherbrooke, are acting as executors under said last will and codicil, but have no special power thereunder to divide the estate of said Malcolm William Mitchell and to make up the shares of each of the legatees and it is necessary that they be authorized so to do; and

Whereas it is expedient to grant the prayer to that effect contained in the said petition;

Therefore, His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

Disposition of
residue of
estate.

1. The residue of the estate of the late Malcolm William Mitchell after payment of debts, succession duty, particular legacies in favour of Isabel Winnifred Mitchell (née White) and the charges and expenses of the estate shall be held and dealt with by the executors and trustees named under his last will and testament dated September 14th, 1926, and codicil dated October 1st, 1926, for the benefit of his five children, Isabel Brooks Call, Louise Weldon, James Simpson Mitchell, Malcolm William Mitchell and John White Mitchell, in equal shares, the donation made by said Isabel Brooks Call and Louise Weldon on the 15th August, 1935, before Worthington, notary, as amended by deed before said notary dated December 14th, 1935, and the donation made by said James Simpson Mitchell before the said notary on the 19th day of May, 1936, all of which are in favour of Isabel Winnifred Mitchell as tutrix to said minors Malcolm William Mitchell and John White Mitchell being hereby set aside, for all purposes, without prejudice however to rights of third parties and to payments of revenue already made to Isabel Winnifred Mitchell with respect to the shares of her said minor children and also without prejudice to the occupation which she has enjoyed without payment of rental of the immoveable properties described in the said donations, to the end that each of said children shall inherit a one-fifth part in capital and accumulated and accruing revenue thereof, and the said will and codicil shall be interpreted and carried out as though the said five children had originally been named as such by said will and codicil.

2. The executors and trustees under the will of said late Malcolm William Mitchell are hereby authorized to pay to James Simpson Mitchell and his judicial adviser, Douglas L. Ross, out of the fifty per cent of the revenue accumulated and to accumulate on his one-fifth share of said estate, such sum, not to exceed twenty thousand dollars (\$20,000.00), as may be required to pay or settle his liabilities and obligations existing at the time of the coming into force of this act. Payments authorized.

3. The transfer by deed before Gravel, notary, dated the 14th of April, 1939, as amended by the deed of agreement before the same notary, dated the 19th of May, 1939, between James Simpson Mitchell and Ann Low Mitchell (née Fuller) his wife, of his share in the said estate to the extent of fifty thousand dollars (\$50,000.00), is hereby ratified, confirmed and validated subject to the conditions of the will, provided that the said James Simpson Mitchell reaches the age of thirty years. Transfer ratified. Proviso.

4. Except as hereby authorized no share of any legatee or person under the will of said late Malcolm William Mitchell shall be assigned, pledged or transferred, nor shall any legatee or person so taking be entitled to anticipate any revenue payable to him or her from said estate. Assignments, etc., prohibited.

5. The legal expenses of obtaining this legislation and relief shall be charged to the capital of the said estate. Expenses.

6. This act shall come into force on the day of its sanction. Coming into force.

