

- Remuneration of trustees under Senator O'Brien's will increased. **1.** The remuneration of the trustees appointed by the late Honorable James O'Brien, senator for the Dominion of Canada, by the latter's will of the 25th June, 1896, Lonergan N. P., and codicil of the 30th November, 1901, before the same notary, to administer his estate, and of their successors in office, is hereby increased to the sum of five thousand dollars per annum for the three of them, to be distributed among them as the majority may determine, but each trustee to receive not less than the sum of one thousand five hundred dollars per annum; provided always that the net revenues of the estate be sufficient to pay the said remuneration in addition to the annuities bequeathed by the will, anything in the said will and codicil to the contrary notwithstanding.
- Proviso.
- Reduction of amount in certain event. **2.** If, after the partial distribution of the estate, provided in the said will to take place in the year 1920, the total net income of the residue of the estate available for distribution among the beneficiaries, at any time after the said year 1920, fall below the total net income received by the said beneficiaries in the year preceding such distribution, then the said remuneration of the said trustees shall be reduced in the same proportion, it being understood, however, that the said remuneration shall not in any case be more than five thousand dollars per annum.
- Proviso.
- When increase to begin. **3.** The said increase shall begin with the current year, that is, shall take effect from the 29th of May, 1905.
- Coming into force. **4.** This act shall come into force on the day of its sanction.

C H A P. 1 0 9

An Act to ratify a deed between Magloire Brayer *dit* St. Pierre, senior, and his wife, and Magloire Brayer *dit* St. Pierre, junior

[Assented to 9th March, 1906]

Preamble. **W**HEREAS Magloire Brayer *dit* St. Pierre, senior, and Magloire Brayer *dit* St. Pierre, junior, have by their petition represented:

That, by deed of contract of marriage between Magloire Brayer *dit* St. Pierre, junior, and Alexina Martin, dated the 24th October, 1898, before Mtre. J. A. Chauret, notary public, Magloire Brayer *dit* St. Pierre, senior, and his wife, for the purpose of settling their son, Magloire Brayer *dit* St. Pierre, junior, gave the latter by gift *inter vivos* and irrevocable: "a lot of land situated in the parish of St. Raphael de l'Île Bizard, known

and designated on the official cadastral plan and book of reference of the said parish under No. 80," the said immoveable to remain *propre de communauté* of the said Magloire Brayer dit St. Pierre, junior;

That, by the said deed, the donee will have possession and enjoyment of the said immoveable only on the death of the survivor of the donors;

That it is further stipulated in the said deed of gift that the donee shall, for his own benefit, so long as he shall not have the final enjoyment of the said immoveable No. 80, seed either of the two lots belonging to the donors, to wit: lot No. 80 or lot No. 244 of the official cadastral plan and book of reference of the parish of St. Geneviève, according to the desire or will of the donors;

That the said gift is made subject to the obligation by the donee to pay all seigniorial dues, taxes, assessments and ground rents, and to keep his sister Clara with him;

That the said donors and donee valued in the said deed the said immoveable No. 80 at forty-five thousand *livres*, old currency, and that the said donors charged the donee to return the said immoveable to their succession, either in kind or by taking the sum of forty-five thousand *livres* less, in order that there might be equality between all the children of the donors;

That a hypothec is stipulated on the said immoveable to secure the fulfilment of the charges imposed upon the donee;

That the said gift is made subject to the obligation of the donee to restore the said immoveable to his children after his death and, in default of children, to his brothers and sisters. But in the event of the donee disposing of the said immoveable in favor of one or more of his children or descendants, the obligation to return shall be null and void;

That, by deed of renunciation, passed on the 4th July, 1903, between the said Magloire Brayer dit St. Pierre, senior, and his wife, and the said Magloire Brayer dit St. Pierre, junior, before Mtre. J. A. Chauret, notary, Magloire Brayer dit St. Pierre, senior and his wife disposed, in favor of the donee, of the enjoyment of the said immoveable No. 80, in consideration of the payment by the latter of a sum of twenty thousand francs, payable in the month of March, 1904;

That, by the said deed of renunciation, the said Magloire Brayer dit St. Pierre, senior, and his wife relieved the donee from the obligation of returning the said immoveable to their succession, either in kind or by taking less;

That, on his part, the donee renounced the right conferred upon him by the said contract of marriage to seed the said immoveable lot No. 244 for his benefit;

That the said contract of marriage and the said deed of renunciation have been registered;

That, in the month of March, 1905, by a suit bearing No. 1525 of the records of the Superior Court, at Montreal, Magloire Brayer *dit* St. Pierre, senior, claims from his son, Magloire Brayer *dit* St. Pierre, junior, the said sum of twenty thousand *livres*, with interest from the month of March, 1904, making in all an amount of three thousand five hundred dollars;

That Magloire Brayer *dit* St. Pierre, junior, contested the said suit, pleading in substance that the deed of renunciation of the 4th July, 1903, was null and void as constituting an agreement regarding a future succession, as modifying the matrimonial agreement resulting from the said contract of marriage of the 24th October, 1898, and as having for its object the setting aside of the substitution created by the said contract of marriage;

That doubts have arisen as to whether the said contract of marriage creates a substitution of the said immoveable No. 80; and in the event of such substitution being created, whether it can take effect in view of the obligations to return, which may extend not only to the donee, but also to his successors, whether substitutes in the substitution or not; whether the substitution can be valid when the obligation to return comprises all the property given, and when the property to be returned is neither defined nor determined; whether the deed of renunciation of the 4th July, 1903, modifies the agreements of the contract of marriage, and constitutes an agreement regarding a future succession;

That the parties, after issue joined and after proceeding before the court to argue the said case, in view of the facts above related, agreed to pass the deed of transaction reproduced in the schedule hereunto annexed;

That, in the interest of the parties and of the family of the parties, it is desirable to ratify such deed of transaction so as to finally settle the present suit and future suits which would certainly result from the said deed between the said children of the donors;

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 January
4th, 1906, ra-
tified.

1. The deed of transaction between Magloire Brayer *dit* St. Pierre, senior, and his wife, and Magloire Brayer *dit* St. Pierre, junior, before Mtre. J. A. Chauret, notary, dated the 4th January, 1906, and reproduced in the schedule hereto, is hereby ratified and rendered valid to all intents and purposes.

Property
vested in M.
Brayer *dit*

2. Magloire Brayer *dit* St. Pierre, senior, is declared the absolute owner of the immoveable known and designated under No. 80 on the official cadastral plan and book of reference of the

parish of St. Raphael del'Ile Bizard; and the immoveable designated as No. 244 on the official cadastral plan and book of reference of the parish of St. Geneviève, is freed from the enjoyment constituted in favor of Magloire Brayer dit St. Pierre, junior, by the deed of contract of marriage of the 24th October, 1898, between the latter and Alexina Martin, and received by J. A. Chauret, notary.

3. The price of sale of five thousand six hundred dollars, mentioned in the deed of transaction, shall be the absolute property of the said Magloire Brayer dit St. Pierre, junior, who is relieved from the obligation to return such sum to the succession of his father and mother.

Certain price, absolute property of M. Brayer dit St. Pierre, junior.

4. The registration of the said deed of transaction regarding the immoveables mentioned in section 2 of this act shall have the effect of cancelling any hypothecary inscription which may result from the registration of the said contract of marriage of the 24th October, 1898, and the registration of the deed of renunciation of the 4th July, 1903.

Effect of registration of deed.

5. All the clauses of the deed of transaction shall have the same effect as if they were inserted in this act.

Effect of deed of transaction.

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

Coming into force.

SCHEDULE

In the year nineteen hundred and six, on the fourth of January, before M^{RE}. JOSEPH ADOLPHE CHAURET, the undersigned notary public, in and for the Province of Quebec, residing and practising in the parish of St. Geneviève, in the district of Montreal,

CAME AND APPEARED:

Mr. MAGLOIRE BRAYER dit ST. PIERRE, senior, farmer, of the parish of L'Ile Bizard, and Dame ADELINÉ LEGAULT dit DESLAURIERS, his wife, by him hereunto authorized, residing in the said parish of L'Ile Bizard,

Of the first part;

AND

Mr. MAGLOIRE BRAYER dit ST. PIERRE, junior, farmer, of the parish of L'Ile Bizard,

Of the second part;

Which parties, for the purpose of putting an end to a suit now pending between them in a case bearing No. 1525 of the records of the Superior Court, Montreal, have covenanted as follows:

1. Whereas, by the contract of marriage entered into on the twenty-fourth of October, eighteen hundred and ninety-eight, between Mr. Magloire Brayer *dit* St. Pierre, junior, and Miss Alexina Martin, before J. A. Chauret, notary, Mr. Magloire Brayer *dit* St. Pierre, senior, and his wife, gave to the party of the second part as a settlement for him, certain moveable property and also the immoveable Number eighty of the cadastre of St. Raphael de l'Île Bizard, subject to the substitution in favor of the children to be born of their future marriage, and, in default of children or descendants, in favor of the brothers and sisters of the defendant, such immoveable was valued by the parties at the sum of forty-five thousand *livres*, old currency;

It was further stipulated that the party of the second part should be bound to return to the succession of the donors or to take the sum of forty-five thousand *livres* of said currency less, in order that all the children of the donors might inherit equally, and, in the event of the party of the second part renouncing the succession of the donors, it was stipulated that he should be bound to return to such succession the amount he had received over and above that received by his brothers and sisters in order to maintain equality between them;

It was further stated in the said deed that the party of the second part should assume possession and enjoyment of the said immoveable upon the death of the survivor of the donors, the latter reserving the enjoyment and usufruct thereof until then, but it was also stipulated that the defendant should, for his own benefit and so long as he would not have the final enjoyment of lot Number eighty, seed either the said lot Number eighty or the lot Number two hundred and forty-four of the cadastre of the parish of Ste. Geneviève, at the choice of the donors;

2. Whereas, subsequently to the said contract of marriage and of the marriage of the defendant with the said Dame Alexina Martin, to wit: on the fourth of July, nineteen hundred and three, before Mtre J. A. Chauret, notary, a deed was passed between the said parties, to wit: the party of the first part and his wife, and the party of the second part, in which it was stated and declared that the party of the first part and his wife had, by the said contract of marriage, given to the party of the second part, the said immoveable Number eighty, valuing the same at the sum of forty-five thousand *livres* of said currency, in order that all the children of the donors should inherit equally, and, in the event of renunciation to the succession of the donors, the party of the second part was to return to the said succession the amount received by him, over and above

that received by his brothers and sisters, in order to maintain equality between them; that the party of the second part had the right to seed, for his own benefit, either said lot Number eighty, or lot Number two hundred and forty-four aforesaid; that the donors wished to renounce the enjoyment of lot Number eighty, under certain reservations and conditions and to finally settle the aforesaid return:

After thus setting forth the reasons of the parties, it was agreed that the donors should renounce the enjoyment and usufruct of lot Number eighty and the buildings thereon erected, subject to the reservation in favor of the donors of one-half of the house built on Number eighty, with every right of way for the peaceful and useful enjoyment of the said half of the house; that by the said deed it was stipulated that, in consideration of the abandonment of the said enjoyment, the party of the second part should pay to the donors the sum of twenty thousand *livres* old currency, in the month of March then next, (1904); that, in consideration of the said agreement, the donor should discharge the party of the second part from the obligation of returning to their respective successions the said sum of forty-five thousand *livres*, old currency as (the deed says), he was bound to do according to his contract of marriage if the party of the second part wished to renounce thereto; this had been stipulated in order that there might be equality between the children of the parties of the first part, considering that, by exacting the sum of twenty thousand *livres*, old currency, the party of the second part would not have more than the other children of the donors; that the party of the second part should renounce his right to seed lot Number two hundred and forty-four, with the reservation of the crop of the current year and the right to use the buildings until the following spring; finally that, for the security of the said sum of twenty thousand *livres*, old currency, lot Number eighty would be hypothecated subject to the vendors' privilege, (*bailleur de fonds*);

3. Whereas the party of the first part has instituted a suit against the party of the second part, under No. 1525 of the records of the Superior Court, Montreal, by which the party of the first part claims from the party of the second part the said sum of twenty thousand *livres*, old currency, with interest amounting to one hundred and sixty-six dollars and sixty-six cents, making in all the sum of three thousand five hundred dollars for the recovery of the sum of twenty thousand *livres*, old currency, stipulated as payable by the said deed of the fourth of July, nineteen hundred and three;

4. Whereas the party of the second part has contested the said suit, pleading in substance that the said deed of the fourth of July, nineteen hundred and three, was null and void, as constituting an agreement regarding a future succession, as modifying the agreement resulting from the said contract of mar-

riage, dated the 24th October, 1898, and as having for its object the setting aside of the substitution created by the said contract of marriage;

5. Whereas, in view of the suit between the said parties, doubts have arisen as to the following questions, namely:
1. Whether the said contract of marriage has created a valid substitution of the said immoveable Number eighty of the hypothecary cadastre of the parish of l'Île Bizard, and that in view of the obligation to return which may extend not only to the party of the second part but also to his successors, whether substitutes or not in the said substitution: and in view also of the fact that the obligation to return might include the whole of the property given, and the property to be returned would not be defined in certain cases provided for in the said contract of marriage;
2. Whether the deed of the fourth of July, nineteen hundred and three, modifies the matrimonial agreement contained in the said contract of marriage and constitutes an agreement regarding a future succession.

Such declarations being made, the said parties, in order to end the suit between them and in the interest of the family of the parties, covenant as follows, to wit:

(a) The party of the second part sells, without warranty, to the party of the first part, the said immoveable Number eighty of the hypothecary cadastral plan of the parish of St. Raphaël de l'Île Bizard, and further abandons to the party of the first part all rights of enjoyment and usufruct he may have in virtue of the said deeds in and to lot Number two hundred and forty-four of the hypothecary cadastre of the parish of Ste. Geneviève. The party of the second part shall however guarantee the hypothecs or other real rights he may have consented and which might affect the said immoveable Number eighty;

(b) The party of the first part, in consideration of the said sale, promises to pay to the party of the second part the sum of five thousand six hundred dollars in the course of the month of March next, provided the bill hereinafter mentioned be passed and adopted by both Houses before the third of March next. Such payment shall be secured by vendor's privileges, (*baillieur de fonds*), upon the said immoveable Number eighty of the hypothecary cadastre of the parish of St. Raphaël de l'Île Bizard;

(c) The party of the first part shall apply to the Legislature of the Province of Quebec, at its next session, for the passing of an act to ratify and validate the present transaction;

(d) The costs occasioned by the passing of the said act shall be paid by the party of the first part, and the present transaction shall not have any effect unless the said act be passed;

(e) The party of the first part further undertakes to pay all

the costs of the plaintiff and defendant of the said suit, as well as those of the present deed;

(f) If the said act be not passed by both Houses before the third of March next, it shall be lawful for the party of the second part to cultivate the said land for the year then current and to keep the produce thereof.

In such case, the party of the first part shall not be bound to effect such payment of the said sum of five thousand six hundred dollars until the month of March of the following year, without interest.

It is further stipulated that the party of the second part shall not have the right to take any wood from the said land, except for his own personal use and solely for fuel, and in so doing shall cause no damage to the timber thereon;

(g) As soon as the said sum of five thousand six hundred dollars shall be paid, the party of the second part shall immediately replace the party of the first part in possession of the said immovable;

(h) The party of the second part shall cultivate the said land as a careful owner, and shall perform all work of maintenance until he hands it over to the party of the first part;

(i) The municipal and school taxes shall be paid by the party of the second part until the delivery of the said lot, that is to say, that all taxes levied to that date shall be payable by the party of the second part; the same shall apply to the seigniorial rents;

(j) The party of the first part relieves the party of the second part of the obligation to pay him the sum of twenty thousand *livres*, old currency, under the deed of the fourth of July, nineteen hundred and three, and to effect the return stipulated by the contract of marriage dated the twenty-fourth of October, eighteen hundred and ninety-eight, in the event of renunciation to his succession;

(k) The immovable Number eighty sold by the party of the second part to the party of the first part shall be relieved from the substitution which may result from the said contract of marriage, and the party of the second part may dispose of the sum of five thousand six hundred dollars as if the same belonged to him and without regard to any such substitution;

(l) The registration of the present deed shall effect the cancellation of the mortgage and other charges and real rights that may result from the said deeds of the twenty-fourth October, eighteen hundred and ninety-eight, and of the fourth July, nineteen hundred and three, and which may affect the said immovable Number eighty in favor of the parties respectively.

And for the execution of these presents the parties elect domicile in their actual residence.

WHEREOF ACTE :

DONE AND PASSED, in the parish of Ste. Geneviève, in the study of the said notary, on the day and in the month and year aforesaid, under the number eight thousand three hundred and thirty-three of the minutes of the said notary.

These presents being duly read, the parties of the first part declared they could not sign, in the presence of Mr. A. Z. Libersan, notary, of the parish of Ste. Geneviève, legal witness, who signed with the party of the second part and with the said notary.

(Signed) A. Z. LIBERSAN,
 “ MAGLOIRE ST. PIERRE,
 “ J. A. CHAURET, Not. Pub.

True copy of the minute of the record remaining in my study.

J. A. CHAURET,
 Not. Pub.

 CHAP. 110

An Act to ratify a deed of partition between the heirs of the estate of the late Félix Décarie

[Assented to 9th March, 1906]

Preamble.

WHEREAS Joseph Noël Décarie, advocate, Antoine Victor Décarie, merchant, Félix Joseph Victor Décarie, trader, Bernadette Décarie, wife of Alphonse Décarie, farmer, Apolline Décarie, spinster, all of the parish of Notre Dame de Grâce, district of Montreal; Marie Décarie, wife of Alexandre Prud'homme, notary, of the town of Notre Dame des Neiges, said district; the said Bernadette Décarie and Marie Décarie, duly authorized hereto by their husbands, and Dame Rose de Lima Hurtubise, of the said parish of Notre Dame de Grâce, widow of the late Félix Décarie, in his lifetime farmer and gardener of the same place, testamentary executrix of the estate of the late Félix Décarie, and tutrix to Ursule Décarie and Radegonde Décarie, her minor daughters, issue of the marriage of the said late Félix Décarie with the said Dame Rose de Lima Hurtubise, have by their petition represented:

That, by will made before Mtre. J. A. Brunet, notary, on the 24th July, 1899, the late Félix Décarie, in his lifetime farmer and gardener of the village of Notre Dame de Grâce West, husband of Dame Rose de Lima Hurtubise, one of the petitioners