



## CHAPTER 131

### An Act respecting the Estate of the late John Dwane

*[Assented to, the 25th of April, 1940]*

**WHEREAS** Alice Frances Dwane, of the city of <sup>Preamble.</sup>

Outremont, in the district of Montreal, wife separate as to property by contract of marriage passed before Joseph C. B. Walsh, notary, at Montreal, on the tenth day of October, nineteen hundred and fourteen, of James Richard Ross Elliott, Esquire, of the same place, and by her said husband duly authorized, the said Alice Frances Dwane Elliott, acting in her quality of sole executrix and trustee, in office, of the last will and testament of the late John Dwane, has by her petition represented:

That John Dwane, in his lifetime of the said city of Outremont, merchant, died on the nineteenth day of February, nineteen hundred and seventeen, leaving his last will and testament which had not been revoked nor altered, and which was executed in authentic form at Montreal, before Joseph C. B. Walsh and colleague, notaries, on the thirteenth day of February, nineteen hundred and seventeen;

That the said late John Dwane had been only once married and that his wife, Mary Conway Dwane, who had also been named as executrix and trustee under the said last will, died on the twenty-eighth day of February, nineteen hundred and thirty;

That under the terms of the said last will and testament the said late John Dwane directed that the capital of his estate and the surplus revenue be invested in

first mortgages or hypothecs on improved real estate in the cities of Montreal, Westmount or Outremont; and he further gave to his executors or executor, as the case may be, the most ample powers of sale, alienation and hypothecation of his moveable or immoveable property, with power to receive all moneys coming to his estate and good and sufficient acquittance and discharge therefor to give and grant, and with power to reinvest the same as hereinabove provided; he also gave to his executors or executor full power to settle and compromise all claims for or against his estate;

That at the time of his death the said late John Dwane held a number of hypothecs, some having the rank of first hypothec and others having the rank of second and even of third hypothec;

That, due to the unsettled condition of mortgages, real estate and immoveable property in the Montreal district, the executrix and trustee or her predecessor have been obliged to take over and acquire, for the value of the hypothecs affecting the same, certain immoveable properties upon which the said late John Dwane did hold a hypothec, and certain other immoveable properties upon which the said executrix and trustee or her predecessor had loaned money on the security of a first hypothec, in accordance with the terms of the said last will and testament;

That the executrix and trustee was advised by counsel learned in the law that she had the right to take over such immoveable property, and, following that advice, some immoveable properties were taken over in settlement of the hypothecary debts and *mainlevée* given of the hypothecs;

That all of the persons interested in the said estate have given their consent to the passing of the act prayed for by the petitioner;

Whereas in the interest of the estate, the executrix and trustee is desirous of having it definitely made clear that the estate does possess the right to take over such immoveable properties;

And whereas it is expedient to grant the prayer 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:

**1.** In the interest of the estate, the executrix and trustee of the last will and testament of the late John Dwane and her successor and successors, have the right to take over for such consideration and subject to such terms and conditions as may be deemed advisable by way of purchase, at sheriff's sale or otherwise, or by way of *dation en paiement*, any immoveable property upon which the said estate has or upon which the said estate may hereafter have a hypothec, and to grant release and *mainlevée* of any hypothec or hypothecs now held or which may in the future be held upon such immoveable properties so acquired, and to sell such immoveable property or properties so acquired. Purchase, etc., of immoveables.

**2.** The acts of the executrix and trustee of the last will and testament of the late John Dwane and her predecessor in acquiring immoveable properties upon which the said late John Dwane or his estate held hypothecs, and in selling such immoveable properties, and in granting release and *mainlevée* of the hypothec or hypothecs held thereon by the said late John Dwane or his estate, are ratified and confirmed. Acts ratified.

**3.** The executrix and trustee shall charge the legal and other expenses of obtaining this legislation and relief to the mass of the estate; Costs.

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

