



CHAPTER 167

An Act respecting the estate of the late Joseph Ethier

[Assented to, the 18th of May, 1935]

WHEREAS Paul Ethier, manager, Pio Ethier, Doctor in Preamble.

Chemistry, both of the city of Outremont, Dame Alice Ethier, of the city of Westmount, wife separate as to property of Charles Lefrançois, physician and surgeon, of the same place, and the said Charles Lefrançois to authorize his wife for the purposes hereof, and Dame Marie Rose Ethier, of the city of Outremont, wife separate as to property of Antoine Bernard Hamelin, advocate, of the same place, and the said Antoine Bernard Hamelin to authorize his wife for the purposes hereof, and in his capacity of testamentary executor of the estate of the late Joseph Ethier, all four of the district of Montreal, have, by their petition, represented:

That, by his will executed at Montreal, on the 30th of October, 1929, before J. M. Savignac, notary, in the presence of Robert Désy, also notary, Joseph Ethier, in his lifetime, burgess, of the city of Outremont, appointed to execute his will the petitioners, his two sons, Paul Ethier and Pio Ethier, and also the petitioner, his son-in-law, Antoine Bernard Hamelin, with power to exercise the office of testamentary executors and trustees beyond the year and day fixed by law, until final partition of his property, at the period fixed in the will;

That, by his will, the said Joseph Ethier, who died on the 11th of August, 1930, after having made certain particular legacies, bequeathed the residue of all the property composing the estate to the petitioners, his four children, Paul Ethier, Pio Ethier, Dame Alice Ethier now Mrs. Charles Lefrançois, and Dame Marie Rose Ethier now Mrs. Antoine Bernard Hamelin, or the survivor or sur-

vivors of his said children, in the event of any of them predeceasing him without children, to enjoy and dispose of, in equal shares, in full ownership and free possession, the balance of the said property at the time only of the partition which shall not be made before the first of January, 1950;

That clause 7 of the said will stipulates as follows:

"Notwithstanding the clause of accretion mentioned in the preceding paragraph, I wish and intend that there be no substitution of my property, and that the above clauses shall in no way affect the powers and rights conferred by me upon my testamentary executors and trustees, relieving also the latter in all cases from appointing a curator to my property, relying entirely on their integrity and spirit of justice.";

That it is stipulated amongst other things in clause 11 of the said will, as follows:

"From the date of my death, until the period fixed for the partition of my property, to wit: the first of January, nineteen hundred and fifty, (1950), the administration of my property shall remain in the hands of my said testamentary executors and trustees, to whom I give the absolute power to sell, hypothecate, transfer, exchange or otherwise alienate all my property, moveable or immoveable which may compose my estate. . . .";

That the testator did not give his testamentary executors power to borrow, and that the petitioners desire that clause 11, after the words "to whom I give absolute power to", be amended, by adding the word "borrow," so that the first lines of clause 11 of the will hereafter will read as follows:

"From the date of my death, until the period fixed for the partition of my property, to wit: the first of January, nineteen hundred and fifty, (1950), the administration of my property shall remain in the hands of my said testamentary executors and trustees, to whom I give the absolute power to borrow, sell, hypothecate, transfer, . . .";

That the testamentary executors of the estate find it impossible to retain the property of the estate, owing to the fact that they cannot realize upon the hypothecs which largely compose the assets, on account of the Moratorium Act and the financial depression, without being empowered to borrow to pay the charges ranking before the hypothecs held by the estate;

That it is stipulated in clause 13 of the will, as follows:

"During the carrying out of my will, that is to say until the first of January, nineteen hundred and fifty, (1950),

my said testamentary executors and trustees shall be bound to set aside annually in an incorporated bank doing business in the city of Montreal, in the name of the estate Joseph Ethier, ten per cent of the gross revenues of my estate, with right and power to lend such ten per cent of my revenues, when there is thus in the bank an amount of over two thousand dollars, in first hypothecs, on properties with buildings thereon, on the Island of Montreal, on such conditions as they may deem proper, both as regards the rate of interest and terms of repayment and as regards the amount to be invested and the value of the properties; in all cases, such ten per cent and all the revenues and proceeds which may be derived therefrom must be capitalized, the whole to be divided at the date of the final partition of my estate.”;

That the petitioners pray that the testamentary executors of the estate be exempted from the obligation “to set aside annually in an incorporated bank, doing business in the city of Montreal, in the name of the estate Joseph Ethier, ten per cent of the gross revenues of my estate”, as stipulated in the paragraph above cited, but pray that they be held to so set aside ten per cent of the net revenues, owing to the fact that the estate, having been obliged to take back a large number of properties in payment of second and third hypothecs, draws from most of these properties revenues barely sufficient to meet fixed charges;

That the petitioners therefore desire that the will be amended in clauses 11, 13, 15 and 16, where there is question of setting aside ten per cent of the gross revenues of the estate, so that the testamentary executors be not bound to set aside more than ten per cent of the net revenues, and this from the opening of the estate; and

Whereas it is expedient to pass an act for such purpose;

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

1. The testamentary executors of the estate of the late Joseph Ethier are authorized to borrow, as if the testator had added to clause 11 of his will, after the words “to whom I give absolute power to”, the word “borrow,”, before the words “sell, hypothecate, transfer . . .”. Borrowing by testamentary executors authorized.

2. The testamentary executors of the estate of the late Joseph Ethier shall be bound to set aside only ten per cent of the net revenues of the estate, instead of ten per cent of the gross revenues, as provided in clause 13 of Setting aside of certain sum from net revenues authorized.

the will, and the parts of clauses 11, 13, 15 and 16 of the said will, where there is reference to the setting aside of ten per cent of the gross revenues, are amended to the same effect, and this from the opening of the estate of the late Joseph Ethier.

Costs.

3. The estate shall pay the costs, disbursements and fees incurred for the passing of this act, and the testamentary executors may impute the amount thereof to the capital of the estate.

Coming into
force.

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