

L A W S O F I N T E S T A C Y

IN THE

D O M I N I O N O F C A N A D A .

CHAPTER I.

I N T E S T A C Y .

An intestate is one who dies without having made a will, although he had the capacity to do so; or, having drawn up or signed a document intending to have it perfected so as to make a will has failed to do so; or who, having made a will, has revoked it without making a new one, or if it be revoked by law, *neque ego negaverim non uno genere fieri intestatos aut is intestatusqui non scripsit testamentum aut qui id scripsit quod valere non possit.* (Quinctilian) An intestate (Mackenzie, Roman Law,) is one who dies without a will, or who leaves a will which is not valid. The law appoints the person or persons who are to succeed to his property, according to certain rules, which mainly depend upon their proximity in blood to the deceased.

Not only do laws of succession differ in many of the Provinces but the legal terms have not the same meaning in Quebec that they have in the other parts of the Dominion; the words are different, and the familiar expression of the common law is comparatively unknown there. It seems therefore necessary to explain certain terms. For instance;

ANCESTOR.—By the common law the person from whom real property descended was called the ancestor. The first rule was that inheritance could not ascend. No inheritance could be claimed unless the ancestor was actually seized of the lands and tenements. This is not law now in any part of the Dominion where the common law is in force except New Brunswick.

Under the actual law of England, the son may be the "ancestor" of his father; in the United States it has been decided that the father is of the blood of his child, and that a younger brother was the "ancestor" of his elder brother.