

C H A P. 130

An Act respecting the estates of William and Anne Kelly.

[Assented to 19th February, 1914]

Preamble.

WHEREAS William Edward Durack, Mary Catherine Durack, wife of Henry Austin Jones, Margaret Mary Anne Durack, wife of Frederick Tuck, and Anne Durack, wife of George Lewis, all of the City of Montreal, have by their petition represented:

That the said William Edward and Mary Catherine Durack are the sole surviving executors named in the will of their late mother, Dame Anne Kelly, widow of the late Patrick Durack, made on the 9th November, 1887, before L. O. Hétu, N. P., and that their said mother died on the 3rd July, 1895, and they constitute with the other two petitioners, their sisters, the only children of said Anne Kelly;

That by her said will said testatrix provided that all her property, including that portion of the estate of her late husband of which she had become owner by transfers from three of her children, and her share and interest and whatever interest she or her children might have through the decease of her sister, Catherine Kelly, in the estate of her father, the late William Kelly, in his lifetime of Montreal, grocer, shall be consolidated into one mass or estate and that the usufruct and enjoyment be held by her five children during their lifetimes, the same to revert to their children at their deaths; no partition of the estate to take place until twenty-five years after her death, or sooner in the event of the decease of all her children;

That the said William Kelly, father of Dame Anne Kelly, died on the 9th October, 1855, after making a will before James Smith, N. P., dated 29th May, 1855, in which he bequeathed his property to his two daughters, Anne and Catherine Kelly, in usufruct during their natural lives, with the right in their favor to bequeath one equal half of his estate to their children lawfully begotten or to such of their children as they may think fit, in full property; in the event of either of said daughters dying without issue the whole of his said property was to vest in and become the property of the child or children to whom the same should be bequeathed by the survivor of his said daughters, and that the property affected by his said will is known as lots 647 and 948 on the official plans of St. Lawrence and St. Antoine wards respectively in the city of Montreal;

That notwithstanding the terms of her said father's

will, which directed that his property should revert to her children, said testatrix purported in her will to leave them only the enjoyment thereof, with reversion in favour of their children;

That the said Catherine Kelly died unmarried on the 16th August, 1893, and John James Durack, the brother of the petitioners, and the only other child of Dame Anne Kelly, died intestate and unmarried on the 27th November, 1906;

That after the death of the said Dame Anne Kelly, the petitioners, Annie Durack and Mary Catherine Durack, transferred to her executors the rights of succession belonging to them as heirs, each for one undivided fifth, of their late father, Patrick John Durack, who died intestate at the city of Montreal, on the 13th March, 1885;

That doubts have arisen as to the effect of the said wills and as to whether substitutions were thereby created, and whether the said Dame Anne Kelly had a right to continue any substitution that may have been created by the will of her father beyond her own children, and it is desirable for the purpose of preventing litigation and expense that an act be passed to clear up any doubt that may exist, and your petitioners are the persons who in the event of the absence of wills on the part of the said William and Catherine Kelly, or the invalidity of the provisions of such wills, would be entitled to the ownership of the property left by them at their deaths;

That the assets of the estate consist largely of immoveable property in the city of Montreal, as to which conditions have greatly changed since the deaths of the said testators; the buildings being old and dilapidated and the municipal valuation having increased out of all proportion to the rentals that can be procured therefor, which conditions involve heavy annual charges for taxes, repairs, etc., leaving little or no revenue for the parties in interest; in some instances the rentals being entirely eaten up by the carrying charges;

That it is to the advantage of all the parties interested that the alienation and partition of such property in the manner hereinafter set forth be authorized;

And whereas the petitioners have prayed that an act be passed to the above effect, and 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:

1. The above named petitioners, in their quality of Sale of pro-
substitutes as well as executors of the will of the late Dame party au-

thorized on certain conditions.

Anne Kelly, or whoever is legally authorized to execute the said will, together with the curator to the substitution created, after having previously obtained the consent of the family council duly homologated, are authorized to sell, transfer or exchange, with good and valid legal warranty, in whole or in part, by private sale, without other judicial formality, and from time to time as occasion may present itself, the immoveable property comprised in the estates of the said late Dame Anne Kelly and of the said William Kelly, including the interest transferred to the executors of the late Anne Kelly by her said two children (which said interest is declared to form part of the estate and to fall under the terms of the said will, and her executors are vested with the ownership thereof in their said quality); provided nevertheless that the purchase price be invested or deposited in accordance with the provisions of article 953a of the Civil Code, and they may give good and valid acquittance to the purchaser, who shall be free from following the said purchase price once for all, from the moment it shall have been invested in accordance with the provisions of paragraphs 3 and 4 of the said article 953a, or deposited in the hands of the Prothonotary in accordance with paragraph 5 of said article.

Hypothecation of property authorized on certain conditions.

2. The petitioners, in their said respective qualities, or whoever is legally authorized to execute the said will, and the curator, with the consent of the family council duly homologated, are also authorized to borrow on the security of the said property, for the purpose of improving the said property and the buildings thereon.

When the time fixed in the said will of the said Dame Anne Kelly for the partition of her estate has arrived, the executors and curator are authorized to effect the partition without judicial formality, and to determine any boot (soulte) to be received or paid; and after the partition the institutes, and the curator of the substitution, are authorized to sell, transfer or exchange the shares received by them, with the same rights and powers, and subject to the same conditions, as mentioned in the preceding article as regards property to be divided, and also to borrow on the security thereof for the purposes of improvements or repairs.

Expenses of this act.

3. The expenses incurred for procuring this act shall be borne by the estate of the late Dame Anne Kelly, and the executors are authorized to take the necessary amount from capital.

Coming into force.

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