

estate, notwithstanding any declaration made by him to the contrary.

Certain deed
authorized to
be passed.

2. The said John and Alexander Molson and their children now living are hereby authorized to execute, with the said trustees and executors, or their representatives, a deed ratifying and confirming the acts of the said trustees and executors, and discharging them finally from all further liability in respect of the said estate, which discharge shall be valid as against the said John and Alexander Molson and their lawful issue.

Coming into
force.

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

C A P. X C V.

An Act to declare the partition of the property of the estate of the late Amable Prévost final and definitive.

[Assented to 9th January, 1897.]

Preamble.

WHEREAS by his testament, dated the twenty-fourth of December, one thousand eight hundred and forty-four, and by codicils, respectively dated the twenty-sixth of December, one thousand eight hundred and forty-four, and the twenty-second of January, one thousand eight hundred and sixty, received at Montreal before J. Belle and his colleague, notaries, the late Amable Prévost, in his lifetime of the same place, merchant, bequeathed to the children born and to be born of his marriage with Dame Rosalie Victoire Bernard, his wife, the usufruct and enjoyment, during their lifetime, of all his moveable and immoveable property, the full ownership of the said property to belong, after the death of the said children or of any of them, to the children to be born of their respective marriages ;

Whereas the said will and codicils constitute a substitution in which the children of the said late Amable Prévost are the institutes and his grandchildren are the substitutes ; and whereas it is especially ordered by the said will and codicils that the real estate or immoveables of the testator should pass in kind into the hands of the said grandchildren without the children of the testator or even the grandchildren, so long as the usufruct bequeathed to the children should exist, being able to alienate, sell, pledge or hypothecate the same for any cause whatsoever ;

Whereas the said late Amable Prévost died at Montreal on the ninth of February, one thousand eight hundred and seventy-two, without having revoked his said will and codicils, leaving as his survivors his wife, the said Dame Rosalie Victoire Bernard, and seven children ;

Whereas the said late Amable Prévost was common as to property with his said wife, Dame Rosalie Victoire Bernard, so that the said will affected only the share of the said late Amable Prévost in the said community and the property personally belonging to him ;

Whereas, after inventory was made of the property that was left by the said late Amable Prévost, his said children and their mother, the said Dame Rosalie Victoire Bernard, proceeded, on the twenty-seventh of April, one thousand eight hundred and eighty-three, by deed passed before G. M. Prévost, notary, to the partition and liquidation of the said community of property and of the estate of the said late Amable Prévost ; and, by the said partition, all the moveable and immoveable properties coming to them from their father were divided amongst the seven children of the said late Amable Prévost, his only heirs and legal representatives ;

Whereas the agreements and stipulations of the said partition have been carried out on both sides, and since the said day, the twenty-seventh of April, one thousand eight hundred and eighty-three, the heirs Prévost have separately enjoyed the property of the said estate according to the partition then made amongst them ;

Whereas, since the said partition, doubts have arisen as to the question whether the said partition was a provisional one, like that between institutes, under the provisions of article 948 of the Civil Code, or whether, on the contrary, it is final, in consequence of the special provisions contained in the will of the said late Amable Prévost ;

Whereas, the said institutes have consulted eminent legal authorities, but their opinions are divided on this point and even, in a non-litigious proceeding, to wit : an application made by Dame Marie Elizabeth Adèle Prévost, wife of Azarie Brodeur, Esquire, physician, of the city of Montreal, for the purpose of being authorized to expend a sum of money for the improvement of a property which devolved to her by the said partition,—the Honorable Mr. Justice Jetté, by an order in chambers, dated the twenty-seventh of March, one thousand eight hundred and ninety-six, ordering the convening of a family council, declared that the said partition was not provisional but final, that the said legatees, the institutes, were authorized to make it so by the very terms of the said will and codicils, and, consequently, that each institute definitively owned the share of the property bequeathed to him, on the sole condition of delivering it to his children, and that the other institutes have no interest in the property so allotted to one of them ;

Whereas the said order, although it cannot constitute *res judicata*, causes serious doubts as to the nature, whether provisional or final, of the said partition ; whereas such

doubts cannot be solved except by a suit at law between the said heirs Prévost, which cannot but be very long and costly, and which would have the effect of dissipating the property of the said succession; whereas the legatees, the institutes, have divided the property of the said estate amongst themselves in a fair and equitable manner; whereas one of them, to wit: Amable Oscar Alexandre Prévost, in his lifetime of the city of Quebec, superintendent of the Government Cartridge Factory at Quebec, died on the sixteenth of September, one thousand eight hundred and ninety-five, leaving minor children, now represented by their mother, Dame Marie Louise Duchesnay, their tutrix, duly appointed in law, in favor of whom the said substitution is now opened, as regards their father's share, so that it is necessary to determine, without delay, the true character of the partition made on the twenty-seventh of April, one thousand eight hundred and eighty-three, of the property left by the said late Amable Prévost;

Whereas all the testamentary executors appointed by the said late Amable Prévost are now deceased, and the interested parties have applied to the courts to have them replaced, but the Honorable Mr. Justice Taschereau, by an order, dated fifteenth of November, one thousand eight hundred and ninety-six, declared that the execution of the said will and codicil were completed, and that there was no occasion to replace the said testamentary executors;

Whereas Edouard Henri Armand Prévost, burgess, both in his quality of legatee and institute, and as curator duly appointed in law to the said substitution, Louis Roméo Prévost, accountant, Toussaint Prévost, Benjamin Hector Prévost, broker, and Dame Marie Rhéa Berthe Prévost, widow of the late Joseph Elzéar Berthelot, all of the city of Montreal, being the majority of the legatees and institutes in the substitution established by the said late Amable Prévost, have, after alleging the facts above-mentioned, represented, by their petition, that they are prepared to accept the principle laid down in the order of Mr. Justice Jetté, as aforesaid, and to acknowledge the partition of the property of the estate of the said late Amable Prévost, as having been final and definite; and whereas it is very important, in order to remove all doubts and avoid ruinous lawsuits for the heirs, that the said partition of the twenty-seventh of April, one thousand eight hundred and eighty-three, of the property of the estate of the said late Amable Prévost, be declared final and definitive to all intents and purposes whatsoever; and whereas it is expedient to grant the prayer of the petitioners;

Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. The partition of the property of the estate of the late Amable Prévost, in his lifetime merchant, of the city of Montreal, made by and between the legatees who are institutes in the substitution under the will and codicils of the latter, dated respectively the twenty-fourth and twenty-sixth of December, one thousand eight hundred and forty-four, and the twenty-second of January, one thousand eight hundred and sixty, before J. Belle and his colleague, notaries, by a deed of partition and liquidation before G. M. Prévost, notary, on the twenty-seventh of April, one thousand eight hundred and eighty-three, is declared to be and always to have been final and definitive; and, accordingly, the legatees who are institutes in the substitution established by the said late Amable Prévost are declared to be and always to have been the sole proprietors of the share of the said property which has respectively devolved to them, under the terms of the said deed of partition and liquidation, subject to the condition of handing over such share to their children at their death, as set forth in the said will and codicils; and the children, issue of the marriage of the said late Amable Oscar Alexandre Prévost with the said Dame Marie-Louise Duchesnay, are declared to be and always to have been, since the death of their father, the sole owners of the property which devolved to the said late Amable Oscar Alexandre Prévost, in virtue of the said partition.

Nevertheless any of the parties interested may, within two months following the passing of this act, submit to the Court of Queen's Bench sitting in appeal, the other heirs being duly notified, the question whether the said partition of the 27th April, 1883, made before Prévost, notary, is final and definitive, which may be done by taking an appeal to the said court by inscription in the ordinary way from the judgment rendered in chambers by the Honorable Mr. Justice Jetté in March, 1896, and in such case the parties shall proceed as in a case in which the said partition shall have been declared definitive.

If, by the judgment of the said court, the said partition is declared definitive, the said judgment shall be declared final and without appeal. If the contrary, the said parties shall immediately proceed to a new partition and liquidation according to the ordinary rules of voluntary partitions, each interested party returning to the mass, according to law, all that he shall have received under the said partition of the 27th April, 1883. The partition thus made after the returns shall be final and definitive for all purposes, subject to the substitution enacted by the will of the late Amable Prévost.

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

Coming into force.