



CHAPTER 139

An Act respecting the estate of the Honourable Joseph Masson

[Assented to, the 1st of April, 1927]

WHEREAS Raoul Masson, Esq., physician, Albert Preamble.
Pancrace Lespérance, bank manager, Joseph Maurice Bastien, advocate, and Alphonse Milette, administrator, all of the city and district of Montreal, and Raymond Masson, sculptor, of the city of Outremont, in the said district, being all the testamentary executors and trustees of the properties of the estate of the late Honourable Joseph Masson, in his lifetime residing in the said city of Montreal, acting in their above capacity, have, by their petition, represented:

That they are the testamentary executors and trustees of the estate of the late Honourable Joseph Masson;

That the will of the late Honourable Joseph Masson was made on the 25th of December, 1845, and that the estate opened during the year 1847;

That, by the terms of his above will, the late Honourable Joseph Masson bequeathed all his property in trust to the testamentary executors and trustees to be named in accordance with the provisions of his will, to whom he gave power to manage and administer all his property, to realize in cash the moveables and effects belonging to his estate, and to employ, after liquidating the affairs of the estate, all the moneys realized as aforesaid, as well as all the revenues from his moveable or immoveable properties, in the purchase of real estate or in any other manner which may be deemed advantageous and profitable; and also to employ in the same manner the revenues from all such moveable or immoveable properties or investments therein;

That the testator further ordered that all the moveable and immoveable property which he left at his death was to

be divided into as many equal parts as he left children at the time of his death, so that each of such parts or portions should represent the moveable and immoveable properties, of which each of his children was to have half of the revenues during his or her lifetime; and that the revenues of each of such portions of property revert after the death of each child, to the children born in legitimate marriage to each of them respectively and be substituted from descendant to descendant indefinitely, or as long as the law permits;

That, in addition, the testator ordered that ten years after the day of his death, there should be made delivery every year to his said children then of majority, or from the coming into majority of those who would then be minors, for their lifetime, of half the revenues from all the property composing the share of each of his children as established as aforesaid; and also of half the revenues from all the properties acquired by his trustees during the ten years following his death, as well as from those which have been acquired by the said trustees with the other half of the revenues remaining at the disposal of the latter, to be employed as aforesaid;

That the testamentary executors employed the revenues arising from the property of the estate, except those which they distributed to the heirs, in accordance with the provisions of the will, in the purchase of real estate and other securities mentioned in the will;

That upon proceeding to the partition provided for by the will, the testamentary executors and trustees divided all the property of the estate into nine parts or lots, the ninth lot being composed of everything which could not be included in any one of the eight lots, attributed respectively to each of the children, and that each of the nine lots comprised partly immoveable property which belonged to the testator at the date of his death, and partly immoveable property acquired by the testamentary executors and trustees with the revenues which they had reinvested;

That the above will has been differently interpreted by the courts: certain judgments maintaining that the testator had established a fiduciary substitution for two degrees apart from the institute, whilst others considered that the testator had established a trust, and that the ownership of all the property of the estate was vested in the testamentary executors and trustees for the benefit of the children and grandchildren of the testator; but it is manifest that, in any event, the testator intended to grant to his testamentary executors and trustees the most ample powers;

That the power of the testamentary executors and trust-

ees to dispose of the immoveable property, which they had acquired with the revenues of the estate, does not seem to be contested; but doubts have arisen as to whether they have the same power with regard to the immoveable property which was in the estate at the time of the death of the testator;

That it is in the interest of the estate to remove such doubts and to declare that the testamentary executors and trustees possess and have always possessed power to dispose by onerous title of the properties of which they are seized, both those possessed by the testator and those acquired since his death;

That the testamentary executors and trustees are presently negotiating to effect a considerable sale of immoveable property of the said estate at a very advantageous price, and that this transaction cannot be realized if their powers be not clearly defined;

That as a very large number of the heirs live abroad, it is practically impossible for the testamentary executors and trustees to consult them when a transaction has to be effected which requires dispatch;

That it is expedient to grant to the said testamentary executors and trustees more ample powers, and notably the power to purchase with the funds of the estate, the hereditary shares of certain heirs;

That the assets of the estate are composed largely of immoveable properties, and that it would be extremely prejudicial to all those interested, under the present circumstances, to proceed to the division of any one or all the lots composing the estate;

That the testator clearly expressed his wish to maintain indefinitely, if it could be done, his estate entire and the seizin of his testamentary executors and trustees;

That the entire estate is still managed by the petitioners and that none of the interested has hitherto claimed a partition;

Whereas it is expedient to grant the prayer of 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. Notwithstanding any law or provisions to the contrary, the testamentary executors and trustees, appointed in virtue of the will of the late Honourable Joseph Masson, possess and have always possessed all the powers enumerated in section 10 of chapter 29 of the Act 42-43 Victoria, intituled: "An Act respecting Trusts"; and in particular

Powers of
testament-
ary execu-
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they are and have always been vested with the right to dispose of, by mutual agreement, without the intervention of the beneficiaries or interested parties and without any legal formalities, by sale or other onerous contract, for the prices, terms and conditions which they may deem fit, the moveable and immoveable properties bequeathed to them in trust, both those which composed the estate of the testator at the time of his death, and those which they have since acquired in execution of such will; and they shall possess the same powers for and as long as they continue to manage the said estate.

Acquisitions authorized.

2. The testamentary executors and trustees aforesaid may employ the moneys of the estate to acquire, by mutual agreement, the whole or part of the hereditary shares, properties or rights of such of the heirs as wish to dispose of same. Such acquisition shall be made by preference out of the moneys derived from the lot of which the hereditary rights to be acquired form part and, if there are no disposable funds from such lot, the acquisition shall be made out of the moneys derived from the lot known as lot No. 9. In all cases the acquisition shall be for the benefit of that share from which the moneys employed were derived, and such employment of the moneys shall be deemed an investment made in accordance with the provisions of article 981*o* of the Civil Code.

Interpretation.

Nothing in this section shall be interpreted as giving the lot known among the heirs as number 9 any other effect than that attributed by the will.

Partition.

3. No one may demand the partition of the property of the estate of the late Honourable Joseph Masson before the expiration of two years after the coming into force of this act.

Costs, etc.

4. The estate of the late Honourable Joseph Masson shall pay the costs and disbursements incurred for the passing of this act.

Coming into force.

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