

C H A P . 137

An Act to ratify the title deed of the subdivided portion of lot No. 177, upon the official plan and book of reference of the municipality of the parish of Montreal, situated in Notre-Dame de Graces ward of the city of Montreal

[Assented to 9th February, 1918]

Preamble.

WHEREAS Ernest Edward Fairman, gentleman, of the city of Westmount, has by his petition represented:

That by deed of sale, passed at Montreal, before Ernest R. Decary notary, on the 25th day of October, 1907, he purchased from George Marcil certain lots of land, described in said deed of sale as follows, namely:

“Certain subdivisions of original lot 177 upon the official plan and book of reference for the municipality of the parish of Montreal”;

That the said George Marcil acquired the whole of the now subdivided portion of said lot No. 177 from Theophile Prud'homme, by deed of sale passed before E. R. Decary, notary, dated at Montreal on the 28th day of March, 1906;

That said lot No. 177 previously belonged to René Leduc, who, by deed of donation, passed before J. E. O. Labadie, notary, dated the 9th of May, 1868, donated the same to Theophile Prud'homme with substitution in favour of the latter's children;

That in creating the substitution aforesaid the said René Leduc stipulated as follows:

“The said donees to enjoy, use and dispose of said farm and dependencies in usufruct only during their lifetime without being bound to furnish security, and after their decease to revert and belong in full ownership to their respective children, born or to be born, in lawful wedlock, and in case of the decease of one of the donees without children, his half of said farm and dependencies shall then revert to the survivor of them in usufruct only, during his life time, and the full ownership thereof shall revert to his legitimate children, and should they both die without any legitimate children, then in such case said farm and its dependencies shall revert to Dame Dometilde Leduc, their mother, if she is then alive, and should she predecease them, it shall revert to their nearest relatives, according to law. *In consequence of the substitution as*

above established, the said donees will not be able to sell, hypothecate or otherwise alienate the farm presently donated or any portion thereof."

That differences of opinion as to the interpretation to be given to the last paragraph of the above quotation of said deed of donation, have resulted in doubt being raised as to the right of the said Theophile Prud'homme to sell to the said George Marcil the portion of lot 177 described in the sale above referred to, and that in consequence the petitioner and the several other holders of subdivision lots of original number 177, have been unable in several instances to dispose of their lots, or even to mortgage the same.

That all the conditional substitutes to said substitution have given their full approval of the said sale from Theophile Prud'homme to George Marcil;

That the institute, Theophile Prud'homme and his wife, the parents of the said substitutes, are both over sixty-five years of age;

That the sale from Theophile Prud'homme to George Marcil was made with the consent and assistance of the curator to the substitution, and after all the proceedings required by article 953a of the Civil Code, and 1341 of the Code of Civil Procedure, were fully carried out;

That upon said lot 177 being subdivided, several hundred lots were sold to individuals, many of whom have built expensive houses and other buildings upon their lots, and from being a farm, valued at a few thousand dollars, said lot 177 is now subdivided and with the buildings since erected upon it is worth at least one million dollars;

That as a result of the doubt raised with regard to the said title, the petitioner and several hundreds of small proprietors have been and may be prejudiced, until such doubt is at once and forever removed;

That the sale of said lot 177 has been advantageous to the said institute and substitutes;

That it is in the interest not only of the petitioner, but of those to whom he has sold, or may sell, lots, and also of the institute and substitutes under said substitution, that it be declared at once, and enacted, that the said Theophile Prud'homme was fully entitled to sell, as he did, the said lot No. 177 to George Marcil, that the latter thereby acquired a good and complete title to the portion of the said lot 177 therein described, and to have the same confirmed, validated and ratified in so far as is necessary to give the deed from Theophile Prud'homme to George Marcil full and complete effect;

That the petitioner sincerely believes that the words

used by the said René Leduc in his donation to Theophile Prud'homme, namely:

"In consequence of the substitution above established the said donees will not be able to sell, hypothecate or otherwise alienate the farm presently donated, or any portion thereof," were used by him solely by way of explanation of the then existing law of substitutions, and not as a prohibition to the said institute to alienate said lot, and that the sale of the said property to George Marcil was not contrary to the donor's intention, but on the contrary served the best interests of the substitutes, in whose favour the said property was substituted, as the said substitutes have themselves shown by their consent to and approval thereof;

Whereas it appears that the balance of \$70,000.00 remaining due on the purchase price has been paid in accordance with the provisions of article 953*a* of the Civil Code;

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 deed of donation did not contain a prohibition to alienate.

Words explanatory.

Proprietor entitled to sell certain property.

Coming into force.

1. The donation made by René Leduc to Theophile Prud'homme, passed before J. E. O. Labadie, notary, dated the 9th of May, 1868, did not contain a prohibition to alienate the property described in said deed, and the words: "In consequence of the substitution above established, the said donees will not be able to sell, hypothecate or otherwise alienate the farm presently donated, or any portion thereof," were merely explanatory of the provisions of the said deed creating the substitution.

2. The said Theophile Prud'homme was consequently entitled to sell and transfer, as he did, to George Marcil, the property described in the deed of sale which he executed in favour of the latter, passed before E. R. Decary, notary, on the 20th day of March, 1906.

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