



CHAPTER 153

An Act respecting the Estate of the late Victor Beaudry

[Assented to, the 30th of March, 1939]

WHEREAS Beaudry Leman, banker, Joseph Beaudry, ^{Preamble.} manufacturer, both of the city of Outremont, and Charles Laurendeau, advocate, of the city of Montreal, in their capacity of testamentary executors and fiduciary administrators of the estate of the late Victor Beaudry, senior, have, by their petition, represented:

That Victor Beaudry, who died in 1888, by his will executed before O. Morin and his colleague, notaries, on the 26th of December, 1887, made certain particular legacies to Dame Angéline Leblanc, his wife, created a life pension in her favour of twelve thousand dollars per annum and bequeathed the rest and remainder of all his property to his children in the first degree living at his death, or, failing them, to the children left by them born in lawful marriage and by roots, subject to the said children of the first degree to keep such property or the securities representing same in order to render and return them at their respective death to their children or grandchildren born and to be born in lawful marriage, the share of the said children dying without issue to accrue to their surviving brothers and sisters and to be substituted like the other property; the children of the first degree, during their lifetime, and the children of any of them who may predecease him to receive, from the date of their coming to the age of majority, or the date of their marriage, only the fruits and net revenues of the property of the estate to the extent of a sum of six thousand dollars per annum for each of them and not more, the opening of the substitution to take place only upon the death of the last survivor of the children of the first degree,

and the final division of the property to be made at that date between their children or descendants equally and by roots, the testator further stipulating that after the death of each child of the first degree, the children or other descendants of the latter, by roots, shall receive from the testamentary executors and fiduciary administrators the share of the revenues which their *auteur* would have had, if he had lived until the opening of the substitution, and that the grandchildren or other descendants called to receive the substitution cannot dispose of what they may claim in the mass of the property of the estate until the substitution has opened through the death of the last child of the first degree, absolute ownership to belong to the substitutes only after the opening of the substitution, and any sale, gift, assignment or other alienation of such rights shall be null and void;

That the testamentary executors and fiduciary administrators appointed by the will and those who have succeeded to them, while keeping an account for each child in the books of the estate of the accumulated revenues during his minority, have invested the capital of the estate and the accumulated revenues together, without distinguishing between capital and accumulated revenue, being of opinion that the revenues accumulated during the minority of the children and afterwards formed part of the substitution;

That, by an order of the Judicial Committee of the Privy Council, dated the 28th of July, 1900, in two cases of *Beaudry vs. Barbeau et al., es-qualité*, and *Barbeau et al., es-qualité, vs. Beaudry*, confirming a judgment of the Superior Court and of the Court of Appeals of the Province of Quebec, it was decided that the accumulated revenues for each of the children of the first degree during their minority was not subject to the substitution created by the said will, that the substitution was limited to the capital of the property existing at the date of the death of the testator and that such revenues belong to the children of the first degree who may dispose of same by will;

That the act 9 George V, chapter 152 (1919), grants to the children of the first degree, in addition to their pension of six thousand dollars per annum, the revenue of the capitalized sums for each of them during their minority;

That by the act 19 George V, chapter 144 (1929), the testamentary executors and fiduciary administrators, at the request of the testator's widow and of the children of the

first degree, were authorized to pay them additional pensions of an equal amount, not exceeding two thousand five hundred dollars per annum to each, provided that the testamentary executors be of opinion that the revenues of the estate, during each financial year, would permit of it, such additional pension to be paid, at the death of each child, to his children by roots;

That the said additional pensions have been paid for a few years only, the revenues in subsequent financial years not permitting the testamentary executors to pay them;

That the substituted capital as well as the accumulated revenues, both during the minority of the children of the first degree and since, are invested together on immoveables and in hypothecs;

That if a partition has to be made at the death of a child of the first degree, there would be as many partitions as there are children, which would be to the prejudice of those concerned, especially in the present circumstances, in view of the unfavorable condition of the real estate market and the moratorium law;

That the interests of those interested, as indeed it was the testator's intention, well known to the family, is that the property, capital and accumulated revenues, be retained and be distributed between those interested, only at the opening of the substitution;

Whereas the persons interested and René Morin, curator to the substitution, have declared themselves favourable to the prayer contained in the said petition and have agreed to the passing of this act; 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:

I. Until the opening of the substitution, the revenues accumulated during the minority of the children of the first degree and subsequently shall remain in the hands of the testamentary executors and shall be administered and invested by them with the substituted capital, as in the past, provided that, in the books of the estate, accounts be kept distinct and separate from the substituted capital. Administering of revenues.

As regards such revenues, the testamentary executors shall have the same powers as those which they possess regarding the substituted capital in virtue of the will of the 26th of December, 1887, and of the statutes amending the same.

Partition of
assets.

2. After the opening of the substitution, the partition of the assets realized shall be made by the delivery to the substitutes of the substituted capital, then by the delivery, to the persons entitled thereto, of the revenues accumulated during the minority of the children of the first degree, and the remaining assets realized shall then be divided among the substitutes and the other persons interested proportionately to the amount representing the substituted capital and the amount representing the revenues accumulated since the coming of age of the children of the first degree, the whole in conformity with the account books of the estate.

How parti-
tion made.

Such partition shall be made by the testamentary executors, and may be contested by any interested party. For such purpose, the powers of the testamentary executors shall be extended for a period of two years counting from the opening of the substitution. During such period they shall sell and realize the property and make the partition.

Costs of act.

3. The costs incurred for the passing of this act shall be paid by the testamentary executors out of the revenues accumulated since the coming to the age of majority of the children of the first degree.

Coming into
force.

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