

1912, shall discharge the said purchasers and the said immoveable.

Coming into force. **4.** This act shall come into force on the day of its sanction.

C H A P . 139

An Act to authorize the sale of immoveable property belonging to the estate of the late Frederick Thomas Judah and of his wife, the late Sarah Caine

[Assented to 9th February, 1918]

Preamble.

WHEREAS, inasmuch as Henry Haig Judah, gentleman, Frederick R. Judah, draughtsman, Idah G. Judah, Amy Judah, the latter two *filles majeures et usant de leurs droits*, and Sarah Judah, wife of Louis Gordon Glass, being five of the institutes under the last wills and testaments of their father and mother, the late Frederick Thomas Judah, in his lifetime of the city of Montreal, advocate, king's counsel, and his wife the late Sarah Caine; and the said Louis Gordon Glass, for the purpose of authorizing his said wife herein; and John Stephen Ibbotson, surgeon dentist, in his quality of tutor to James F. Burnett, junior, a minor, grandson of the late Frederick Thomas Judah and Sarah Caine, and the only child born of the marriage of Miriam Judah, in her lifetime of the city and district of Montreal, an institute under the said last wills and testaments, widow by her first marriage of the late James Findlater Burnett, in his lifetime of the city of Montreal, at the time of her death the wife of the said John Stephen Ibbotson; and Ernest Lionel Judah, osteologist, Dorothy Hope Judah, *fille majeure et usant de ses droits*,—all of the city and district of Montreal, and Noel Fulton Judah, of Edmonton, in the province of Alberta, clerk, and the said Henry Haig Judah, Frederick Rosa Judah, Idah G. Judah, Amy Judah and Henry John Kavanagh, advocate, king's counsel, and Samuel Carsley, stock broker, both of the city and district of Montreal, the latter six persons in their quality of executors under the last will and testament of the said late Sarah Caine; William Henry P. Hill, physician, Andrew Murray, insurance agent, Thomas McL. Graham, journalist, William A. Baker, advocate, king's counsel, George Hugh Semple, recorder of Montreal, Jeffrey H. Springle, surgeon dentist, George H. Harrower, all of the city of Montreal,

and Walter John Ambrose, of the city of St. John, in the Province of New Brunswick, the last eight persons in their qualities of curators respectively to the several substitutions, not yet open, created by the said last wills and testaments, have by their petition represented:

That the late Frederick Thomas Judah, in his lifetime of the city and district of Montreal, advocate, King's counsel, died there on the 3rd of October, 1901;

That his wife, the said late Sarah Caine, died there on the 5th of April, 1909, and that they were common as to property;

That the late Frederick Thomas Judah made his last will and testament before A. D. Jobin, notary, at Montreal, on the 20th of February, 1888;

That by his last will he bequeathed to his wife the enjoyment (*usufruct*) during her life of his immoveable property, and, appointing her the executrix of his will, made no other provision for the execution of his will, except as hereinafter mentioned;

That on the 11th of February, 1897, the said testator made a codicil to his will, before the same notary A. D. Jobin;

That by the effect of his said last will and testament and the codicil thereto the said late Frederick Thomas Judah bequeathed all his immoveable property to his five children Henry Haig Judah, Frederick R. Judah, Ida G. Judah, Amy Judah and Sarah Judah, to his daughter the said late Miriam Judah, who survived him, one-seventh share to each, and one-seventh share therein to his grandchildren, Ernest Lionel Judah, Noel Fulton Judah and Dorothy Judah, to be divided equally between the latter three, with substitution in each case in favour of the children of the said legatees;

That by the said codicil the testator further ordained that after the death of his wife and until they should have attained the age of twenty-five years, the share devolving to the children of his deceased son Ernest should vest in his testamentary executors, namely, his sons Henry and Frederick, who however were appointed as such testamentary executors merely in respect of the bequest to the three children of the testator's son Ernest Judah, which executorship came to an end inasmuch as the youngest of the three children of the late Ernest Judah has attained the age of twenty-five years;

That the said late Sarah Caine survived her husband and died on the 5th of April, 1909, having made her last will and testament before A. D. Jobin, notary, at Montreal, on the 20th of May, 1902, by which she bequeathed all her

immoveable property to her six children, namely, the said Henry Haig Judah, Frederick R. Judah, Ida G. Judah, Amy Judah, Sarah Judah and Miriam Judah, in equal shares, with substitution in favour of their children *par souches*;

That to execute her will the said Sarah Caine named her two sons Henry Haig Judah and Frederick Judah, and her two daughters Idah Judah and Amy Judah, also the late Athanase Branchaud, K. C., and Albert Pancrace Lespérance, as the executors of her will, and extended their powers and *seizin* beyond the year and day, giving them power to alienate and hypothecate any part or the whole of her estate, and further providing in case of death or refusal of any of them, that they should be replaced by the remaining executors, under notarial deed;

That the said Athanase Branchaud predeceased the testatrix, and the said Pancrace Lespérance refused to act as an executor, and thereupon the remaining executors, by deed passed at Montreal, on the 22nd of May, 1909, before A. D. Jobin, notary, named the said Samuel Carsley and Henry John Kavanagh, as executors to replace them;

That there has been no division of the community of property existing between the said Frederick Thomas Judah and his wife Sarah Caine;

That their testamentary successions comprise several immoveable properties situate in the city of Montreal;

That the said Miriam Judah survived her father and mother, and died on the sixth of February last (1917), leaving only one son, the said James Frederick Burnett, and that by her death the substitution attached to the legacy in her favour under the wills of her father and mother was opened;

That the buildings on the immoveable properties belonging to the said two estates and successions are falling to ruin as to the greater part thereof, several of them are untenanted and some are in so dangerous a condition that it may become necessary to demolish them;

That even at the present time the rentals are insufficient to pay taxes and repairs, and that the conditions of the buildings generally is getting worse;

That since the death of the late Sarah Caine (Mrs. F. T. Judah), there has been a very considerable decrease in the demand for and in the value of the immoveable property in the city of Montreal, and it has become extremely difficult to sell real estate there otherwise than at a loss;

That in the present conditions of the real estate market, it is impossible to sell the said immoveable property judicially at public auction (1351 C. C. P.) in conformity

with articles 1341 to 1354 inclusively of the Code of Procedure relating to the sale of substituted immoveable property under article 953a of the Civil Code, otherwise than at an unwarranted and very considerable loss;

That for nearly two years past real estate brokers have been consulted by the estates and successions of the late Frederick Thomas Judah and of his wife Sarah Caine, and it has been ascertained to be impossible, otherwise than at great loss to the institutes and substitutes under the said two wills, to sell the said real estate at auction, *en bloc* or in parcels, under the provisions of the said article of the Civil Code and of the said articles of the Code of Civil Procedure;

That under the present conditions in Montreal, the said immoveable property can only be sold without loss, provided the institutes be in a position to consent to a deed of sale immediately on finding purchasers;

That the said immoveable property cannot be sold without loss otherwise than with the aid of an expert real estate agent, and the petitioners are advised that no competent agent will undertake the sale under the general provisions of law applying in such case to substituted immoveable property, and that four months time from the date of authorization (3154 C.C.P.) is not sufficient to enable a real estate broker at the present time or for a very considerable time to come to effect such sales;

That it would be a useless expense to attempt to bring the said immoveable property to sale in accordance with article 953a of the Civil Code and the articles of the Code of Civil Procedure therein referred to (1341 to 1354 C. C. P.);

That in the present case some of the institutes, on account of the smallness of their means, might not be able to bid the properties up to the extent of their value, which might result in their being acquired by others of the institutes at a very low price, to the disadvantage of the former;

That the most equitable and advantageous manner of selling the immoveable properties belonging to the said two testamentary estates and successions would be by sales in the ordinary manner and not by auction, but with the consent of the institutes and curators and of the tutor to said minor;

That the testamentary estate and succession of the late Frederick Thomas Judah is owner of the said immoveables for one undivided half, and the testamentary succession of his wife, the late Sarah Caine, is owner for the other undivided half interest;

That it is in the interest as well of the institutes as of the substitutes under the several substitutions created by both of the said last wills and testaments, that authorization be granted to sell the said immoveables in parcels as opportunity may offer, without recourse to the means provided for by the said articles of the said Code;

That one of the more valuable properties belonging to the said successions is situate on Craig street, in the city of Montreal, and the building thereon is very old and on account of its dilapidated condition is a disfigurement to that part of the city, and that it is in the public interest that this and some of the other properties be sold, inasmuch as it is most probable that the purchaser would remove the present buildings and erect others in their place more suitable to the surroundings;

Whereas the said petitioners have prayed that an act be passed authorizing the sale of the said immoveable property without such formalities; and it is expedient to grant such prayer;

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

Authoriza-
tion to sell
certain pro-
perty.

1. The institutes, the curators to the substitutions under the last wills and testaments of the late Frederick Thomas Judah and of his wife the late Sarah Caine, and the tutor to the said minor James Frederick Burnett, may definitively sell, exchange or otherwise dispose of the whole or any part of the immoveables belonging to the said succession; and in such case the purchaser shall not be bound to follow the said purchase price from the moment that, after deducting commissions and other expenses, and fees and costs herein-after mentioned in section 4, and less the amount coming to the said James Frederick Burnett, it shall have been employed by the vendors in accordance with paragraphs 3 and 4 of article 953*a* of the Civil Code, or shall have been deposited in the hands of the Prothonotary in accordance with paragraph 5 of the said article. That part of the said purchase price coming to the said James Frederick Burnett shall be paid to him on his attaining his majority, or before upon judicial authority.

Amount to
be paid in
cash.

2. The purchaser or purchasers shall be bound to pay in cash, at the time of the execution of each deed of sale, not less than twenty per cent of the purchase price, the balance to be secured by vendor's privilege.

Deeds to be

3. The deed or deeds of sale of the immoveable pro-

erties belonging to the said two testamentary successions legal and shall be legal and valid to all intents and purposes, as if all valid. necessary authorization in due course of law had been procured for each transaction.

4. The fees and costs in connection with the passing Fees and of this act, and the commissions and expenses connected costs to be with the sales, shall be charged to capital, and in equal charged to parts to each of the said two testamentary estates and capital. successions.

5. Any person who may hereafter be appointed to Powers to replace any of the curators to any one of the said several apply to substitutions, shall have all the authority and powers of successors of those now the curator or curators hereinabove named and in whose in office. stead he or they may be appointed.

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

C H A P . 140

An Act respecting the estate of the Honourable Charles
Wilson

[Assented to 9th February, 1918]

WHEREAS the Honourable Sir Alexandre Lacoste, Preamble. advocate and King's Counsel; William Napoléon Moncel, accountant; Honourable Hormisdas Laporte, merchant; all three residing in the city and district of Montreal; Tancrède Bienvenu, bank manager, residing in the city of Westmount, and Paul Lacoste, advocate and King's Counsel, residing in the city of Outremont, all five in their capacity of testamentary executors and administrators of the estate of the late Honourable Charles Wilson, in his lifetime senator, and residing in the city and district of Montreal, have, by their petition, represented:

That they are now the testamentary executors and administrators of the estate of the late Honourable Charles Wilson;

That by his will dated the fifteenth of June, eighteen hundred and seventy-five, passed before Messrs. P. E. Normandeau and E. A. Panet, notaries public, and in virtue of the codicils to the said will: one made on the first day of December, eighteen hundred and seventy-six, before Messrs. Normandeau and Anthony Brogan, notaries public;