

2. On the death or resignation of either of the said tutors or of both of them, or when they or either of them shall have ceased to perform their or his duties for any reason whatsoever, the tutor or tutors appointed to replace either or both, shall have the same powers. Powers pass to successors of tutors.

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

CHAP. 130

An Act to declare the partition of the property of the succession of the late Dame Angèle Appolline Delphine Cimon to be final and for other purposes

[Assented to 25th April, 1903]

WHEREAS Joseph Frenette, of Malbaie, physician, Jules Frenette, of the city of Quebec, insurance agent, *abbé* Eugène Frenette, of the town of Chicoutimi, priest, Dame Marie Adèle Frenette, wife of Aram Tremblay, of the town of Chicoutimi, veterinary surgeon, and Dame Angéline Frenette, wife of Simon Lapointe, of the town of Chicoutimi, advocate, have represented by their petition :

That, by his will made at Quebec on the 19th February, 1850, before J. Petitclerc, notary, and his codicil made at Baie St. Paul, on the 9th August, 1854, before O. Clément, notary, Hubert Cimon, of Malbaie, merchant, bequeathed his property to his wife, Dame Angèle Simard Longbrette, with substitution in favor of his children and grandchildren ;

That, on the 27th September, 1864, by her will made at Malbaie, before H. Hudon, notary, the said Dame Angèle Simard bequeathed her property to her children, with substitution in favor of her grandchildren ;

That Dame Angèle Appolline Delphine Cimon was born of the marriage of the said Hubert Cimon with the said Dame Angèle Simard ;

That the said Dame Angèle A. D. Cimon was married to François Xavier Frenette, of Malbaie, advocate, under the regime of community of property ;

That, by his will made at Malbaie on the 23rd October, 1874, before Elie Angers, notary, the said François Xavier Frenette bequeathed his property to his said wife, with substitution in favor of her child or children whom she might choose, dispensing her from making an inventory, and leaving her free to dispose of the property bequeathed to her ;

That, by her will made on the 4th March, 1893, at Malbaie, before Elie Angers, notary, the said Dame Angèle A. D. Cimon made the said Joseph Frenette, Jules Frenette, Eugène Frenette and the said Dame Marie Adèle Frenette and Angéline Frenette, children issue of her said marriage, her universal legatees with equal shares, subject to substitution in favor of their children, and in default of children, in favor of her co-legatees, and that she died without having disposed of her husband's property ;

That the children mentioned in the above paragraph are their father's sole heirs ;

That the substitution established by the said Hubert Cimon and his wife, became open on the death of the said Dame Angèle A. D. Cimon, and that the property to be returned by the latter consisted of moveable property and moveable effects and claims of a total value of \$6,607.78 ;

That the property of the said four successions is mixed up together, and that on account of the absence of an inventory of the property of the said F. X. Frenette, it is impossible to determine the value of the latter's estate, and consequently the nature and value of the property substituted by his wife ;

That, during the said community, the said F. X. Frenette acquired immoveables to the value of \$8,250.00, which were partly paid with money derived from the succession of the said Hubert Cimon ;

That an inventory has been made of the moveable property of the said successions, and that, after deducting the said sum of \$6,607.78, the value of the moveable and immoveable property belonging to the succession of the said F. X. Frenette and of the said Dame Angèle A. D. Cimon, is \$17,231.24 ;

That it is expedient to divide this sum of \$17,231.24 equally between the successions of the said F. X. Frenette and that of his said wife, and that the share of each of the petitioners in his or her mother's estate will be only \$1,723.12 ;

That the petitioners are entitled to the enjoyment of their property which is not substituted, separately from the property substituted ;

That, under the circumstances, a judicial partition of the said successions would give rise to insurmountable difficulties and to the danger of costly complications, which the petitioners sought to avoid by proceeding to make a voluntary partition of the said successions by an authentic deed, passed at Malbaie on the 29th March, 1893, before Elie Angers, notary, and bearing the number 3347 of the minutes of the said notary ;

That it is expedient to declare such partition final ;
That the said immoveables produce but little revenue
and it would be advantageous to sell the same ;

That all the petitioners are of the full age of majority ;

That the curator to the substitution concurs in the conclusions of the petition ;

Whereas 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 partition (Appendix A to this act) of the property of the successions of Hubert Cimon, of Dame Angèle Simard, of François-Xavier Frenette and of Dame Angèle Apolline Delphine Cimon, made at Ste. Etienne de la Malbaie, on the 29th March, 1893, between Joseph Frenette, Marie Adèle Frenette, Angéline Frenette, Jules Frenette and *abbé* Eugène Frenette, before Elie Angers, notary, residing at St. Etienne de la Malbaie, in the district of Saguenay, by a notarial deed bearing number 3347 of the minutes of the said notary, is declared final. Certain partition declared final.

2. Each of the co-sharers shall have the right to sell, by voluntary and private sale or otherwise, his or her share in the moveable and immoveable property to him or her allotted by the said partition, and may give an irrevocable title thereto, notwithstanding the substitution. Co-sharers may sell their share, &c.

3. A sum of \$1,723.12 shall be employed for the purposes of the substitution in accordance with article 948 of the Civil Code by each of the co-sharers who shall so sell his or her share wholly or partly. Application of certain sum.

4. The institutes shall in all other respects remain subject to the laws governing substitutions. Laws to govern institutes.

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

APPENDIX A

Before Mtre ELIE ANGERS, the undersigned notary public for the Province of Quebec, residing in the parish of St. Etienne de la Malbaie, in the district of Saguenay.

CAME AND APPEARED :

JOSEPH FRENETTE, esquire, physician, Miss MARIE ADELE FRENETTE, spinster, and PAMPHILE HUBERT CIMON,

esquire, sheriff, of the district of Saguenay, residing in the parish of St. Etienne de la Malbaie; the said Pamphile Hubert Cimon acting herein for and on behalf of Miss Angéline Frenette, a minor, for whom he has become surety (*s'est fait et porté fort*) and by whom he has promised to have these presents ratified as soon as she shall have attained the age of majority, and also in his quality of special attorney of Mr. Jules Frenette, student-at-law, of the city of Quebec, and the Reverend Mr. Eugène Frenette, deacon, of the town of Chicoutimi, under the terms of their powers of attorney under private writing, dated the twenty-third day of March instant, and remaining annexed to the original of these presents;

Who stated and declared to us as follows:

1. That the said Joseph, Jules, Eugène, Marie Adèle and Angéline Frenette, all five issue of the marriage between the late François Xavier Frenette, in his lifetime, advocate, and the late Dame Angèle Apolline Delphine Cimon, his wife of the said parish of St. Etienne de la Malbaie, are qualified to declare themselves heirs, each for a fifth, both in the succession of the late Hubert Cimon, in his lifetime merchant, and of the late Dame Angèle Simard, his wife, their maternal grandfather and grandmother, and in the succession of the late Dame Angèle Apolline Delphine Cimon, their mother, deceased on the fifth March instant, under the terms of her will made by notarial deed before the undersigned notary and witnesses on the fourth day of March instant;

2. That the said heirs Frenette, wishing to avoid the heavy expenses, which would be necessitated by the making of an inventory before a notary, as well as the judicial partition of the immoveable property belonging to the said successions, have, by unanimous consent, proceeded, by amicable arrangement amongst themselves, to make an inventory, as accurate and faithful as possible, of all the moveables and immoveables, and of the assets and liabilities of every kind of the said successions; that they have drawn up a detailed statement of the whole, whereof each heir has kept a copy duly certified by all the parties interested;

3 That, by the said statement, it appears that the property belonging to the successions of the said late Hubert Cimon and of his said wife, amounts to the sum of six thousand, six hundred and seven dollars and seventy-eight cents. That the said sum is to be divided into equal shares between the said heirs, and that each of them shall enjoy his share in full ownership and enjoyment from this day,

inasmuch as the substitution, created in their favor by their said grandparents is open this day by the death of the said Dame Frenette, their mother ;

4. That it further appears, by the aforesaid statement, that the value of the moveable and immoveable property belonging to the succession of the said late Dame Frenette, and with respect to which she created a substitution under the terms of her will above mentioned, is sixteen thousand, eight hundred and thirty-two dollars and thirty-five cents ;

5. That the said Dame Frenette having, by her said will, bequeathed her clothes and body linen, as well as her jewellery, to her two daughters, Marie Adèle and Angeline, these articles cannot take part in the partition which is to be the object of the present deed ; and they are mentioned here merely as a memorandum ;

6. By his will, made by notarial deed before the undersigned notary and witnesses, on the twenty-third day of October, one thousand, eight hundred and seventy-four, the said late François-Xavier Frenette, while making his wife, the said late Dame Angèle Apolline Delphine Cimon, his universal legatee, bequeathed his library to that one of his sons who might become an advocate or a notary. That the said Jules Frenette, at present a student-at-law, fulfils the conditions required for receiving the said legacy, and he shall accordingly take from the mass of his mother's succession, and before sharing the same with the other heirs, a sum of eight hundred and seventy-four dollars and sixty-four cents, the amount equal to that realized by the sale of a portion of the library to him bequeathed by his father, which sale the said Jules Frenette approves, confirms and ratifies, in so far as the same may be necessary, for the purposes of the present partition ; the remainder of the books not sold belong of right to him as the other heirs and legatees have acknowledged ;

7. As regards the furniture, silver plate and moveable effects of every kind and description in the house in which the said Dame Frenette died, her said heirs and legatees have made a valuation thereof by amicable agreement, but they have unanimously decided not to divide the same at present, reserving the right to do so later at their convenience ; they are, therefore, mentioned here merely as a memorandum ;

8. The immoveables belonging to the said successions and which shall be disposed of as hereinafter set forth, consist of :

(1) A farm about six arpents in front by forty arpents in depth, situated and being in the first concession north-east

of the Malbaie river, bounded in front by the said Malbaie river; in rear by the depth thereof; on the north, by the road leading to the Fraserville concession; on the south, by number 314 of the official cadastre of the said parish of Malbaie, and constitutes lots number 315, 317 and the south-west part of lot number 316 of the aforesaid cadastre, with the buildings thereon erected, circumstances and dependencies;

(2) Various lots or parcels of land situate in Fraser village, in the aforesaid parish of Malbaie, and constituting lots numbers 458, 459, 471 and 472 of the cadastre above mentioned, with the buildings thereon erected, circumstances and dependencies;

(3) Five arpents of land in front by fifty arpents in depth, the whole more or less, situate and being partly in the concession of the Grands Fonds Sud of the seigniority of Mount Murray, bounded in front by the front line of the St. George concession, and in rear by the depth of the said concession of the Grand Fonds Sud; on the south-west by the land given by the said Dame Frenette to the Roman Catholic episcopal corporation of the diocese of Chicoutimi, and on the north-east by David Harvey or his representatives; the five arpents of land above described being and forming the north-east two-thirds of lots 587 and 562, and of lots 588 and 561 of the official cadastre of the parish of St. Fidèle;

(4) A certain lot or parcel of land now held by Georges Filion, under a certain emphyteutic lease, and forming number 318 of the official cadastre for the said parish of Malbaie; this lot of land is to revert to the said heirs at the expiration of the lease;

The farm and lots situated in the Fraser village have, for the purpose of the present deed, been valued as follows, to wit:

The farm at six thousand dollars.....	\$6,000.00
The lots at two thousand dollars.....	2,000.00

As to the lot of land in the Grand Fonds concession, as it is yet of but slight value, the said heirs have not deemed it advisable to make a valuation of the same, and they have decided to enjoy in common the fruits and revenues that may be derived therefrom, pending an opportunity of disposing thereof.

ASSETS

The assets and claims of all kinds belonging to the said successions being all detailed below in the various

shares allotted to the said co-sharers as made up amongst them by amicable agreement, it has been decided that it would be better, in order to avoid unnecessary repetition, not to mention them here in detail and they are therefore mentioned merely as a memorandum ;

LIABILITIES

The said parties have also stated and declared to us that, to the best of their knowledge, the debts due by the succession of the said Dame Frenette, amount to the sum of about five hundred dollars (\$500.00).

Finally, the said heirs and legatees have stated and declared to us that they all desire to enjoy separately, and as soon as possible, the share coming to each of them in the said successions, and they have proceeded to make a partition of the said successions amongst themselves by amicable agreement, taking into account not only the testamentary provisions of the late Dame Frenette, their mother, but also her intentions and wishes which are well known to them and which they desire to scrupulously respect, requesting us to draw up an authentic deed of the partition they have made as aforesaid.

We have accordingly proceeded as follows, to wit :

RECAPITULATION

Value of the successions of the late Hubert Cimon and his wife	\$ 6,607 78
Value of the farm	6,000 00
	<hr/>
	\$ 12,607 78
Value of the lots.....	2,000 00
Total amount of the claims and moneys in cash belonging to the succession of Dame Frenette	8,932 35
	<hr/>
Grand total.....	\$ 23,540 13
Deducting the amount of the liabilities as above set forth.....	500 00
	<hr/>
	\$ 23,040 13
thus leaving a sum of twenty-three thousand and forty dollars and thirteen cents to be divided amongst the co-heirs and legatees above mentioned.	

PRETAKINGS

But, before proceeding to make up the shares allotted to each of the said heirs, and in order to comply with their

mother's intentions, it has been decided that the said heirs should take from the said sum of \$23,040.13 the following amounts, to wit :

1. Joseph, the sum of	\$ 350 00
2. Jules, the sum of.....	897 86
3. Eugène, the sum of.....	956 85
4. Marie Adèle, the sum of.....	1,247 08
5. Angéline, the sum of.....	1,270 69

Total of the pretakings.....\$ 4,722 48

leaving a sum of \$18,317 65 (eighteen thousand, three hundred and seventeen dollars and sixty-five cents), to be equally divided amongst the five heirs above mentioned.

The said parties have stated and declared to us that, with the unanimous consent of all the interested parties, the five shares have been made up as follows, to wit :

FIRST SHARE

This share, allotted to Joseph, the eldest of the said heirs, with their unanimous consent and duly accepted by him, consists of the farm firstly mentioned and described under the head of the immoveables. But, inasmuch as the said farm, as stated above, has been valued by the said co-sharers, at the sum of six thousand dollars, and inasmuch as the said Joseph Frenette is entitled for his share in the said successions only to the sum of four thousand and twenty-eight dollars and thirty-two cents, he shall repay to the mass of the said successions the sum of one thousand, nine hundred and seventy-one dollars and sixty-eight cents, which he has done by undertaking to pay to each of his said two sisters a sum of nine hundred and eighty-five dollars and eighty-four cents ; which sums he has paid them by his promissory note voluntarily accepted by each of his said sisters, with the annual interest of six per cent. payable from next All Saints' Day.

In this share are also comprised all the live stock and other moveable effects at present on the said farm, and which belonged to the said Dame Frenette, his mother, as well as the two family cows.

The value of the first share as estimated by the co-sharers at.....	\$ 6,000 00
Deducting the amount due by Joseph to his sisters	1,971 68

The share coming to Joseph in the said successions.....\$ 4,028 32

SECOND SHARE

This share, allotted, with the consent of the other heirs, to the said Jules Frenette, and duly accepted by him, consists of :

1. The lots and parcels of land above secondly described under the head of immoveables and valued, as stated above, at a sum of...	\$2,000 00
2. The following obligations due to the succession of the late Dame Frenette, to wit :	
By Arthur Pilote, Malbaie.....	1,243 15
By Joseph Lapointe, Tadousac.....	516 90
By Widow Jacques Claveau, Malbaie.....	102 90
By Hector Bherer, fils de Jean Bte, Malbaie..	618 75
	<hr/>
	\$4,581 70
Value of Jules' share according to the partition made by the said heirs.....	4,575 48
	<hr/>
Surplus to be paid by Jules to the other heirs...	\$ 6 22

THIRD SHARE

This share, allotted, with the consent of the other heirs, to the said Eugène Frenette, and duly accepted by him, consists of the following claims, to wit :

Promissory note of the municipality of Malbaie.	\$ 204 08
Cléophas Gauthier, St. Irénée.....	203 57
Pitre Lapointe, (Promissory note) Malbaie.....	53 00
“ (Obligation).....	101 59
Charles Fortin, St. Irénée.....	347 73
Didier Tremblay.....	65 69
Joseph Dufour, Benj.....	720 14
Thaddée Dufour, (Obligation and Promissory note).....	60 19
Ferd. and Mars Duchêne, St. Hilarion.....	57 72
Didier Duchêne.....	176 41
Isaac Savard (Promissory note).....	23 51
Georges Tremblay, fils de Joseph, St. Irénée....	611 54
Théophile Duchêne, St. Irénée.....	102 05
Louis Gonzague Lajoie.....	1,292 89
Joseph McLean.....	500 00
Louis Bellay, fils de Joseph.....	95 90
Pierre Tremblay, fils de Edouard; St. Fidèle.....	52 82
	<hr/>
	\$4,668 83
Value of Eugène's share, according to the partition made by the said heirs.....	4,635 17
	<hr/>
Surplus to be paid by Eugène to the other heirs.	\$ 33 66

FOURTH SHARE

This share, allotted, with the consent of the other heirs, to the said Marie Adèle Frenette, and duly accepted by her, consists of the following claims :

Promissory note of her brother Joseph.....	\$ 985 84
Hippolyte Dallaire, St. Fidèle.....	440 92
Thaddée Bouliane, fils de feu Hubert.....	80 20
Caiphe Desbiens.....	102 79
Napoléon Martel, Saguenay.....	226 80
Elie Maltais, (Promissory note).....	100 50
Frs X. Gilbert, St. Agnès.....	209 52
Zozine Gagnon, St. Fidèle.....	307 80
Alexis Bouchard, St. Irénée.....	121 65
“ “ (Promissory note).....	10 17
William Tremblay.....	279 75
François Villeneuve, fils de Séraphin.....	635 92
François McNicoll, Calumets.....	204 66
Joseph Gauthier, fils de Sarathiel.....	484 60
“ “ “.....	690 48
	<hr/>
	\$ 4,881 50

By so much paid to the said Marie Adèle Frenette, by the other heirs, to make up her share.....	<hr/>
	43 90

Value of Marie Adèle's share, according to the partition made by the said heirs.....	\$ 4,925 40
--	-------------

FIFTH SHARE

This share, allotted, with the consent of the other heirs, to the said Angeline Frenette, and accepted for her by the said P. H. Cimon, consists of the following claims, to wit :

Promissory note of her brother Joseph.....	\$ 985 84
François Lapointe, fils d'Isaac, St. Fidèle.....	260 54
Maurille, Guillet, Thomas Tremblay, St. Hilarion	170 17
Jos. Ferdinand Asselin.....	255 84
Antoine Perron.....	101 86
Justinien Tremblay, township.....	102 22
Elie Desbiens, Malbaie.....	264 48
Thomas Simard, St. Agnès.....	203 13
Elzéar Carré and Louis Villeneuve.....	300 28
Herméas Tremblay, St. Agnès.....	337 17
Thomas Tremblay, St. Urbain.....	367 31
Mars Duchêne, St. Hilarion.....	129 48
François Tremblay, fils d'Elisée.....	410 94
Joseph Dufour, fils de feu Tim.....	207 54

Elie Harvey, St. Hilarion..	233 15
Ulysse Tremblay, Hyac., surety.....	489 28
Onésine Gauthier, fils de Jean, Eboulements...	30 16
Flavien Boily.....	76 39
Wilfrid Mailloux, Promissory note.....	10 09
Seraphin Bergeron and his mother.....	9 84
Ambroise Trudelle, (village).....	29 55

\$4,945 26

By so much paid to the said Angéline Frenette, by the other heirs, to complete her share...	3 75
--	------

Value of Angéline's share according to the parti-
tion made by the said heirs..... \$4,949 01

It is advisable to state here, to facilitate the recovery by the said heirs of the interest on the various claims comprised in their respective shares, that the said interest has been calculated up to the fifth day of March instant and capitalized.

Each of the co-sharers shall be the final owner from this day, and may dispose, as he or she may think proper, of the property comprised in his or her share, and he or she shall have the separate enjoyment thereof by the collection of the fruits, interests and revenues from the fifth day of March instant.

Each co-sharer has acknowledged to have received and to have in his or her possession the particular title deeds of the property, as well as of the other securities and claims in his or her share.

For the mutual fulfilment of what reverts to them under the terms of the present partition, the said parties have respectively made and accepted, under the usual security between co-sharers, a mutual abandonment of all the rights they may have in and upon all the property above mentioned.

The said Joseph and Jules Frenette shall take the immoveables, comprised in their respective shares in the condition in which they are at present, without other warranty than the usual warranty between co-sharers, and they shall be bound to fulfil all the servitudes and pay all contributions of every kind which may become due on the immoveables comprised in their respective shares from the fifth day of March instant, without any recourse against any of the other heirs.

The present partition, which is made for the reasons mentioned in the above preamble, by amicable agreement, between the said co-sharers, and in such manner as to protect the rights and interests of each, shall be deemed final,

under penalty of all costs, damages and interests against such of the heirs as might refuse to conform thereto for any reason whatsoever.

The said co-sharers have agreed not to take into account the slight differences or errors of calculation which may have crept into the division of the above shares, whereof final and mutual acquittance.

As to the board of the said Jules Frenette, for the whole period of time remaining for the completion of his four years of studentship, it shall be paid as follows, to wit : Jules shall alone pay one-half and the other half shall be paid in equal shares by the said co-sharers, including the said Jules Frenette. His travelling expenses in coming to Malbaie at the beginning of the holidays and in returning to Quebec at the re-opening of the course of lectures, from the present time to the end of the said four years of studentship, as well as the amount which may be necessary to pay his fees at the University, his diplomas and other strictly necessary disbursements when he is received as an advocate, and also the law books which he shall be strictly obliged to purchase between the present time and the end of his studentship, shall be paid in equal shares by the co-sharers above mentioned.

DONE AND PASSED, in the said parish of St. Etienne de la Malbaie, in the year one thousand, eight hundred and ninety-three, on the twenty-ninth day of March, under the number three thousand, three hundred and forty-seven (3347) ; and the said parties, on being thereunto requested have signed with us the said notary, these presents duly read.

(Signed) JOSEPH FRENETTE, M.D.

M. AD. FRENETTE,

P. H. CIMON,

ELIE ANGERS, N.P.

TRUE COPY of the original remaining of record in my office.

ELIE ANGERS, N.P.
