



CHAPTER 105

An Act granting certain powers to the Executors of
the Estate of the late Thomas Mussen

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

WHEREAS Thomas Mussen, in his lifetime of the Preamble.
city of Montreal, merchant, did on the 19th
day of January, A. D. 1886, execute his last will and
testament before Joseph E. O. LaBadie and Mederic
Content, colleague notaries, and the said Thomas
Mussen departed this life on or about the 5th day of
April, 1892;

Whereas the said late Thomas Mussen, in and by his
last will aforesaid, named certain executors who are
long since deceased, but provided for their replacement
by a "Judge in court upon the advice of Family
Council", in the case where such replacements or
succession should become necessary for the complete
winding-up of the estate, "and so to continue till the
completion of the entire substitution";

Whereas the substitution created in and by the
aforesaid will was created in favour of the children of
the testator's grandchildren, when each should attain
majority, provided the grandchild in that line was not
living; consequently the substitution in many lines
has not yet opened and in some branches of the family
it cannot open for many years to come, and it has
become necessary to cause to be appointed successors
to the original executors in the manner provided by
the said will;

Whereas Crown Trust Company and Arthur York
Wilks were named and appointed executors of the
aforesaid estate to succeed the executors previously
in office, under and by virtue of a judgment of the
Superior Court for the District of Montreal rendered

on the 21st day of May, 1923, and a judgment of the said Superior Court rendered on the 15th of February, 1937, respectively, and Cornelius McGee was named and appointed curator to the substitution created in and by the aforesaid will by judgment of the aforesaid Superior Court on the 23th of March, 1925;

Whereas among the assets of the estate of the late Thomas Mussen was an emplacement of land situated in the city of Montreal, being cadastral lot number one hundred and twenty-six (No. 126) on the Official Plan and in the Book of Reference for the Centre Ward in the city of Montreal, with the buildings thereon erected, and in and by the said will no power of sale of immovable property was given to the executors, notwithstanding that the said estate consisted in substantial part of immovables, and the executors have, on each occasion that a sale of immoveables has been effected, been forced to adopt the long and cumbersome procedure of sale by licitation under the provisions of the Code of Civil Procedure of this Province and with the consent of the substitutes, as required by the provisions of Article 953 of the Civil Code of Lower Canada;

Whereas on the 21st of July, 1925, the executors of the estate of the late Thomas Mussen then in office, together with Cornelius McGee, sold, in conformity with the aforesaid provisions of the Code of Civil Procedure and Civil Code, to one Henry Miles of the city of Montreal, merchant, the aforesaid cadastral lot number one hundred and twenty-six (No. 126) on the Official Plan and in the Book of Reference for the Centre Ward in the city of Montreal, with the buildings thereon erected, for the sum of one hundred and ten thousand dollars (\$110,000.00), to which deed of sale were made parties twenty-one of the descendants of the said late Thomas Mussen, as institutes and substitutes affected under his said last will, the said parties acting respectively personally and as attorneys for the others; and on account of the purchase price of the said property was paid the sum of fifty thousand dollars (\$50,000.00), and there is a balance of capital remaining amounting to sixty thousand dollars (\$60,000.00), with arrears of interest exceeding twenty thousand dollars (\$20,000.00), which The Royal Trust Company, as executor of the estate of the late Henry Miles, the purchaser of the aforesaid property, has declared it is unable to pay, and it has offered the peti-

tioners to retransfer to the executors of the estate of the late Thomas Mussen the aforesaid emplacement in the form of a *dation en paiement*, in exchange for a discharge of all obligations for capital and interest due by the estate of the late Henry Miles to the executors aforesaid, and the said executors are willing to accept the return of the said property upon the conditions aforesaid, but have grave doubts as to their having any power under the will of the said late Thomas Mussen so to do;

Whereas of the eleven children of the late Thomas Mussen there survive Albert Edward Mussen, twenty-two grandchildren, thirty-one great-grandchildren, and three great-great-grandchildren (who take the place of one of the great-grandchildren); the one surviving institute in the first degree, nine of the grandchildren institutes in the second degree, and sixteen of the substitutes reside outside of Canada, and it is practically impossible to procure the consent of all of the substitutes to the transaction of *dation en paiement* or to the resale of the said property when such transaction is concluded, and it is in the interests of justice and of the institutes and substitutes that the executors should have power and authority to complete the said transaction and to resell and if necessary reacquire and deal with the said property, to the same extent and with the same effect as if power so to do had been given them under the will of the said late Thomas Mussen;

Whereas Crown Trust Company, a body corporate having its head office and principal place of business in the city of Montreal in the Province of Quebec, and Arthur York Wilks, insurance executive, of the city of Westmount in the Province of Quebec, in their present qualities of executors of the estate of the late Thomas Mussen, and Cornelius McGee, accountant, of the city of Montreal in the Province of Quebec, in his quality of curator to the substitution created under the last will and testament of the said late Thomas Mussen, have by their humble petition prayed for the passing of an act granting power unto the executors for the time being in office, and the curator to the substitution for the time being in office, to accept from the estate of the late Henry Miles, in his lifetime of the city of Montreal, in the form of a *dation en paiement* in full and complete satisfaction of an obligation of sixty thousand dollars (\$60,000.00), with accrued interest, cadastral lot number one hun-

dred and twenty-six (No. 126) on the Official Plan and in the Book of Reference for the Centre Ward in the city of Montreal, with the buildings thereon erected, and for the granting unto the said executors and curator, for the time being in office, power thereafter to resell and deal with the said property with the same effect as if power so to do had been given to the said executors under the last will and testament of the said late Thomas Mussen, executed before Joseph E. O. LaBadie and Mederic Content, colleague notaries, on the 19th day of January, 1886, and it is expedient to grant the prayer of the petitioners aforesaid;

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

Executors
authorized
to accept
retrocession
of certain
property.

1. The executors for the time being in office of the estate of the late Thomas Mussen, in his lifetime of the city of Montreal, and the curator to the substitution created under the last will and testament of the said late Thomas Mussen, executed before Joseph E. O. LaBadie and Mederic Content, colleague notaries, at the city of Montreal on the 19th day of January, 1886, are hereby authorized and empowered to accept from the estate of the late Henry Miles, in his lifetime of the city of Montreal, in the form of a *dation en paiement*, in full and complete satisfaction of an obligation of sixty thousand dollars (\$60,000.-00) with accrued interest, cadastral lot number one hundred and twenty-six (No. 126) on the Official Plan and in the Book of Reference for the Centre Ward in the city of Montreal, with the buildings thereon erected.

Power to
resell, etc.,
such
property.

2. The said executors and curator for the time being in office are authorized and empowered thereafter to resell and deal with the aforesaid property. The said property shall not, however, be sold for an amount less than forty thousand dollars, with interest upon any balance of price at a rate which must not be less than five per cent per annum.

Force and
effect of such
power.

3. The power and authority hereby granted shall have the same force and effect as if the executors and curator aforesaid had been granted such power and authority under the last will and testament of the late Thomas Mussen.

Coming
into force.

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