

No. 244.

3d. Session, 3d. Parliament, 13 Victoria, 1850.

BILL.

An Act to abolish the Right of Primogeniture in the Succession to Real Estate held in fee simple or for the life of another in Upper Canada, and to provide for the division thereof amongst such of the relatives of the last proprietor, as may best accord with the relative claims of such parties to consideration in the division thereof.

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Second Reading, Thursday, 8th August, 1850.

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The Hon. Mr. Attorney General Baldwin.

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PRIMOGENITURE ABOLITION BILL.

(UPPER CANADA.)

An Act to abolish the Right of Primogeniture in the Succession to Real Estate held in fee simple or for the life of another in Upper Canada, and to provide for the division thereof amongst such of the relatives of the last proprietor, as may best accord with the relative claims of such parties to consideration in the division thereof.

WHEREAS it is expedient to abolish the right of Primogeniture in the succession to real estate held in fee simple or for the life of another in Upper Canada, as such right now exists according to the laws in force in that section of the Province, and to provide for the division of such real estate amongst such of the relatives of the person last seized or possessed, and who shall have died without leaving any testamentary disposition thereof, as may best accord with the relative claims of such parties to consideration in the division thereof; Be it therefore enacted, &c. Preamble.

10 I. That whenever on or after the first day of January, which will be in the year of our Lord one thousand eight hundred and fifty-one, any person shall die seized in fee simple or for the life of another of any real estate in Upper Canada, without having lawfully devised the same, such real estate shall descend or pass by way of succession 15 in manner following; that is to say:

How real estate of an intestate dying after 1st January, 1851, shall descend,

Firstly.—To his lineal-descendants;

Secondly.—To his father;

Thirdly.—To his mother, and

20 Fourthly.—To his collateral relatives, subject in all cases to the rules and regulations hereinafter prescribed.

II. And be it enacted, That if the intestate shall leave several descendants in the direct line of lineal descent and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate the 25 common degree of consanguinity may be.

As to descendants in equal degrees of consanguinity.

If some children be living and others dead, leaving issue.

III. And be it enacted, That if any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who shall have died, leaving issue, had been living; and so that the descendants of each child who shall be dead shall inherit the share which their parent would have received if living. 5

Same rule as to other descendants in unequal degrees of consanguinity.

IV. And be it enacted, That the rule of descent prescribed in the last section shall apply in every case where the descendants of the 10 intestate, entitled to share in the inheritance, shall be of unequal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity, shall take the shares which would have descended to them had all the descendants in the same degree of consanguinity who shall have died leaving issue, been living, and so 15 that the issue of the descendants who shall have died, shall respectively take the shares which their parents if living would have received.

If the intestate leave no descendants:—rights of father, mother, &c.

V. And be it enacted, That in case the intestate shall die without lawful descendants, and leaving a father, then the inheritance shall go to such father,—unless the inheritance came to the intestate, on the 20 part of his mother, and such mother be living, and if such mother be dead the inheritance descending on her part, shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided, and if there be no such brothers or 25 sisters or their descendants living, such inheritance shall descend to the father in fee.

If there be no father entitled to inherit.

VI. And be it enacted, That if the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a 30 mother and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brother or sister of the intestate as may be living, and the descendants of such as may be dead according to the same law of inheritance hereinafter provided, and if the intestate in 35 such case shall leave no brother or sister, the inheritance shall descend to the mother in fee.

And if there be neither father nor mother.

VII. And be it enacted, That if there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate: and if there 40 be several of such relatives all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate the common degree of consanguinity may be.

Succession of brothers and sisters and their descendants.

VIII. And be it enacted, That if all the brothers and sisters of 45 the intestate be living, the inheritance shall descend to such brothers and sisters; and if any of them be living and any be dead, then to the brothers and sisters and every of them who are living, and to the descendants of such brothers and sisters as shall have died, so that each

brother or sister who shall be living, shall inherit such share as would have descended to him or her, if all the brothers or sisters of the intestate who shall have died leaving issue, had been living, and so that such descendants shall inherit the share which their parent
5 would have received if living.

IX. And be it enacted, That the same law of inheritance prescribed in the last section, shall prevail as to the other direct lineal descendants of every brother and sister of the intestate to the remotest degree whenever such descendants are of unequal degrees.

As to such descendants in unequal degrees.

10 X. And be it enacted, That if there be no heir entitled to take under either of the two next preceding sections, the inheritance, if the same shall have come to the intestate on the part of his father shall descend :

If there be no heir under the two next preceding sections.

Firstly. To the brothers and sisters of the father of the intestate
15 in equal shares if all be living :

Secondly. If any be living, and any shall have died leaving issue, then to such brothers and sisters as shall be living, and to the descendants of such of the said brothers and sisters as shall have died.

20 Thirdly. If all such brothers and sisters shall have died, then to their descendants ; and that in all such cases the inheritance shall descend in the same manner as if all such brothers and sisters had been brothers and sisters of the intestate.

XI. And be it enacted, That if there be no brothers or sisters, or any of them, of the father of the intestate, and no descendants of
25 such brothers and sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as shall have died, or if all shall have died, then to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of
30 the father.

Further provision.

XII. And be it enacted, That in all cases not provided for by the preceding sections, where the inheritance shall have come to the intestate on the part of his mother, the same instead of descending to the brothers and sisters of the intestate's father, and their descendants as prescribed in the preceding tenth section, shall descend to
35 the brothers and sisters of the intestate's mother, and to their descendants as directed in the next preceding section ; and if there be no such brothers and sisters or descendants of them, then such inheritance shall descend to the brothers and sisters, and their descendants,
40 of the intestate's father as before prescribed.

Further provision—if the estate came by the mother's side.

XIII. And be it enacted, That in cases where the inheritance has not come to the intestate on the part of either the father or the mother, the inheritance shall descend to the brothers and sisters both of the father and mother of the intestate in equal shares, and to their
45 descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate.

If it came neither on father's or mother's side.

If intestate was illegitimate.

XIV. And be it enacted, That in case of the death without descendants of an intestate who shall have been illegitimate, the inheritance shall descend to his mother; and if she be dead it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate.

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Half blood to succeed with whole blood.

XV. And be it enacted, That relatives of the half blood, shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood; unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

Exception.

If there be failure of heirs.

XVI. And be it enacted, That on failure of heirs under the preceding rules, the inheritance shall descend to the remaining next of kin of the intestate, according to the rules in the English Statute of 15 distribution of the personal estate.

Co-heirs to take as tenants in common.

XVII. And be it enacted, That wherever there shall be but one person entitled to inherit according to the provisions of this Act, he shall take and hold the inheritance solely. And wherever an inheritance or a share of an inheritance shall descend to several persons under the provisions of this Act, they shall take as tenants in common in proportion to their respective rights.

Descendants &c., born after death of intestate, but begotten before it.

XVIII. And be it enacted, That descendants and relatives of the intestate begotten before his death, but born thereafter, shall in all cases inherit in the same manner as if they had been born in the life time of the intestate and had survived him.

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Illegitimate relations.

XIX. And be it enacted, That children and relatives who are illegitimate shall not be entitled to inherit under any of the provisions of this Act.

Tenancy by courtesy or in dower not affected.

XX. And be it enacted, That the estate of a husband as tenant by the courtesy, or of a widow as tenant in dower, shall not be affected by any of provisions of this Act, nor shall the same affect any limitation of any estate by deed or will, or any estate which, although held in fee simple or for the life of another is so held in trust for any other person, but all such estates shall remain, pass and descend as if this Act had not been passed.

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Case of children who have been advanced by settlement, &c.

XXI. And be it enacted, That if any child of an intestate shall have been advanced by the intestate by settlement, or portion of real or personal estate, or of both of them, and the same shall have been so expressed by the intestate in writing, or so acknowledge in writing by the child, the value thereof shall be reckoned for the purposes of this section only as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his next of kin according to law, and if such advancement be equal

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or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate.

XXII. And be it enacted, That if such advancement be not equal to such share, such child and his descendants shall be entitled to receive as much only of the personal estate, and to inherit so much only of the real estate of the intestate, as shall be sufficient to make all the shares of the children in such real and personal estate and advancement to be equal as near as can be estimated.

If such advancement be not equal.

XXIII. And be it enacted, That the value of any real or personal estate so advanced, shall be deemed to be that, if any, which may have been acknowledged by the child by an instrument in writing; otherwise such value shall be estimated according to the value of the property when given.

Value of property advanced how estimated.

XXIV. And be it enacted, That the maintaining or educating or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement within the meaning of this Act.

Educating, &c. not advancement.

XXV. And be it enacted, That the term "real estate" as used in this Act, shall be construed to include every estate, interest and right, legal and equitable, held in fee simple or for the life of another (except as in the twentieth section of this Act is before excepted) in lands, tenements and hereditaments in Upper Canada, but not to such as are determined or extinguished by the death of the intestate seized or possessed thereof, or so otherwise entitled thereto, nor to leases for years; and the term "inheritance," as used in this Act, shall be understood to mean real estate as herein defined, descended, or succeeded to, according to the provisions of this Act.

Interpretation.

XXVI. And be it enacted, That whenever in the preceding sections, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent or succession came, and whenever any person is described as having died, it shall be understood that he died before such intestate.

Interpretation.

XXVII. And be it enacted, That the expressions used in this Act, "when the estate shall have come to the intestate on the part of the father", or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.

Interpretation.

XXVIII. And be it enacted, That this Act shall apply to that part of this Province called Upper Canada and to none other.

Act to apply to U. C. only.