

C H A P. 1 3 6

An Act to interpret the will of the late Owen McGarvey, to extend the powers of the executors, provide for the payment of legacies and make provision for the administration and winding up of the estate

[Assented to 25th April, 1903]

Preamble.

WHEREAS William McNally, of the city and district of Montreal, importer of drain pipes ; Joseph Cooper, of Lindsay, in the Province of Ontario, executors of the last will and testament of the late Owen McGarvey, in his lifetime of Montreal aforesaid, Margaret McGarvey and Jane Cooper, spinsters, both of Montreal aforesaid, Dame Annie McGarvey, wife separate as to property of the said William McNally, and Martin Eagan, of Montreal aforesaid, manager, curator duly appointed to the substitution created by the said will, have represented by petition :

That the said Owen McGarvey died, at Montreal, on the 7th of July, 1897, and by his said will bequeathed and disposed of his property, as follows :

- (a) To his wife, Margaret Cooper, now deceased, his whole estate in usufruct ;
- (b) To his daughter Margaret, on the death of his wife, the revenue of fifty thousand dollars, and the capital thereof to her children at her death, and, in default of such children, to Owen McGarvey, grandson of the testator and son of John McGarvey, in full ownership ;
- (c) To the said Owen McGarvey, his grandson, the enjoyment of testator's share in the immovable 910 St. Antoine Ward, Montreal, and the ownership thereof to the said Owen McGarvey's children at his death, and, in default of such children, then to the testator's surviving children and descendants ;
- (d) To Dame Theresa Heney, widow of the said John McGarvey, the testator's son, an annuity of one thousand dollars ;
- (e) To Miss Jane Cooper an annuity of five hundred dollars ;
- (f) To other persons and institutions cash legacies amounting to seven thousand dollars, one thousand of which has been paid to Havelock Lunen according to the terms of the will ;

- (g) To his daughter, Annie McGarvey aforesaid, and to her children, the residue of his estate, which she and the curator to the substitution aforesaid have duly accepted under benefit of inventory ;

The whole upon the terms and as more particularly set forth in the said will ;

That, owing to the death of the said Margaret Cooper and the termination of her usufruct by reason thereof, it has become necessary to administer the said estate, pay the legacies and generally execute the said will ;

That the said estate to be realized upon as available for distribution among the legatees, consists of immoveable and other properties amounting, according to their assessed and estimated values, to eighty thousand, one hundred and sixty-seven dollars and thirty-four cents, and the legacies and liabilities payable by the estate amount to eighty-six thousand, seven hundred and twenty-nine dollars and fifteen cents, leaving a nominal deficit of six thousand, five hundred and sixty-seven dollars ;

That it is necessary to realize the said estate and distribute it amongst those thereto entitled by the will according to its sufficiency ;

That it is necessary to empower the executors to sell and otherwise dispose of the immoveables and other property of the succession and otherwise amplify and extend their powers and provide for their remuneration ;

That there is doubt as to the date when the enjoyment of the legacy to Owen McGarvey, grandson of the testator, of the immoveable 910 St. Antoine ward, Montreal, shall begin ; but the petitioners believe and allege that the testator's intention was that it should begin upon the death of the testator's wife ;

And whereas they have prayed that it is expedient to grant relief, and that all the doubts concerning the said will be removed and that provision be made for its proper execution and the administration of the estate ; and whereas it is expedient to grant the prayer of 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 said executors or their successors in office duly appointed are hereby declared seized and possessed of all the property, moveable and immoveable, of the estate and succession of the late Owen McGarvey until the complete execution and fulfilment of the said will is accomplished, or until the same is otherwise disposed of under the provisions of this act, and are declared to be vested with and to have

Executors
seized and
possessed of
estate.

the fullest and most unrestricted powers in respect of such property and estate for the following purposes, to wit :

Powers of such executors to sell property;

(a) To sell all or any portion thereof, by private sale or otherwise upon such terms and for such prices as they see fit without the necessity of judicial authorization, but with the consent or the assistance of the tutor to the minors or of the curator to any substitution under the said will; to join with others in all deeds of partition or otherwise concerning property held jointly or forming part of any community; to grant good and effectual title to all or any of the same; to lease, mortgage, hypothecate or in any other way dispose of or alienate the same or any part thereof; to make any and all conveyances, transfers or assignments and all contracts and agreements of and concerning the same which they may see fit; to grant all receipts and discharges necessary in the premises and all delays for payment or otherwise which in their discretion they may deem necessary or advisable; to borrow upon the security of such property or any part thereof all sums they may deem necessary in the interest of the estate; to invest all moneys now in their hands or hereafter realized and collected and the proceeds of all sales in such manner as they deem advisable, and until such time as the same are paid or handed over to the legatees entitled thereto under the said will or otherwise disposed of according to the provisions of this act;

To pay legatees;

(b) To pay over, out of the cash assets of the estate and the amount realized from any sales of the property of the succession to the legatees named in the said will, the respective amounts of their legacies on the basis hereinafter provided at such time or times and in such amount or amounts as the executors shall have on hand; provided however that, at the date of distribution of any moneys in payment of legacies, each legatee shall receive a *pro rata* amount of his or her legacy;

To capitalize certain annuities.

(c) To capitalize the annuity of five hundred dollars per annum payable to Miss Jane Cooper and the annuity of one thousand dollars per annum payable to Dame Theresa Heney, widow of the testator's son, the late John McGarvey, at five per centum interest to wit: ten thousand dollars and twenty thousand dollars respectively; the revenue upon which capitalized sums shall represent the annual

value to each of the said legatees of her legacy respectively, whether the amount derived from the same is equal to the amounts mentioned in the will or not. The legacy of the annuity of five hundred dollars per annum shall be due and payable to Miss Jane Cooper on and after the 31st October, 1903.

2. The enjoyment of the legacy bequeathed to Owen McGarvey, the grandson of the testator, in the testator's share of the immoveable, being lot 910 upon the official plan and book of reference of St. Antoine Ward in the city of Montreal, and the income and revenue derived or derivable therefrom, are declared to have been and to be payable to the testator's said grandson, the said Owen McGarvey, from and after the date of the death of the said Mrs. Owen McGarvey (Dame Margaret Cooper), to wit, from and after the thirty-first day of October, nineteen hundred and two; on condition that if, in any year, the annual value of the capitalization of the legacy to Dame Theresa Heney shall not reach one thousand dollars, the amount necessary to make up the deficiency shall be taken and paid out of the revenues of the part of the immoveable of which the usufruct is left to Owen McGarvey, or out of the revenues of any capital which may be realized by the sale of such part and invested in place thereof.

When certain legacy to be deemed to have accrued to O. McGarvey.

3. All the legacies of whatsoever kind, other than that of the testator's share in the immoveable lot No 910 of St. Antoine Ward of the city of Montreal, shall be subject to a uniform reduction in proportion to their respective amounts in the event of the estate not realizing sufficient to pay them in full.

Reduction of legacies if estate does not realize sufficient to pay.

This section shall not apply to the legacy to Dame Theresa Heney and Margaret McGarvey before the 31st of October, 1903.

Section not to apply to certain legacy before certain date.

4. The said executors are authorized to pay and hand over to the residuary legatee, Dame Annie McGarvey, wife of the said William McNally, and she is authorized to receive, and hold upon such security as the Superior Court or any judge thereof shall, upon application of the executors or the said residuary legatee, determine, the capital of all annuities and amounts which may form part of the residue of said estate until her death or her handing over thereof according to law and the provisions of the said will

Executors may pay residuary legatee capital of annuities, &c.

5. The testamentary executors shall pay, out of the funds of the said estate, all costs, disbursements, and counsel's fees incurred in the passing of this act.

Costs of this act.

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

Coming into force.