

on the southwest side by a portion of the said lot No. 1571, belonging to Dame Louise Chartrand, and on the northeast side by another portion of the said lot number 1571, and partly by another portion of the said lot No. 1571, belonging to the said Dame Louise Chartrand, with houses, theatre and other buildings thereon constructed, bearing the numbers 1234 to 1236 of St. Catherine street, together with the active and passive servitudes, respecting a right of way established, partly on the said land and partly on the neighbouring lands, for the common use of all persons who may be entitled thereto, to have access from the said above described land to Fullum street,—

is by this act ratified, confirmed and declared legal and valid in favour of the said Jean Rodier, both as regards the substitutes and the institutes to the said substitution.

The balance of the purchase price shall be invested or deposited for the benefit of the substitution by the executrix and the curator in accordance with the provisions of article 953*a* of the Civil Code and the said purchaser shall be discharged from following the amount of purchase price once for all from the moment it has been invested in accordance with paragraphs 3 and 4 of the said article 953*a* or deposited with the prothonotary in accordance with paragraph 5 of the same article.

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

## C H A P. 127

An Act respecting the estate of Dame Eléonore Gauvin

[Assented to, the 29th of December, 1922]

**W**HEREAS Dame Marie Anne Joséphine Albertine Ostell, wife separate as to property of Armand Bériault, clerk, of the city and district of Montreal, and duly authorized by the latter; Marie Sophie Jeanne Mélina Ostell, wife separate as to bed, board and property of Albert Constantin, clerk, of the same place, and judicially authorized for the purposes of these presents; Joseph Thomas Ostell, and Edouard Sydney Ostell, both gentlemen, of the city and district of Montreal, and John Benjamin Ostell, accountant, of the city of Chicago, in the state of Illinois, one of the United States of America, have, by their petition, represented:

That the petitioners are the only grandchildren of Dame

Preamble.

Eléonore Gauvin, during her lifetime wife of John Ostell, of the city of Montreal;

That the said Dame Eléonore Gauvin made her will at Montreal, on the 4th of February, 1887, before Mtres. Ed. Lafleur and Jos. Boivin, both notaries public, and died there on the 24th of August 1889, without having in any wise changed or revoked the said will;

That by her said will, the said Dame Eléonore Gauvin, after making certain particular legacies, gave the enjoyment of the residue of her property to her husband John Ostell, and after the termination of the latter's enjoyment she disposed thereof as follows: the enjoyment of one third to her son, Joseph William Ostell, and the ownership of the said third to the children of the said Joseph William Ostell; the enjoyment of one third to her daughter-in-law Dame Brigitte Lambert, widow of Charles Ostell, and the ownership of the said third to the children issue of the marriage of the said Dame Brigitte Lambert with the said Charles Ostell, and one third to her daughter, Dame Mélina Ostell, wife of William Jackson Moore;

That it is stipulated in the said will that the grandchildren of the testatrix may enjoy and dispose of their respective shares after termination of the above-mentioned enjoyment;

That it is moreover stipulated in the said will that, if the said Mélina Ostell, daughter of the testatrix, dies without legitimate children or descendants, her third interest in the estate shall accrue, half, to the legitimate children and descendants of her brother, Charles Ostell, and the other half, to the legitimate children and descendants of her other brother, Joseph William Ostell, and that such children shall enjoy and dispose of the property derived from such third interest, on the same titles and conditions as the property bequeathed to them directly;

That it is moreover stipulated in the said will that if any of the grandchildren of the testatrix dies without legitimate children or descendants, his or her share in this property shall accrue under the same title and conditions to his or her surviving brothers and sisters and to the lawful descendants of the deceased, by roots;

That John Ostell, husband of the testatrix, died on the 6th of April, 1892;

That her son, John William Ostell, died on the 22nd of June, 1890;

That her daughter-in-law, Dame Brigitte Lambert, widow of Charles Ostell, died on the 10th of March, 1914;

That her daughter, Mélina Ostell, wife of William Jackson Moore, died without issue on April 6, 1903;

That the petitioners Dame Marie Anne Joséphine Albertine Ostell, wife of Armand Bériault, and Marie Sophie Jeanne Mélina Ostell, wife of Albert Constantin, are the only two children of the said Joseph William Ostell, and that the other petitioners, Joseph Thomas Ostell, Edouard Sydney Ostell and John Benjamin Ostell are the only children of the said late Charles Ostell and his wife, Dame Brigitte Lambert;

That the petitioners, Dame Marie Anne Joséphine Albertine Ostell and Dame Marie Sophie Jeanne Mélina Ostell, have taken an action in partition and licitation of the property of the estate of the said Dame Eléonore Gauvin, in a case bearing No. 558 of the records of the Superior Court for the district of Montreal, in which they are plaintiffs and the other petitioners are defendants;

That, in the said action, it is alleged that the petitioners Dame Marie Anne Joséphine Albertine Ostell and Dame Marie Sophie Jeanne Mélina Ostell are owners of one half of the property of said estate, one third having been bequeathed to them directly and one half of the third bequeathed to Dame Mélina Ostell, wife of William Jackson Moore, having accrued to them owing to the death of the latter without issue, and that the other petitioners, Joseph Thomas Ostell, Edouard Sydney Ostell and John Benjamin Ostell are owners of the other half of the estate for the same reasons;

That by judgment rendered in the said case by the Superior Court, on the 29th of June, 1922, the sale by licitation of all the immoveables belonging to the said estate was duly ordered, the said immoveables being described as follows, namely:

(a) A lot of irregular shape, known and designated under No. 3 of St. Louis Ward, of the city of Montreal, being ninety-two feet in front on St. Louis street, ninety-seven feet and two inches on Craig street, containing eight thousand five hundred and seventy feet in superficies, English measure, and more or less, bounded in front by St. Louis street, in the rear by Craig street, on one side by lot No. 2 of the said cadastre, and on the other side by lot No. 4 of the said cadastre of St. Louis Ward, of the city of Montreal, with buildings erected thereon, bearing Nos. 256, 258, 260, 262, 264, 266 and 268 of Craig street east, of the city of Montreal, and Nos. 199, 201, 203, 205 and 207 of St. Louis street, in the city of Montreal, district of Montreal.

(b) A lot now known and designated as forming part, the northeasterly one, on a level with St. Louis street, of the said official lot No. 176, in the official plan and book of reference of St. James Ward, of the city of Montreal;

the said lot belonging to the said estate of Dame Eléonore Gauvin, of a superficies of forty-eight feet in width, on the said St. Louis street; of fifty feet in width on the depth of the said lot, with a depth of seventy-nine feet on the southwest line, and eighty-five feet on the northeast line, the whole English measure, and more or less, according to a plan made by Joseph Riel, surveyor, on the 2nd of November, 1865, intituled: "Plan of a lot belonging to Dame C. A. Brault, indicating at the same time the neighbouring lot belonging to the estate of Dame Eléonore Gauvin", the said portion of lot presently described being bounded as follows: on the southeast side, by the said St. Louis street, in rear by the official lot No. 178 belonging to the representatives of J. C. Robillard, on the northeast side, by the official lot No. 175, belonging to the Goulet heirs or representatives, and on the southwest by a portion of the said official lot No. 176, forming part of the land sold and described in a deed of sale made by the Trust and Loan Company of Canada, the said Dame Eléonore Gauvin, to Messrs. Jordan and Bénard, before A. D. Jobin, N. P., on the 3rd of February, 1874, registered at the Registry Office of Montreal, now Montreal West, where the said plan is also fyled under No. 77073, with two wooden houses bricked outside, erected thereon, and bearing Nos. 337 and 339 of St. Louis street, of the city of Montreal;

That the auction sale of the said immoveables was announced to take place on the 5th of September, 1922, at the Court House, in Montreal, according to law;

That, on the 5th of September, 1922, the said immoveables were put up for auction sale by the prothonotary of the district of Montreal, and that the immoveable first described was adjudged to the company, A. Prud'homme & Fils, Limited, a legally constituted corporation, having its principal place of business in the city and district of Montreal, for the sum of thirty-five thousand dollars, and that the second immoveable, having found no bidder for the upset price fixed by a judgment of the Superior Court, shall be resold at auction on a subsequent date;

That in virtue of the law and under the conditions mentioned in the statement of charges, the immoveable adjudged to the said A. Prud'homme & Fils, Limited, is sold with warranty against eviction;

That the said A. Prud'homme & Fils, Limited, has paid on account of the purchase price a sum of five thousand dollars on the day of the sale, as required so to do by the statement of charges;

That doubts have been raised by the said purchaser as

to the validity of the title which it must receive from the prothonotary, and that it accordingly refuses to complete the sale and pay the balance of the purchase price;

That the said purchaser contends that under the said will, the said immoveable is charged with a substitution, owing to the clause declaring that if any of the grandchildren, namely, the petitioners, dies without issue, his or her share shall accrue to his or her surviving brothers and sisters and to the lawful descendants of those who are dead, by roots;

That the petitioners deny that there is any substitution, and allege that, in any case, if there was substitution, the latter would be extinct as to one third of the said immoveable, and as absolute owners of the said third, they are entitled to demand the partition and licitation of the said immoveable, and that the sale thus made for a cause having priority to substitution has the effect of discharging all the other substitutions which might arise from the said will;

That notwithstanding this, doubts still arise, as no curator to the substitution was made a party to this action in partition and licitation;

That in fact no curator was ever appointed for the substitution, as the petitioners contend that there is no substitution;

That if the prothonotary of the district of Montreal is not authorized to give a valid and absolute title to the purchasers of the said immoveables, an action annulling the decree will be taken to decide whether there is a substitution or not; that if it is decided that there is a substitution, the petitioners will only have to cause a curator to be appointed and to reinstitute proceedings in partition and licitation, by making the latter a party to the case, and the immoveable will then be definitely alienated;

That to avoid all these annoyances and lawsuits, the petitioners desire that an act of the Legislature render valid and certain the titles to be given by the prothonotary to the said immoveables, both to the one already adjudged to the company A. Prud'homme & Fils, Limited, and to the one the auction sale of which was postponed;

Whereas it is necessary to provide for the final determination of the rights of the parties as regards the distribution or investment of the proceeds of the said sales;

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

Certain title validated. **1.** The title which will be given by the prothonotary of the district of Montreal, in conformity with the adjudication of September 5th, 1922, to the company A. Prud'homme & Fils, Limited, on payment of the balance of the purchase price, shall be a valid and absolute title to the ownership of the immoveable known and designated as No. 3 of St. Louis ward, in the city of Montreal, and shall have the effect of setting aside, with respect to the said immoveable, all the substitutions which might arise from the will of Dame Eléonore Gauvin, wife of John Ostell, made on the 4th of February, 1887, before Mtres. Ed. Lafleur and Jos. Boivin, notaries public.

Effects thereof.

Certain title validated. **2.** The title which will be granted by the prothonotary of the district of Montreal, after adjudication on the sale to be made in conformity with the judgment of June 29th, 1922, of the immoveable known and designated as forming part, that of the northeast, of the official lot No. 176 of St. James Ward, in the city of Montreal, shall, on payment of the purchase price by the purchaser, be a valid and absolute title to the ownership of the said immoveable, and shall have the effect of discharging, with respect to the said immoveable, all the substitutions which might arise from the said will of the late Dame Eléonore Gauvin, wife of John Ostell.

Effects thereof.

Costs of this act. **3.** All the costs and disbursements entailed by the passing of this act shall be charged to the petitioners in proportion to their rights to the said estate of Dame Eléonore Gauvin, as established by the judgment of the said Superior Court, and may be paid by the said prothonotary from and out of the purchase price, as costs of the estate to be distributed, on production of a statement of such costs approved by the attorneys for the interested parties.

Distribution of the price of the adjudication, etc. **4.** The distribution of the price of adjudication shall not be made until the Superior Court shall have decided on a summary petition that there is no substitution. If it be decided that there is a substitution, the proceeds of the sale for the substituted part shall be invested according to article 953a of the Civil Code.

Curator *de bene esse*. A curator *de bene esse* of the possible substitution shall be appointed as in the case of an acknowledged substitution, and the petition shall be served upon him, and he shall be heard on the question submitted.

Appeal. There shall be an appeal from the decision as in ordinary cases.

The payment of the price of adjudication at the office of the court or in conformity with the decision shall be valid and final as against all interested parties.

Payment of the price of adjudication.

The cost of the proceedings shall be paid by the estate.

Cost.

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

Coming into force.

## CHAP. 128

An Act to confer upon Isabelle Hamel certain rights respecting her person and property

[Assented to, the 29th of December, 1922]

**W**HEREAS Dame Caroline Vincent, of the town of Chicoutimi, did on the 30th of April, 1918, in the city of Quebec, in the parish of St. Roch, marry Joseph Henri Alphonse Hamel, of the town of Chicoutimi;

Preamble.

Whereas one child, Isabelle Hamel, was born of this marriage;

Whereas the said Alphonse Hamel died in the town of Chicoutimi on the 6th of January, 1920;

Whereas by his will, passed before Mtre. Maurice Ovide Bossé, notary public, for the Province of Quebec, dated the 1st of October 1919, the late Alphonse Hamel, left a portion of his property to his wife and a portion to his daughter, Isabelle;

Whereas by deed of tutorship, dated 12th of January, 1920, Dame Caroline Vincent was named tutrix to her minor child;

Whereas some doubts have arisen as to the validity of the marriage in view of the degree of consanguinity existing between the consorts, to wit: that of uncle and niece, although the religious authority granted the requisite dispensation;

Whereas Dame Caroline Vincent desires to have the rights and privileges of her child ratified;

Whereas Dame Caroline Vincent, as well personally as in her quality of tutrix to her minor child, has prayed that an act be passed to this effect, and it is expedient to grant her petition;

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

**1.** Isabelle Hamel, child issue of the marriage of Rights and