



CHAPTER 108

An Act respecting the marriage contract of Didier
Alphonse Pesant, farmer, and Armandine Delorme

[Assented to, the 27th of March, 1941]

WHEREAS Didier Alphonse Pesant, farmer, having ^{Preamble.}
his domicile in the town of St. Léonard de Port
Maurice, and Dame Armandine Delorme, his wife,
both married under the system of community of prop-
erty, and Didier Pesant, also farmer, of the said town
of St. Léonard de Port Maurice, father of the said
Didier Alphonse Pesant, have, by their petition, re-
presented:

That a marriage contract was entered into between
Didier Alphonse Pesant and Armandine Delorme on
the 18th day of December, 1917, made and passed
before Joseph Alexandre O'Gleman, notary, and the
said contract was registered in the registry office of
Hochelaga and Jacques-Cartier under the number
354594;

That the said Didier Alphonse Pesant and Armandine
Delorme were married in the parish of St. Léonard de
Port Maurice, in the district of Montreal, on the 8th
day of January, 1918;

That one of the petitioners, Didier Pesant, senior,
gave by the said marriage contract to Didier Alphonse
Pesant, junior, a piece of land situate at Côte St. Michel
in the town of St. Léonard de Port-Maurice, known
and designated under the number 371 of the official
plan and book of reference for the parish of Sault-au-
Récollet, less a certain strip of ground to be deducted
therefrom, as appears by the said marriage contract;

That clauses 5 and 8 of the aforesaid marriage
contract read as follows:

“5.—In consideration of the said marriage, the future husband gives *inter vivos* and irrevocably to the future wife, thereof accepting, a sum of one thousand dollars (\$1,000.00) to be taken from the most manifest and apparent property of the estate of the future husband, immediately after his death; such gift to avail in favour of the future wife, in addition to the benefits which may accrue to her from the said community of property, only in the case of her surviving the future husband, without any children born or to be born of the said marriage, as a right of survivorship, and to be considered as null and void if the future husband survive her; in the event of the predecease of the future husband, leaving children born or to be born of the said marriage, the future wife shall be entitled to the enjoyment of the property of the future husband, during her lifetime, while she remains a widow; it is further covenanted that the survivor of the future consorts shall have the right to dispose of the property of the community, and even of the private property of the predeceased consort, in favour of one or more of the children born of the said marriage, in such manner and in such proportion as such survivor may see fit.”;

“8.—The property reserved by the future consorts as private property shall be transmitted in the succession of the future consort who brought it in marriage, and shall continue, after his or her death, (notwithstanding any provision of the Civil Code to the contrary), to be so transmitted in the successions of his or her children and descendants, to the nearest relatives of his or her side and line, to the exclusion of the other consort and those of his or her side and line; in the event of the death of one or more of the children born of the said marriage, before attaining the age of majority, there shall be accretion in favour of the others; if all the children issue of the said marriage die in minority, the private property of the one or the other consort shall devolve to the nearest relatives of his or her side and line.

Notwithstanding the above stipulations, the future consorts shall have the right to dispose freely of their property in favour of any person, by onerous title, the proceeds thereof to be subject to the same restrictions as above, without obligation to reinvest.”;

That the said Didier Alphonse Pesant is a farmer;

That ten children—five sons and five daughters—were born of the marriage of the said Didier Alphonse Pesant and Armandine Delorme;

That the said Didier Alphonse Pesant has, since his marriage, acquired two other immoveable properties situated in the parish of St. Léonard de Port Maurice;

That the five sons, aged 22, 21, 19, 18, and 17 years respectively, all work on their father's three farms;

That clause 5 is ambiguous and occasions doubts as to the right of each consort to dispose by will or otherwise of his or her private property and of his or her share in the community in favour of the children of such consort;

That furthermore, the privilege which the surviving consort has in virtue of this clause, to dispose as he or she pleases by will in favour of one or more of the children, of the private property and the share in the community of the predeceased consort, is unreasonable and contrary to the spirit of our law;

That there is an express contradiction between clause 5 and clause 8, inasmuch as clause 5 gives the surviving consort the right to dispose of the private property of the predeceased consort, purely and simply, in favour of one or more of their children, and clause 8 stipulates that the property reserved by each of the future consorts as private property shall be transmitted in the successions of his or her children and descendants;

That it is normal and natural that the petitioners, Didier Alphonse Pesant and Armandine Delorme, should wish to provide first for the needs and the establishing of their children before stipulating in favour of the descendants of their children;

That in virtue of the same clause 8 the said petitioners, Didier Alphonse Pesant and Armandine Delorme, cannot dispose of their property by gift, even to provide for the establishing of their children;

That the petitioners never intended to subject themselves to any such restrictions and that the annexed marriage contract in no way represents the intentions of the parties to the said deed and constitutes a serious hindrance to the working by the family of the farms of the said Didier Alphonse Pesant;

That clauses 5 and 8 of the said marriage contract, in their present form, are subject to several interpretations and may give rise to litigation;

That the petitioners, signatories of the said contract, pray that the clauses numbered 5 and 8 be amended; and

Whereas the petitioners have prayed for the passing of an act for the aforesaid purposes and it is expedient to grant their prayer;

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

Clause 5 of
the marriage
contract
replaced.

1. The clause bearing the number 5 of the marriage contract of Didier Alphonse Pesant and Armandine Delorme made before Joseph Alexandre O'Gleman, notary, on the 18th day of December, 1917, and registered in the registry office of the counties of Hochelaga and Jacques-Cartier, under the number 354594, is replaced by the following:

"5. In consideration of the said marriage, the future husband gives *inter vivos* and irrevocably to the future wife, thereof accepting, a sum of one thousand dollars (\$1,000.00) to be taken from the most manifest and apparent property of the estate of the future husband, immediately after his death; such gift to avail in favour of the future wife, in addition to the benefits which may accrue to her from the said community of property, only in the case of her surviving the future husband, without any children born or to be born of the said marriage, as a right of survivorship, and to be considered as null and void if the future husband survive her; in the event of the predecease of the future husband, leaving children born or to be born of the said marriage, the future wife shall be entitled to the enjoyment of the property of the future husband, during her lifetime, while she remains a widow."

Clause 8 of
said contract
replaced.

2. The clause bearing the number 8 of the said marriage contract is replaced by the following:

"8. Notwithstanding the above stipulations in the present marriage contract, each of the future consorts shall have the right to dispose freely of his or her property in favour of any person whomsoever according to law."

Coming
into force.

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