



CHAPTER 173

An Act respecting the substitutions created by Amable Prévost and Marie Rosalie Victoire Bernard

[Assented to, the 11th of April, 1935]

WHEREAS The Sun Trust, Limited, of the city of Mont- Preamble.
real, formerly known by the name of The Sun Trust
Company, Limited, Dame Marie Rosalie Berthelot, wife
of Léon Bourgeois, and her daughter, Léonie Bourgeois,
both of the city of Paris, France, at present in the city of
Montreal, and Arthur Gagné, advocate and King's Counsel,
of the city of Outremont, in his capacity of curator to the
hereinafter-mentioned substitutions, have, by their peti-
tion, represented:

That, by testament and codicils executed in Montreal
on the 24th of December, 1844, the 26th of December,
1844, and the 22nd of January, 1860, before J. Belle,
notary, Amable Prévost, in his lifetime of the same place,
merchant, bequeathed as an alimentary allowance to the
children born and to be born of his marriage with Dame
Marie Rosalie Victoire Bernard, the usufruct and enjoy-
ment, during their lifetime, of all his moveable and im-
moveable property, the full ownership of the said property
to belong, after their death, to the children to be born of
their respective marriages;

That the said will and codicils constitute a substitution
in which the children of the said late Amable Prévost are
the institutes and his grandchildren are the substitutes;
and that the immoveables of the testator were to pass in
kind to his grandchildren, without the children of the
testator or even the grandchildren, so long as the usufruct
should exist, being able to alienate, sell, pledge or hypo-
thecate the same;

That, on the 9th of February, 1872, the said Amable Prévost predeceased his wife and his seven children, among whom was Dame Marie Rhéa Berthe Prévost afterwards widow, by her first marriage, of Joseph Elzéar Berthelot, and, by second marriage, of Châteauguay de Salaberry.

That the said Amable Prévost was common as to property, so that the said will affected only his share in the community and the property personally belonging to him;

That, by deed entered into before G. M. Prévost, notary, on the 25th of October, 1882, under number 5708 of his repertory, a partial liquidation of the property of the said community was made, and that, by the said deed, the said Dame Marie Rosalie Victoire Bernard, under reserve of the usufruct during her lifetime, made a gift *inter vivos* to her seven children, issue of her marriage with the said Amable Cyprien Prévost, one of whom was the said Dame Marie Rhéa Berthe Prévost, of the whole of the share of the community which had existed between her and her said husband, as well as of all other moveable and immoveable property which she might then possess and own;

That the said deed of gift requires that the said Dame Marie Rhéa Berthe Prévost must preserve and deliver as a substitution to her legitimate children, born and to be born, in the first degree, all moveable and immoveable property received by her from the donor, her mother, and in the event of her death leaving no child, the said substituted property shall accrue to her brothers and sisters in equal shares, to be enjoyed by them under the same substitution in favour of their respective children, the children of the said brothers and sisters, nephews and nieces of the donee representing their deceased father or mother, but without substitution in favour of their children, and that in the event of the death of all the children of the said Dame Marie Rhea Berthe Prévost, before attaining majority and without issue, the said property shall belong under the same substitution as above, to the other donees, their uncles and aunts, with representation;

That, after inventory was made of the property left by the said late Amable Prévost, his said children and their mother, the said Dame Marie Rosalie Victoire Bernard, proceeded, on the 27th of April, 1883, by deed passed before G. M. Prévost, notary, under No. 5805 of his repertory, to the partition and liquidation of the said community of property and of the estate of the said late Amable Prévost; and, by the said partition, all the moveable and immoveable properties coming to them from their father were divi-

ded amongst the seven children of the said late Amable Prévost, his only heirs and legal representatives;

That, such partition was declared final and definitive by the act 60 Victoria, chapter 95, assented to on the 9th of January, 1897;

That, by the above-cited deed of partition of the 27th of April, 1883, the partition between the said Dame Marie Rosalie Victoire Bernard and her children was likewise made of the property which formed the object of the said gift of the 25th of October, 1882, and definitively so, as provided by the said deed;

That, by deed of gift passed at Montreal on the 17th of May, 1899, before Valmore Lamarche, notary, under No. 4155 of his repertory, the said Dame Marie Rosalie Victoire Bernard gave to the said Dame Marie Rhéa Berthe Prévost, certain moveable properties, the donee being charged to preserve them and deliver them as a substitution to her legitimate children in the first degree, with return to the donor, or to her heirs or legatees, in the event of the predecease of the said donee and her children;

That there exists no child of the marriage of Dame Marie Rhéa Berthe Prévost with Châteauguay de Salaberry;

That, of the marriage of the said Dame Marie Rhéa Berthe Prévost with her husband, Joseph Elzéar Berthelot, were born two children, Georges, who died a bachelor, and Marie Rosalie, wife of Léon Bourgeois;

That, of the marriage of the said Dame Marie Rosalie Berthelot with the said Léon Bourgeois, was born a daughter, Léonie, now of the age of majority;

That afterwards and in performance of the transaction entered into between the said Dame Marie Rhéa Berthe Prévost, widow of Châteauguay de Salaberry, and the said Dame Marie Rosalie Berthelot, her daughter, wife of the said Léon Bourgeois, for the purpose of putting an end to the litigation then existing between them, and of protecting the property in the said substitutions:

1. By deed passed before Gustave Beaudoin, notary, at Montreal, on the 25th of June, 1928, under No. 9107 of his repertory, and registered in the registration office of Montreal under No. 182868,—

a. The said Dame Marie Rhéa Berthe Prévost sold, ceded and transferred to The Sun Trust Company, Limited, certain immoveables therein designated, of which she appeared to be owner, as having acquired them in her own name:

b. The said Dame Marie Rhéa Berthe Prévost, delivered over in anticipation to The Sun Trust Company, Limited,

certain other immoveables therein described, which were part of the substitution in which she was institute under the terms of the above-cited will of the said late Amable Cyprien Prévost, her father, of which immoveables The Sun Trust Company, Limited, was already in possession, as purchaser at a sale for municipal taxes;

with the charge upon the Sun Trust Company, Limited, to pay all taxes and other imposts, the amount in principal and interest of the hypothecs affecting such immoveables, to allow her for her lifetime the free enjoyment of one of such immoveables, and to pay her also during her lifetime a monthly rent of two hundred dollars.

2. By deed passed before the said Gustave Beaudoin, notary, at Montreal, on the 25th of June, 1928, under No. 9108 of his repertory, between The Sun Trust Company, Limited, of the one part, and the said Dame Marie Rosalie Berthelot, authorized by the said Léon Bourgeois, her husband, substitute, and the said Miss Léonie Bourgeois, in her capacity of eventual substitute in the said substitutions, and Arthur Gagné, advocate and King's Counsel, of the city of Outremont, in his capacity of curator to the said substitutions, of the other part,—

a. The Sun Trust Company, Limited, acknowledged to hold for the account of the substitutes in the said substitutions, all the property which had formed the object of the sale and delivery in anticipation made to it on the same day, before the same notary, under No. 9107 of his repertory, by the said Dame Marie Rhéa Berthe Prévost, subject to the obligations therein assumed by it;

b. The said Dame Marie Rosalie Berthelot, in her capacity of substitute in the said substitutions, and the said Léonie Bourgeois, in her capacity of eventual substitute in such substitutions, with the concurrence, so far as need be, of the said Arthur Gagné, in his capacity of curator to such substitutions, constituted The Sun Trust Company, Limited, their special mandatory, to which they gave power to represent them in all deeds of administration and disposal of the moveable and immovable property belonging to the substitutions, the whole with the powers detailed in the said deed:

c. The Sun Trust Company, Limited, was authorized to open and did open for the said Dame Marie Rosalie Berthelot and Léonie Bourgeois, in their aforesaid capacities, a credit of twenty thousand dollars, for the purposes therein mentioned, and it was agreed between the parties that The Sun Trust Company, Limited, should be entitled to reimburse itself out of the moveable and immovable prop-

erty belonging to the said substitutions, for such sum of twenty thousand dollars, in principal and interest, as well as for all other advances which it might be called upon to make, either to them directly or as a result of the obligations taken by it in the said deed of sale and delivery by anticipation, and to preserve until full reimbursement the powers of administration and disposal of the moveable and immoveable property belonging to the said substitutions, the whole with the powers set out in the said deed;

That there was reason to believe at the time that the revenues from the property ceded by Dame de Salaberry, and from those delivered by her in anticipation, would be sufficient to provide for the repayment of the advances mentioned in the said deed, and for the charges of administration of the property;

That, deducting the reimbursements made to date, there is at present due to The Sun Trust, Limited, an amount of thirty-three thousand dollars, and that the payment of the arrears of taxes, and of the necessary repairs to the properties, and generally the expenses of administration, will necessitate further advances;

That Miss Léonie Bourgeois has herself, from her own money, made advances to the amount of five thousand dollars, whereof the substitutions have benefitted;

That Dame Marie Rhéa Berthe Prévost, widow of Châteauguay de Salaberry, is now over seventy-five years of age;

That, in order to meet the repayment of the advances made and the necessary expenses to preserve the said properties, it has become necessary, and will probably be necessary in future, owing to a considerable reduction in revenues, to dispose of certain of the properties of the said substitutions;

That a doubt has arisen as to the right of The Sun Trust, Limited, or of the substitutes, to dispose of the said properties, owing to the possibility that both the said substitutes, who form two successive degrees, should die before the said Dame Marie Rhéa Berthe Prévost, despite the improbability of such an event;

Whereas the petitioners have prayed for the passing of an act for the above purposes; 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:

Certain advances declared debts of the substitutions.

1. The advances owing to The Sun Trust, Limited, and amounting to date to thirty-three thousand dollars, the interest accrued and to accrue thereon, the advance of five thousand dollars made by Miss Léonie Bourgeois, and the present arrears of taxes, are declared to be debts of the substitutions.

Selling of certain immoveables authorized.

2. The Sun Trust, Limited, or its assigns, with the consent of Dame Marie Rosalie Berthelot, wife of Léon Bourgeois, and of Léonie Bourgeois, her daughter, and of the curator to the substitutions, are authorized to sell by private sale, and at the price they may deem proper, without following the formalities required for the alienation of substituted property before the opening of the said substitutions, first, the moveables belonging to the said substitutions, and mentioned and described in detail in Schedule A attached hereto, and afterwards, such immoveables belonging to the said substitutions, and mentioned in detail in Schedule B attached hereto, which it may become necessary to sell, to draw the price of sale, and to give discharge therefor, and to employ the proceeds of the said price of sale to pay the debts of the substitutions and costs occasioned by such sales; the said payments to be made by The Sun Trust, Limited, or its assigns, for and in discharge of the said substitutions, and the purchasers shall not be bound to see to the reinvestment of the balance.

Investing of surplus.

Every surplus, if any, must be invested according to the provisions of article 981^o of the Civil Code, or be used to repay all or part of what may remain due on the hypothecs now affecting the said immoveables, which hypothecs are also declared to be debts of the substitutions.

Delaying of alienation in certain case.

3. In the event of it being deemed prejudicial to the substitutions to dispose of the immoveables, The Sun Trust, Limited, may, with the consent of the said Dame Marie Rosalie Berthelot, wife of Léon Bourgeois, and of Léonie Bourgeois, her daughter, and of the curator, delay the alienation thereof and, furthermore, may alone, at its discretion, make new advances, for their conservation, which shall in the same way be recognized as debts of such substitutions, provided that such advances do not exceed, in the course of any one year, twenty per cent of the gross revenues.

Proviso.

Reimbursement of certain advances.

4. If all the advances already made and to be made to the said substitutions, with accrued interest according to the terms of the above-cited deeds on those already made, and at the rate of five per cent, after the date of the passing

of this act, on those to be made, have not been repaid at the time of the opening of the said substitutions, all such properties of the said substitutions which may still then exist, shall remain pledged in favour of The Sun Trust, Limited, or its assigns, which, six months after such opening, may exercise all legal recourses to be reimbursed.

5. Such pledge shall affect the immoveables belonging to the said substitutions described in the notice given by The Sun Trust, Limited, or its assigns, to the registrar, who shall be bound to register it and enter it against the said immoveables. ^{Registering, etc., of pledge.}

6. Nothing in this act shall be interpreted as preventing The Sun Trust, Limited, or its assigns, and the said Dames Bourgeois, from availing themselves of already acquired rights not affected. ^{Acquired rights not affected.}

7. The costs incurred for the passing of this act shall be at the charge of the substitutions, and The Sun Trust, Limited, is authorized to make the necessary advances to pay them, in addition to those mentioned in section 3 of this act. ^{Costs.}

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

SCHEDULE A

1. Canadian Consolidated Rubber 6% 1946 Bonds—\$9,300.00, bearing numbers 2212, 2213, 2486, 2487, 2488, 2489, 2490, 2491, 2492 and 2887, 2888, 2889.

2. Thirteen (13) Preferred shares Dominion Rubber, 7% No. C 0142.

3. Seventeen (17) preferred shares Cassidy's Ltd. No. 0725.

SCHEDULE B

1. Two vacant lots of land situated on Montclair street, in Notre Dame de Grâces ward, of the city of Montreal, designated under numbers five hundred and sixty-four and five hundred and sixty-five, of the subdivision of lot number one hundred and fifty-two, of the cadastre of the parish of Montreal.

2. Four vacant lots of land situated on Walkey street, in the same ward, designated under the numbers five hundred and fifty-one, five hundred and fifty-two, five hundred and fifty-three and five hundred and fifty-four, of the subdivision of lot number one hundred and fifty-two, of the same cadastre of the parish of Montreal;

3. Six vacant lots of land situated on Terrebonne street, in the same ward, designated under the numbers two hundred and sixty-two, two hundred and sixty-three, two hundred and sixty-four, two hundred and sixty-five and two hundred sixty-six and two hundred and sixty-seven, of the subdivision of lot number one hundred and forty-eight, of the cadastre of the parish of Montreal;

4. Four vacant lots of land on Belmore avenue, in the same ward, designated under the numbers four hundred and ninety-two, four hundred and ninety-three, four hundred and ninety-four and four hundred and ninety-five, of the subdivision of lot number one hundred and forty-eight, of the cadastre of the parish of Montreal;

5. An immoveable situated at Chambly Canton, in the county of Chambly, known under the name of "Old Military Hospital", consisting of:

a. Lot number forty-one of the cadastre of the village of the township of Chambly, containing one hundred and fourteen feet in front, by three hundred and forty feet in depth, more or less, bounded in front by the public road, in rear by a by-road, by the hereinabove described portion of lot number forty-two, of the same cadastre, and on the other side by lot number forty, also of the same cadastre, a stone house and other buildings thereon erected;

b. The southeast portion of lot number forty-two, of the same cadastre, which southeast part of the lot contains ninety feet in width by three hundred and forty feet in depth, also more or less, bounded in front by the public road, in rear by a by-road, on one side by lot number forty-one, above described, and on the other side by the remainder of the said lot number forty-two.

6. An immoveable likewise situated at Chambly Canton known under the name of Manoir de Salaberry, consisting of:

a. Lot number three of the cadastre of the village of Chambly, bounded in front by the public road, with a two-story stone house and other buildings thereon erected. To be subtracted from said lot, its northeast part containing about two hundred and twenty-five feet in front, English measure, sold to Mrs. Yule, wife of Fitzwilliam Walker.

b. A lot of land designated under the number forty-two of the said cadastre, bounded in front by the public road, without buildings; To be likewise substracted from such lot, its northeast part containing about eighty feet wide, sold to the said Dame Fitzwilliam Walker.

7. An immoveable situated on Durocher street, in the city of Montreal, containing forty-four feet and six inches in width, by a depth of eighty-three feet, and from thence forty-one feet wide up to the rear line, such total depth being one hundred and twenty feet, consisting of the southeast part of lot number one thousand eight hundred and fifty-six of the cadastre of St. Antoine ward, which southeast part of lot is bounded in front by Durocher street, in rear by a lane known as number twelve of the sub-division of lot number one thousand eight hundred and forty-four of the said cadastre; on the northwest by another part of the said lot number one thousand eight hundred and fifty-six of the said cadastre, and on the southeast, partly by a passage ten feet wide, by about forty-three feet in depth, dividing such immoveable from the neighbouring lot number one thousand eight hundred and fifty-five, of the same cadastre, and partly by another part of the said lot one thousand eight hundred and fifty-six, extending from the depth line of the said passage to the said lane number twelve of the subdivision of lot number one thousand eight hundred and forty-four of the said cadastre;

With the buildings thereon erected, bearing the numbers 3458 and 3460 of Durocher street, and the right of passage in common, both in the above-mentioned passage, and in the said lane situated in rear of such immoveable, and in the lanes communicating therewith.