

INTRODUCTION.

THE author having lately had occasion to study the law of Intestacy, in the different parts of the Dominion, was surprised to find that it was not the same in any two of the Provinces, although the Statutes enacting the law of Descent of real estate in cases of intestacy in British Columbia, Keewatin and the North West Territories are in a very great measure the transcript of that of Ontario. It will be admitted that it is desirable, where there is really no reason to the contrary, that the law should be uniform throughout the Dominion, and particularly when it affects persons residing beyond the jurisdiction of the enacting power. An imaginary line or a streamlet separates one Province from another, and the law may materially differ on one side from the other. The law of the domicile of the intestate at the time of his death governs the distribution of his personal estate; that of the situation governs with respect to the real estate. These rules are founded upon the maxims *mobilia sequuntur personam, immobilia sequuntur situm*. We find accordingly that to inherit from an intestate real property situate in any of the Provinces, except Quebec, the heir must have been born in wedlock, and he cannot even succeed if he has been legitimated by the marriage of his parents after his birth *per subsequens matrimonium*. So that if an intestate were the holder of real property in England, Scotland, Quebec, and Ontario, his son born before marriage, even if "legitimated" according to the law of his domicile, would not inherit the realty in England or Ontario, although he would in Scotland and Quebec.

The succession to personalty is different. On the death of an intestate domiciled in England a daughter of his deceased brother, born in Holland before the marriage of her parents, but legitimated there by their subsequent marriage, claimed to be