



CHAPTER 133

An Act to facilitate the interpretation and the execution of the will of the late Edouard Héneault, and to ratify a deed of sale and transfer of rights of succession by Thérèse Héneault and Armand Héneault to Georges Alphonse Daviault

[Assented to, the 17th of May, 1940]

WHEREAS Messrs G. A. Daviault and J. A. Boivin Preamble. have, by their petition, represented:

That Edouard Héneault, farmer, of the parish of St. Cuthbert, county of Berthier, who died on the 28th of July, 1928, made his last authentic will, without revoking or modifying it, on July 10th, 1928, before Mtre. J. A. Boivin, notary, the said will registered at the registry office for the division of Berthier county, under No. 53914, being married a first time to Dame Emma Laferrière, in conventional community of property, according to their marriage contract, dated June 26th, 1888, before notary P. G. Rondeau, and registered in the said registry office under No. 20868;

That the said Edouard Héneault and Dame Emma Laferrière, under the terms of their marriage contract, gave to the one or the other survivor of them, for his or her lifetime, the enjoyment and usufruct of all the properties belonging to the first one to die, and that the said Edouard Héneault, under the terms of his said will, gave and bequeathed to his said wife, Emma Laferrière, the enjoyment and usufruct of his property and left her a particular legacy;

That the said Edouard Héneault, under the terms of his said will, paragraph 13, named and appointed Mtre. J. A. A. Lavallée, notary of the town of Berthier,

his testamentary executor with certain rights and powers therein mentioned (the said Mtre. J. A. A. Lavallée being discharged from his duties as testamentary executor and Mtre. J. A. Boivin, notary of the town of Berthier, being appointed in his place jointly with the said Emma Laferrière, by an order of the Superior Court, district of Joliette, given by Hon. Mr. Justice Trahan, on May 21st, 1930, and registered in the above-mentioned registry office under No. 56065);

That the said late Edouard Héneault, under the terms of his said will, made certain particular legacies and bequeathed the rest of his property to his nephews and nieces who are not excluded from his estate, under paragraphs six and twelve;

That the said Edouard Héneault was the owner of an immoveable, situated in the parish of St. Cuthbert, known on the official cadastral plan for the parish of St. Cuthbert as lot No. 565, personally, having acquired it before his marriage;

That the said Edouard Héneault was also the owner of seigniorial rights in the Seigniorie of Lanoraie and Dautraie, in the proportion of two hundred and twenty-seven seven hundred and twentieths ($227/720$), in undivided ownership with others, and also left moveable property, such as unsecured and hypothecary claims and furniture, etc., but acquired during the marriage, and he transmitted only the one undivided half in his estate;

That the division of the said community of property has not been made because of the powers and rights granted to the usufructuary by the said will;

That the interpretation and execution of the said will, as drafted, are not easy but present serious and grave difficulties in connection with the safeguarding of the assets of the said Edouard Héneault Estate, particularly in paragraphs three, six, twelve and thirteen of the said will; that the testamentary executor is and will be unable to give an accounting of the said assets without difficulties, if all the management and administration is carried out without his knowledge, and that, under the terms of the said will, the residuary universal legatees are called to inherit the said estate only if they survive the usufructuary and that, in case they died before her, the said usufructuary would be called to benefit by the lapsing of the said legacy;

That, by a deed received before Mtre. Avila Rouleau, notary, under number 9742 of his minutes, the said Dame Emma Laferrière gives her consent to this act.

That it is therefore necessary, both for the good of the said legatees and of the testamentary executor, in order to assure the safeguarding and the conservation of the assets of the said estate, that an act be passed to facilitate the interpretation and execution of the said will, and also to ratify and confirm a certain deed of sale and transfer by the residuary legatees to the Georges Alphonse Daviault, dated January 17th, 1938, before Mtre. Avila Rouleau, notary, and registered at the above-mentioned registry office under No. 64229, and

Whereas they have prayed for the passing of an act for the above purposes, and it is expedient to grant such prayer;

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

1. The usufructuary has and shall have the right to receive and collect, alone, the profits and revenues from the properties composing the Edouard Héneault Estate; however, she shall not have the right to withdraw, receive and collect the capital of such estate, nor to reinvest such capital without the collaboration and the intervention therein of the person vested with the naked ownership, hereinafter named. The investments and reinvestments shall be made according to the provisions of article 9810 of the Civil Code.

Rights of usufructuary etc.,

Investments.

2. The right to borrow granted to the usufructuary by paragraph three of the said will shall be limited to the single case where she would find herself in the evident necessity of doing so to provide for her subsistence and her maintenance. The usufructuary shall not have the right to help Philius Héneault and Aristide Héneault or any other member of the family of the said Edouard Héneault except out of the revenues of the said estate and without being entitled to use, for such purpose, the capital of the said estate or any part thereof, unless a written consent is given

Limitation of right to borrow, etc.

by the person vested with the naked ownership, hereinafter named.

Universal
residuary
legatees.

3. Dame Thérèse Héneault, wife of Cuthbert Bibeau, and Armand Héneault, both children of Joseph Héneault, brother of the testator Edouard Héneault, are and shall always be recognized and considered as having been and being the sole universal residuary legatees of the said Edouard Héneault, for each, an undivided half, in view of their being the sole nephew and the sole niece not excluded from the said estate, by the provisions of paragraphs six and twelve of the said will and under the exclusions therein mentioned.

Deed of sale
ratified.

4. The deed of sale executed by Dame Thérèse Héneault, authorized by her husband Cuthbert Bibeau, and Armand Héneault in favour of Georges Alphonse Daviault, dated January 17th, 1938, before Mtre. Avila Rouleau, notary, and registered at the hereinabove-mentioned registry office under No. 64229, is, by this act, ratified and confirmed according to its form and tenor, for all legal purposes, and the said Georges Alphonse Daviault is declared, from now and always, sole and unique absolute proprietor of the property composing the estate of the said Edouard Héneault, subject to the enjoyment and usufruct in favour of Emma Laferrière, to the payment of the particular legacies and of the debts of the estate, and to the obligation of performing acts of charity, at the end of the said usufruct, in favour of Philias Héneault and Aristide Héneault, in the manner mentioned in the said will, with possession, for the said Georges Alphonse Daviault and his assigns, upon the death of the said usufructuary, Emma Laferrière.

Partition of
property
not
required.

5. In view of the above provisions, there shall be no further need of partition of property, as provided under paragraph twelve of the said will, upon the expiring of twenty-five years following the death of the said Emma Laferrière.

Testa-
mentary
executor.

6. In view of the above provisions, the powers of the testamentary executor Mtre. J. A. Boivin shall end as soon as this act comes into force, and the said Georges Alphonse Daviault shall be substituted in the charges, obligations, rights and powers imposed or conferred on

the co-testamentary executor, J. A. Boivin, by the said will, until perfect execution of such will.

7. The testamentary executor shall remit to the said Georges Alphonse Daviault all titles, papers and documents relating to the said estate, to remain in his possession but with the usufructuary having the right to make use of them as may be required. ^{Remittance of titles, etc.}

8. The costs and disbursements, incurred for the passing of this act, shall be borne by the petitioner, Georges Alphonse Daviault. ^{Costs.}

9. This act shall come into force on the day of its sanction. ^{Coming into force.}

