

C H A P. 120

An Act respecting the succession of the late Susan McVey,
and granting more extended powers to the testamentary
executors

[Assented to 2nd June, 1904]

Preamble.

WHEREAS James Quinn, Joseph Edward Quinn and
Rose Ann Quinn, wife of James Lonergan, notary,
all of Montreal, in their capacity of testamentary executors
and administrators under the will of the late Dame Susan
McVey, have, by their petition, represented :

That, by her will made before James Lonergan, notary, at
Montreal on the 13th September, 1886, and by her two codi-
cils before the same notary, one dated the 2nd September,
1890, and the other the 16th May, 1892, Susan McVey dis-
posed of her property in favor of her children ;

That a portion of the property bequeathed is substituted,
and that the partition of such property cannot be effected
before the opening of the substitution, which will open only
at the death of the last of the children of the testatrix ;

That the property bequeathed consists almost entirely of
immoveables, which yield hardly any revenue ;

That the revenues from all the properties bequeathed are
not sufficient to pay all the expenses ;

That, under the said will, the testamentary executors have
power to sell the whole or a portion of the properties, whether
substituted or not ; but that it is not desirable under the cir-
cumstances to sell the whole or a portion of the said prop-
erties because they are situated in proximity to the city of
Montreal and are yearly increasing considerably in value ;

That it does not appear clearly from the terms of the said
will that the testamentary executors have the power to
borrow and mortgage the immoveables bequeathed ;

That it is in the interest, not only of the institutes, but
also of the substitutes in the said substitution, as well as of
the said legatees in general, that the said property be not
sold now, but that, on the contrary, loans be effected with
a mortgage on the immoveables bequeathed, whether sub-
stituted or not, so as to enable the testamentary executors
to retain the said immoveables as long as possible, in order
to realize, later on, a larger amount than can be realized at
present ;

That the testamentary executors have absolutely nothing
in hand wherewith to meet any extraordinary expense that
might arise, neither can they improve the said immoveables
and incur the necessary expense to dispose of the same to
advantage ;

That a sum of \$3,000.00, with a mortgage on the said immoveables, was borrowed from Doctor Robillard, by deed passed, on the 6th July, 1894, before A. J. H. St. Denis, notary, at Montreal, to pay the debts of the estate; and another sum of \$3,500.00, also with a mortgage on the said immoveables, was borrowed from John McVey, by deed passed, on the 20th March, 1896, before James Lonergan, notary, at Montreal, to pay the share of Frank Quinn, one of the heirs, and doubts have arisen as to the validity of the said mortgages;

That the testamentary executors have, by deed of exchange, passed, at Montreal, on the 11th February, 1898, before O. Crépeau, notary, acquired an immovable on which the estate of the Honorable Joseph Masson has a mortgage to the amount of \$5,000.00;

That the interest paid by the petitioners on such hypothecary debts is five and a half and six per cent. and it is now possible to obtain loans at a lower rate, but that such loans cannot be replaced owing to the doubts that exist as to the power the petitioners may have to borrow;

That Jane Quinn, Jane Susan Quinn and the petitioners are the sole legatees under the said will, Francis Alphonse Quinn having sold his right to the latter;

That the said Jane Quinn, Jane Susan Quinn and Michael Stewart, curator to the substitution, have given their consent to this bill.

Whereas, by their petition, the petitioners have prayed for the passing of an act for the purpose hereinafter stated, and it is expedient to grant their prayer;

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

1. The testamentary executors above-mentioned or their successors are authorized to effect the loans of money that they may deem necessary, and, as security for such loans, to mortgage the immoveables mentioned in the will of Susan McVey or belonging to the estate of the latter. Nevertheless the substituted immovable shall only be hypothecated for loans of money rendered necessary for expenses on the said property.

Power of executors to borrow and mortgage property. Proviso.

2. Such power to borrow may be exercised by the testamentary executors in the same manner and without other formality than the power to sell and alienate which is granted to them by the said will.

How to be exercised.

- Lenders need not see to application of moneys borrowed. **3.** The persons who may lend sums of money to the testamentary executors shall not be obliged to see to the employment of the moneys loaned.
- Mortgage by deed of 6th July, 1894, and 20th March, 1896, confirmed. **4.** The deed of the 6th July, 1894, in favor of Edmond Robillard and the deed of the 20th March, 1896, in favor of John McVey, are hereby declared to have the same validity and effect as though this act had been in force at the time of the execution of the said deeds.
- Replacing of loans. **5.** It shall be lawful for the testamentary executors to replace existing loans and those they may hereafter effect by other loans, as often as they may deem advisable and advantageous
- Property of estate may be seized, &c., by mortgage creditors. **6.** The immoveable property bequeathed by the said will and mortgaged by the testamentary executors may be seized and sold under execution by the hypothecary creditors.
- Application of price of sales of property. **7.** The proceeds of the sales of immoveables that may be effected by the testamentary executors may be employed in preference in paying off the present or future hypothecary claims rather than the legacies.
- Certain delay prolonged. **8.** The delay of ten years mentioned in the twentieth clause of the said will, during which the executors are not obliged to pay particular legacies as well as legacies of the residue of the estate, is prolonged by five years.
- Costs of this act. **9.** The fees and costs incurred in obtaining the passing of this act shall be paid by the estate.
- Coming into force. **10.** This act shall come into force on the day of its sanction.
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