

**notary's
office.**

have been deposited in the office of the Superior Court for the District of Montreal, as belonging to either of said two substitutions, or which may hereafter be so deposited in connection with sales of property made prior to the coming into force of this act, provided, however, that all such monies shall be reinvested in the name of the respective substitutions in the manner hereinbefore provided; but such reinvestment need not necessarily be made at the same time as the receipt of the money from the purchasers in the one case, or the withdrawal from the Court in the other.

**Certain acts
ratified, &c.**

5. All or any acts done or performed in virtue of the foregoing sections shall be legal and valid to all intents and purposes as if all necessary authorizations in due course of law had been procured for each and every transaction.

**Coming into
force.**

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

C H A P . 118

An Act to interpret certain clauses of the will of the late
Walter Drake, and to ratify two deeds of sale.

[Assented to 21st December, 1912.]

Preamble.

WHEREAS Frederick William Evans, insurance broker of the city of Montreal, in his quality of testamentary executor of the late Walter Drake, has by his petition represented:

That the late Walter Drake in his lifetime gentleman of the city of Montreal, Province of Quebec, Canada, died at Montreal on or about the 8th day of February 1900 after having made his last will and testament on the 20th day of December, 1897, before Napoléon Théoret and H. P. Pepin, notaries, his first codicil on the 28th January, 1898, his second codicil on the 13th February, 1899, before the same notaries, his first holograph codicil on the 3rd day of August, 1898, and his second holograph codicil on the 2nd February 1900, both duly probated;

That by said will and codicils, he gave, after having made particular legacies, the rest and residue of his property real and personal comprising his share in the undivided portion of the estate of the late Robert Wood kept undivided, to his niece Dame Sarah Harriet Porter, to his nephews Robert Langley Porter and William Ernest Porter, to be divided between them share and share alike, and to be held, used and

enjoyed by them during their lives only and, after the decease of each of them, the share of the one so dying to go to his or her lawful child or children to whom he substituted the ownership of the said property to be equally divided between them on the youngest attaining the age of twenty-one years, with privilege of representation in favor of the child or children of any of them deceased, and in the event of either of the said nephews or niece, to wit, Robert Langley Porter, William Ernest Porter and Dame Sarah Harriet Porter, dying without issue either before or after his decease, the division of the share of the one so dying without lawful issue as aforesaid will take place according to the order of their decease, in favour of the different beneficiaries mentioned in his holograph codicil of the 3rd August 1898, and according to the terms therein referred to;

That the late Walter Drake appointed for the execution of said will and codicils, said Frederick William Evans his testamentary executor, authorizing him to act as such beyond the year and day limited by law and until the final and entire execution of his said will and codicils, giving him the fullest and most ample powers to administer his estate and to carry into effect all and every the provisions and conditions contained in same as therein enforced without any limitation or restriction whatever, and he declared that the executor's interpretation of his meaning or intention under his will and codicils would be final; and that should any action or law suit be taken to dispute or set aside the decision of his testamentary executor, the party or parties taking such action shall forfeit one half of any amounts to which he would be entitled by his will, the portion so forfeited to be distributed by the executor to some charitable institutions as his said executor should deem advisable;

That the executor was empowered, should he deem it useful, to name and appoint another testamentary executor to act with him;

That the said executor has not as yet appointed another executor;

That the said executor was empowered by the testator to sell or dispose of the whole or any part of the stocks, bonds, mortgages, securities or immoveable property of said estate;

That a doubt has been raised as to the powers of the testamentary executor to retain the administration of said estate beyond ten years and as to the proper interpretation to be given, in connection with said powers, to clauses 15 and 19 of said will which read as follows:

"15. And for the execution of this my last will and testament, I do hereby nominate, constitute and appoint Frederick William Evans as my testamentary executor authorising him

to act as such beyond the year and day limited by law and until final and entire execution of these presents, giving him the fullest and most ample powers to administer my estate and to carry into effect all and every the provisions and conditions contained in these presents as therein expressed, without any limitation or restriction whatsoever, and I do hereby declare that his interpretation of my meaning or intention under these presents shall be final; and should any action or lawsuit be taken to dispute or set aside the decision of my testamentary executor, the party or parties taking such action shall forfeit one half of any amounts to which he would be entitled by this will, the portion so forfeited to be distributed by my testamentary executor to some charitable institutions as my said executor may deem advisable.

"19. I also hereby empower my testamentary executor or executors, should he or they deem it advisable, to retain the administration of my estate as an undivided mass for the term of ten years, paying a sum of not less than eight hundred dollars, per annum, during that term, to each of my universal legatees, increasing said amount as he or they in their judgment may deem advisable to one or all of them; and the surplus of revenues and income can be applied to the payment of legatees, improvement of the estate, or invested for use and benefit of my universal legatees.

"I hereby also empower my said executor or executors, on the division of my estate taking place, to retain the administration and management of the share of one or more of my universal legatees, even after the term of ten years above indicated, should he or they deem it more advantageous to such legatee or legatees and to pay him or them such portion of the revenues, interest or income deriving from his or their share as my said executor or executors may find necessary for the support of said legatee and his family; the surplus of revenue or income to be disposed of as hereinabove provided for, that is to say the improvement of the portion of estate so retained by my said testamentary executor or executors or invested for the benefit of the said legatee."

That the executor, taking advantage of the power which was given to him by the testator in clause 15 of his will, has interpreted said clause 19 to mean that he has the right and is authorized and empowered to retain the administration of the said estate beyond the ten years above referred to and that he has made a declaration to that effect on the 3rd day of February, 1910, before Napoléon Théoret, notary, copy of which was duly registered in the registration division of Montreal West, on the 7th February, 1910, under No. 148,153.

That the institutes hereinabove mentioned have also interpreted the said clause 19 in the same sense as the executor

did and authorized him to keep out of the revenues a salary of one thousand dollars a year and continue his administration.

That, besides the expressed language of said will as in clauses 15 and 19 of said will contained, it appears that the intention of the testator to nominate a testamentary executor to act until final and entire execution of his will and as long as there was property to administer and manage and as long as the substitution was not open, results from the different other clauses of said will and codicils (see clause 13 of will, clause 2 of the holograph codicil of the 3rd August, 1898.)

That by deed of sale made and passed at Montreal, before Napoléon Théoret, notary, on the 24th. April, 1912, the said testamentary executor, Frederick Williams Evans, sold, in his said quality, to Raoul A Girard, merchant of Montreal, for the price of thirteen thousand, four hundred and sixty-seven dollars and fifty cents, two thousand four hundred dollars whereof were paid cash, that is to say the front part containing seven thousand five hundred and twenty-five feet at a dollar and fifty cents per foot and the rear part containing four thousand three hundred and sixty feet at fifty cents per foot, that certain lot of land known as No. 1426 on the cadastral plan and in the book of reference of the parish of Montreal; to be deducted from the said lot, however, the part taken for the opening of St. Catherine Street, containing seventy-two feet six inches in front, eighty-two feet in rear, by a depth of one hundred and fifty-two feet eight inches on the southwest line, a total area of eleven thousand eight hundred and eight-five square feet, English measure and more or less, bounded in front by St. Catherine Street, in rear by lot No. 1427, on one side by Metcalfe Avenue and on the other side by lot No. 1429, vacant, property of said estate;

That on the same date before the same notary, the said testamentary executor sold, in his said quality, to the said Raoul A. Girard, those certain lots of land known as the Nos. 12 and 13 of the sub-division of lot No. 73 of the sub-division of the original lot No. 1654 on the cadastral plan and in the book of reference for St. Antoine ward, in the city of Montreal, containing fifty-two feet two inches in front on St. Catherine Street, fifty-two in rear, by one hundred and twenty-four feet six inches in depth, English measure, a total superficies of six thousand four hundred and eighty-four square feet, vacant, with the use of the lane in common with the others, for the price of fifty-one thousand eight hundred and seventy-two dollars, equal to eight dollars per superficial foot, on account whereof the vendor acknowledged to have received the sum of eleven thousand five hundred and eighty-four dollars, property of said estate;

That the institutes, said Dame Sarah H. Porter of the city

of Kingston, Ontario, wife separate as to property of Mr. Henry T. Hughes of the same place, and the latter personally and to authorize his wife; Robert Langley Porter, physician, and William E. Porter, fruit-grower, of Lindsay, California, join the testamentary executor in the present application by concurring therein;

That the said Frederick W. Evans was duly appointed curator to the substitution created by said will.

Whereas the present act is passed merely as a precaution and for the purpose of removing any doubt as to the interpretation to be given to clauses 15 and 19 of said will and as to the legality of the deeds of sale to be ratified; and whereas the petitioner has proved the allegations of his petition and it is expedient to grant his prayer;

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

Powers of
executors
defined.

1. By the will of the late Walter Drake, made at Montreal, the 20th day of December, 1897, before Napoléon Théoret and Henri H. Pepin, notaries, and by his codicils, made at Montreal the 28th day of January, 1898, and on the 13th day of February 1899, before the same notaries respectively, and by his holograph codicils, signed at Montreal on the 3rd day of August 1898, and on the 2nd day of February 1900, respectively, the testamentary executor or executors is or are nominated and empowered to act with all the powers conferred upon the executors by the said will and codicils until the final and entire execution of said will and codicils even until the opening of the substitution created by same.

Id.

2. The testamentary executor acted and acts within the powers granted to him by said will and codicils in retaining the administration and management of the said estate as an undivided mass and of the share of each and every one of the universal legatees, even beyond the term of ten years indicated in clause 19 of said will.

Deeds
ratified.

3. The two deeds of sale made and passed at Montreal on the 24th day of April, 1912, before Napoléon Théoret, notary, between F. W. Evans in his quality of testamentary executor of the late Walter Drake, and Raoul A. Girard, are hereby ratified and declared valid and legal in so far as the capacity of the vendor is concerned.

Coming into
force.

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