

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

C H A P. 145

An Act respecting the estate of Joseph Gareau

[Assented to, the 15th of March, 1924]

WHEREAS Alexandre Gareau, Hervé Gareau, Hector Gareau, Emile Gareau, Arthur Gareau, and Jeanne Gareau, wife separate as to property of Philéas Rolland, have, by their petition, represented as follows: Preamble.

That they are the children born of the marriage of the late Joseph Gareau, in his lifetime merchant, of the city of Montreal, and of the late Elmina Lamarche, his wife;

That, by his will executed before Mtre. L. Bélanger, notary, on the 14th of October, 1907, Joseph Gareau, who died on the 25th of January, 1908, bequeathed all his property to his wife Elmina Lamarche, with whom he was in community of property, with a substitution thereon, including the share of the said Elmina Lamarche in the community of property, in favour of his children, the petitioners, charging the latter to keep and hand over the share received by each one to their children upon their deaths;

That it was stipulated in the said will that the property composing the estate of the testator and the property that the said Elmina Lamarche would possess at the date of the death of the testator, should form the mass of the substituted property, provided that the said Dame Elmina Lamarche would accept the will within three months of the death of the testator, failing which the bequest in favour of the said Dame Elmina Lamarche would have no effect;

That the said Dame Elmina Lamarche accepted the said will;

That it was stipulated in the said will that the division between the children of the first degree should be made at the date of the death of the said Dame Elmina Lamarche;

That by the said will Dame Elmina Lamarche was appointed testamentary executrix, with power to sell, on such conditions as she deemed proper, all the property bequeathed, without any obligation on the part of the purchaser to see to the investment of the purchase price, with power to make advances to one or more of the children to establish or to assist them;

That it was further stipulated that the property bequeathed should be non-transferable and inalienable by

the legatees, and unseizable against them, so long as each of the substitutions created should not be open;

That the said Dame Elmina Lamarche died on the 7th of March, 1923, and by her will, executed before Mtre. L. Bélanger, notary, she left all her property to her children, appointing them her universal legatees, between whom the division is to be made equally and by roots;

That by her will she appointed as her testamentary executor her son Alexandre, to whom she gave, for a term of four years, power to sell, borrow, and hypothecate the property bequeathed, with full powers of management, administration, and disposal, in order to allow him to realize the property of the estate and to make the division among her legatees; and she declared in her will that she had advanced to her son Arthur the sum of seven thousand dollars, to her son Emile the sum of eight thousand dollars, to her son Alexandre the sum of four thousand dollars, and to her son Hector the sum of four thousand dollars, in order to assist them to establish themselves respectively, according to the wish of her husband;

That according to the inventory, made by notary Bélanger on the 30th of June, 1908, of the property of the community existing between the said Joseph Gareau and Dame Elmina Lamarche, it appears that the community consisted of total assets of seventy-two thousand, six hundred and ninety-eight dollars and thirty-five cents, and liabilities of fourteen thousand, four hundred and twenty-three dollars and eighteen cents, leaving a surplus of fifty-eight thousand two hundred and seventy-five dollars and seventeen cents;

That by the inventory of the property of the estate of the said Dame Elmina Lamarche, including the property bequeathed by the said Joseph Gareau, less the immovable, No. 394, on the official plan and book of reference of St. Mary's ward in the city of Montreal, it appears that the assets amounted to thirty-eight thousand, seven hundred and ten dollars and seventy-six cents, as against liabilities of eighteen thousand, one hundred and forty-eight dollars and sixteen cents, leaving a surplus of twenty thousand, five hundred and sixty-two dollars and sixty cents;

That since the death of the said Joseph Gareau, the said Elmina Lamarche, following the advice given her with respect to the rights and powers which she might have, disposed of the property to her bequeathed under the will of the late Joseph Gareau, as if such property had belonged to herself;

That the said Alexandre Gareau, one of the petitioners, in his capacity of testamentary executor of the estate of the said Dame Elmina Lamarche, continued to administer

and to sell the property left upon the death of the latter and which might form part of the two estates, as if such property had belonged to himself and to his brothers and sister;

That the intention of the late Joseph Gareau, as expressed by his will, was to permit the alienation, even altogether, of the property of the estate, if it was necessary to do so in order to aid in the establishment of his children, and it was with that object that the said properties bequeathed were so administered and alienated;

That the will of the late Joseph Gareau contains contradictory provisions, and, for that reason, the deeds executed by the said Dame Elmina Lamarche both as vendor and as purchaser, as well as the deeds executed by the said Alexandre Gareau, are of doubtful legality for the persons with whom the said petitioners are called upon to transact;

That by reason of the facts aforesaid it is impossible to trace back the property which formed part of the community of the late Joseph Gareau and his wife at the date of the death of the said Joseph Gareau; that the sums of money advanced to certain of the petitioners were authorized by the will of the late Joseph Gareau; that those of the petitioners who have received nothing, or who have received less, are likewise entitled to receive sufficient to put all the petitioners upon an equal footing;

That, with the exception of the immoveable property bearing the number 394 on the official plan and book of reference of St. Mary's ward in the city of Montreal, situated at the corner of St. Catherine and Maisonneuve streets, the other properties would be approximately sufficient to pay to each of the petitioners a sum of eight thousand dollars, to wit, an amount equal to that already received by one of the petitioners, Emile Gareau;

That the petitioners wish to preserve as a substituted property the said immoveable No. 394, which is to-day of considerable value, but that it would be well to provide an easy and economical way of selling such immoveable for the benefit of the substitution;

That it is in the interest of the petitioners and of their children that an act be passed to establish the rights and powers of the petitioners, and to determine what properties shall form part of the substitution, and to ratify the acts of alienations and disposal which have been made by the said Dame Elmina Lamarche and the said Alexandre Gareau, since the death of the said Joseph Gareau;

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:

Property rights confirmed.

1. With the exception of the immoveable property bearing the number 394 on the official plan and book of reference of St. Mary's ward in the city of Montreal, and being civic numbers 850, 852, 854 and 856 of St. Catherine St. East and numbers 241, 243, 245, 247 and 249 of Maisonneuve St., which property is declared to be substituted in favour of the children of the said Alexandre Gareau, Arthur Gareau, Hervé Gareau, Hector Gareau, Emile Gareau and Jeanne Gareau, wife separate as to property of Philéas Rolland, upon the terms and subject to the conditions mentioned in the will of Joseph Gareau, executed before Mtre. L. Bélanger, notary, on the 14th of October, 1907, under the number 18145 of his minutes, all the other properties composing the estates of the said late Joseph Gareau and of Dame Elmina Lamarche, his wife, are declared to be the absolute property of the children in the first degree of the latter, and all the acts of acquisition, alienation or disposal of the immoveable properties which formed part of one or other of the said estates, are declared to have been legally done, are declared legal and valid, and are ratified.

Power to sell.

The said Alexandre, Arthur, Hervé, Hector, Emile and Jeanne Gareau shall have the power to sell at any time, by mutual agreement, the said immoveable No. 394, with the consent of the curator who will be appointed to the substitution, provided that the sale price be approved by a judge of the Superior Court of the district of Montreal, upon petition to that effect, but the price, which they may divide among themselves, must be invested by each of the institutes, but with the consent of the curator to the substitution, for the benefit of the substitutes, according to the provisions of the law.

Coming into force.

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