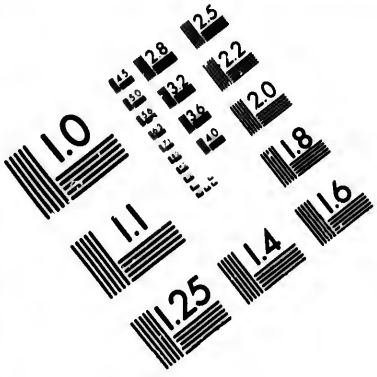

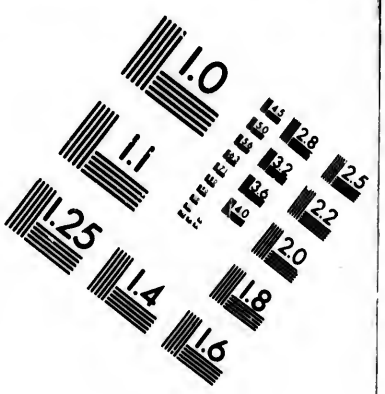

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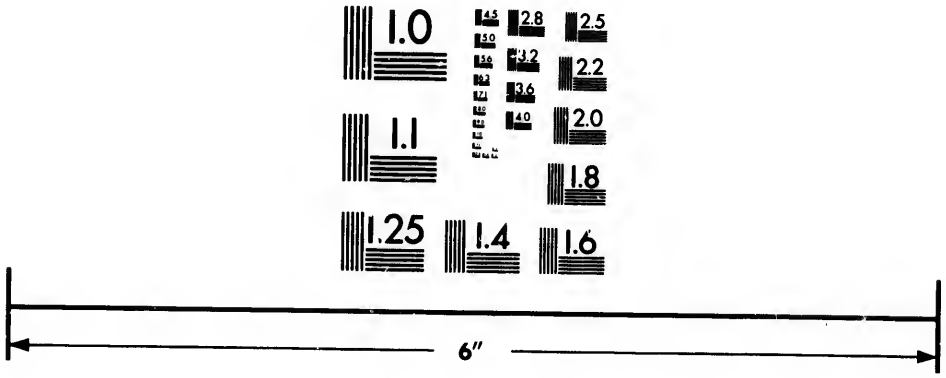

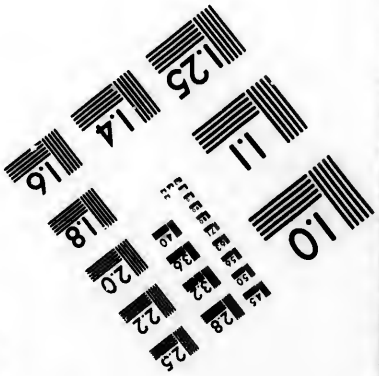

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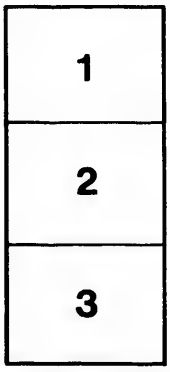

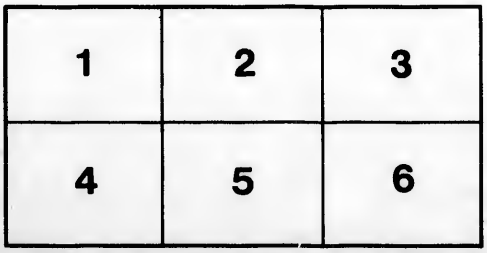

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MR. BIDWELL'S SPEECH

On the Intestate Estate Bill,

IN THE PROVINCIAL ASSEMBLY OF UPPER CANADA, JANUARY 24, 1831.

Mr. Bidwell explained the objects of the bill. By the present law, if a man died without having made a will, and left a son and other children, his land, instead of being divided equally, or in any other proportion, among his children generally, went entirely to the oldest son. In like manner, if such a man left no children, the land, instead of being divided among the nearest relatives of equal degree, went entirely to the oldest male. This principle of preferring the eldest child or other relative, did not obtain when they were all females; but in that case the land was equally divided among them all.

Another rule of the present law was, that if any one died, without a will, and without children, his father, if living, could in no case, succeed to his child's property, but it would go, in preference, to some other relation, however distant, or if none such could be found, it would even escheat to the Lord Manor or the Crown. In short, the father was excluded even from the possibility of succeeding to his child's lands.

In like manner, if a person so dying without a will, left relations of the whole blood, or not, any relations of the half-blood, even brothers or sisters, could not possibly inherit the real estate; but it would go to the Lord of the manor or the crown, to their exclusion.

It was obvious, upon the first blush, that such principles were absurd, unnatural, unjust. They were opposed to the strongest and most amiable emotions of the heart, and the plain dictates of natural justice. The bill was intended to abrogate them, and to substitute, in their place, the more equitable and reasonable rules which prevailed already, as it respected personal property; so that, if that bill became a law, whenever a man, not having made a will, should die, the estate would pass to all his children equally, or to his parents, if he left no children; and, if he did not leave parents or children, it would descend equally among his next kindred, without any distinction between them in favor of the eldest male. The first clause of the bill established this principle, and particularly described the order and mode of succession to an intestate estate, in almost every possible case: so that, in any case, any person of common understanding, by reading the clause, might ascertain who the heirs were, and what was the share of each. The second clause directed the personal property to be distributed in the same manner. The third clause declared that any property advanced by the intestate during his life, towards the portion of any child, should be considered and allowed for in the distribution, and deducted from the share of such child The fourth clause provided for the partition of the property. The Judge of the Probate or Surrogate Court was to decide, subject to a simple and easy appeal to the King's Bench, who the heirs were, and their proportionate shares, and was to appoint three disinterested freeholders, who were, accordingly, after being sworn, to divide the estate. He intended, in order to obviate some objections, to propose an addition to this clause, which he had prepared, and which would authorize these freeholders, when they should judge it best, on account of the smallness of the property or any local circumstances, instead of dividing it, to appraise it, and then, unless some one or more of the heirs would take it, with the consent of the rest, at that appraisal, and pay the others their proportion, the Judge was to have it sold, and the avails divided amongst all. The bill also provided, that any of the heirs, before receiving his share of the estate, might be required to give a bond to pay his proportion of any debt which the Executors or Administrators might afterwards be compelled to pay. This was analogous to a provision in the present law of distribution, by which, before a person could receive his part of the personal property, he could be required to give a similar bond. There was a further clause, authorizing an heir, who had been compelled to pay a debt of the intestate, to recover from his co-heirs their rateable proportions of such debt. These were the provisions of the bill; and it would be observed, that its operation was confined entirely to those cases where a man died without a will. It did not, in the least, interfere with the right which a man now had, to dispose, as he pleased, of his property by will. It applied only to those cases where he died without having made a will, or (which unfortunately was too common,) where he had made a will, but, from some informality, or other cause, it could have no effect.

As to the principle respecting the exclusion of parents and relations of the half-blood, he did not anticipate any objections against the measure which was proposed. A man was certainly under stronger obligations to his father than to any other human being; yet, that father could not, by the existing law, inherit his intestate estate, although he might have given it to him, or, certainly, by the care of his education and his prudent advice, enabled him to acquire it. The father, indeed, was in the next degree of kindred, the nearest friend, the most entitled by merit, by the ties of nature, and the best feelings and affections of the human heart, to inherit the estate. These claims were recognized by the laws of distribution, which, in such case, gave the personal estate to the father; but, by the law of descent, for artificial reasons from fictitious feudal principles, the father, the natural heir in such a case, and the mother, when there was no surviving father, were absolutely excluded from the inheritance. A more distant relation was preferred; and, if there was no other kindred, even the Lord of the Manor or the Crown. This exclusion of the parents was contrary to nature, and justice, and good policy, and the practice of every other civilized nation. There was

certainly no good reason for it in this Province; and he hoped, therefore, that, so far at least, the bill would meet with unanimous support.

But the most important feature of the bill, undoubtedly, was its abolition of the law of primogeniture, and its adoption of a system like that, which obtained in the distribution of personal estate, by which the real estate would be divided equally among all the children or the relatives, without regard to sex or seniority of age. He maintained that such a system was most just and reasonable in itself, best adapted to the condition of things in this Province, and most in accordance with the well known sentiments of the people, who were almost unanimously in favor of such a law. Where indeed was the man in the country, who, in his own case, would be willing, if he should die without a will, or if his will, after his death, should be found insufficient, that all his landed property should pass to his eldest son, and that his other children should be left destitute of any share of it, as if they were unworthy of a father's care and protection?

He knew it was difficult to argue against prejudices, and to reason people into conviction against the strong current of long cherished feelings. He believed that this was the chief obstacle to the bill. The law of primogeniture was derived from ancient times. It was venerable, therefore, in the eyes of all those who were habitually opposed to improvement, on account of the supposed danger of innovation. With such persons every ancient abuse, every superannuated institution, every law which had long ago ceased to be adapted to the spirit and circumstances of the age, was regarded with about the same reverence as the noblest principles of the constitution, or rather, was itself regarded and spoken of as a fundamental principle of the constitution. He expected, therefore, to hear the bill denounced, as it had been on former occasions, as subversive of the fundamental principles of the constitution. He could, however, easily shew, that it did not at all deserve such a terrible character; for, although the law of primogeniture was old, still it was itself an innovation on the constitution. It did not exist until after the principles of the constitution had been settled and established; those noble and life-giving principles of national freedom, which seemed destined by Providence politically to regenerate the world; such as trial by Jury, the right of representation, &c. Mr. Bidwell here quoted the opinions of Lord Holt, Sir William Blackstone, and others, to confirm this proposition. It would be observed, he continued, that these venerable men, these great luminaries of the law, expressed, in strong and decided terms, the opinion, not only that the law of primogeniture did not prevail at that early period, but, furthermore, that a law precisely similar in its principle to the bill then before the Committee was in force at that time. He was aware, that the latter part of this opinion had been controverted, although, as he thought, without much show of reason. All authors, however, agreed that the law of primogeniture did not then exist, but was introduced afterwards. That was sufficient for his argument. It overturned the objections, and ought to dispel the fears of those who thought that the law of primogeniture was one of the fundamental principles of the constitution, and should, therefore, be sacred from the rude and barbarous hand of innovation, and almost from the profane gaze of vulgar irreverence and incredulity. In fact, this law was a feudal principle and had existed no where but in feudal countries. It was unknown to the ancient nations, the Jews, the Greeks, the Romans, the Saxons, &c. And in proportion as nations emancipated themselves from the artificial rules and oppressive restraints of the feudal system, which was a tremendous system of despotism, this law appeared burdensome, unnatural and odious. It is true, it was still the law of England. And perhaps with her immense population, and the danger of making great alterations in the tenure of real property and the mode of its transmission, it might not be wise or prudent there to abrogate it. He thought, however, that there was no reason to conclude that it had contributed, in any degree, to the prosperity and exaltation of England. They were owing to other causes, such as the extent and activity of her commerce, the industry and frugality of her people, and the freedom and impartiality of her laws. It was in spite of the law of primogeniture, and not in consequence of it, that she had continued to flourish. And he believed, that it was because the natural tendency of this law was counteracted by various causes, constantly in operation, that it had not long ago been considered an intolerable evil. Could any sensible and unprejudiced person believe that England, at this moment, was more happy and prosperous than she otherwise would have been, on account of the immense accumulation of landed property in the hands of a comparatively few persons? Did not this law tend to produce such an accumulation? And were not thousands and thousands, in consequence of it, left without any home which they could really call their own, in a state of precarious and miserable dependence, and occasionally of extreme want, suffering, and wretchedness? of dependence, not upon their own honorable industry and careful frugality, but upon the caprice or charity of the wealthy few, or upon the certain, and sometimes sudden, influence of causes beyond their control or even comprehension? At the same time, this aristocratic tendency of the law of primogeniture to aggrandize a few and reduce the multitude to a servile and beggared, and frequently a distressed condition, was restrained and counteracted in England by various circumstances; so that the evil was mitigated and less felt than it otherwise would be. There was a vast and immense amount of wealth there, not vested in land, which was not subjected to the exclusive and unjust principles of this law, but which was divided equally among the children. The question, however, was not whether the law was well adapted to that country, but whether it was necessary or expedient in this.

He thought he had shown that it was not an essential part of the English constitution; and he was quite clear there was no reason to speak of it as a fundamental principle of our constitution. He argued that it was not originally a part of our laws. When the province of Quebec was divided into two provinces, the

laws of Canada were in force here, and so continued, until our Provincial Parliament, most unwisely as he thought, by one comprehensive and indiscriminating act, with a few exceptions, introduced the laws of England, some of which adopted laws, had already been, and others ought to be, repealed, being found unsuitable to this province. By that statute, the law of primogeniture was first established here. Before that, we had the same law as they now have in Lower Canada, by which intestate property, whether of lands or personal estate, was divided equally among all the children or other relatives. His bill, therefore, would introduce no new, unconstitutional, theoretical principle. It would merely restore the old law and the old system.

He believed that this was the only one of his Majesty's North American provinces in which the law of primogeniture existed. It certainly was not the law of Nova Scotia, or New Brunswick, or Lower Canada. They had tried a different system from that of primogeniture long enough certainly to have found out its evils, if there were any of serious importance; but who had ever heard of any one's proposing to do away with it, and to establish the law of primogeniture? And who would say that they were less friendly than ourselves to the principles and institutions of the mother country? Would any one, then, say that the bill was unconstitutional, or that, if it became a law, as he was confident it would in a few years, they would not still have the constitution, in all its vigor, purity and perfection? Why should Upper Canada be distinguished from her sister provinces, by this relic of feudal law?

He defended the constitutionality of the bill in another way. A few years ago the Legislative Council passed a bill, which was unfortunately thrown out in that House, by the casting vote of their Speaker, containing the very principle of that bill. No one, he was sure, could suspect that hon. body, the venerable aristocracy of the country, of any insidious designs of a democratical nature, or of any hostile *enterprise* against our constitution. A principle adopted and sanctioned by them ought certainly to be above suspicion, in the eyes of those whose prejudices conjure up so many dreadful consequences for this bill; for there certainly was *nothing* in that august body but loyalty, pure loyalty.

He hoped, then, that he had brought the bill to rest upon its own merits; and that honorable members, instead of being in horrors at its supposed unconstitutional spirit, and instead of dwelling on the objections which might be urged against the establishment in our mother country of such a law, would be prepared to listen with unprejudiced minds to the arguments in favor of its adoption here.

He argued that the principles of the bill were precisely such as the natural affections of every parent would at once dictate. In whose bosom had nature planted an aristocratic preference of the eldest son, and a contempt and disregard of his other children? Who would give all he had to his strongest, and oldest, and most capable child; and leave the others, who were more helpless, and more worthy of compassion, protection, and assistance, destitute, and unprovided for, as if they were bastards and intruders and unworthy of a father's care? He did not believe that such a wretch, (for a father with such aristocratic feelings deserved no better appellation,) could be found. The voice of nature, in every parent's bosom, would argue, with a pathos and eloquence irresistable, in favor of this bill.

Justice too, austere and inflexible justice, would confirm the claims of natural affection: for nothing could be more just than that a parent should provide for his own offspring, who owe their existence to him. Justice to them and justice to the community, who may otherwise be burthened with their support, equally require it.

A bill that is founded upon plain principles of natural affecton and natural justice, and that will merely substitute these principles, in place of the arbitrary rules of an artificial and unnatural system, ought to require no further argument.

The measure was recommended by a wise policy. Lord Bacon had said that married men were better subjects than those who were unmarried: for they had given hostages to fortune. A man with a family had a peculiar interest in the peace of his country and in the stability of the Government, which protected him and those who were dear to him. In the same manner, a freeholder had a peculiar interest in the public tranquility and in the permanency of those institutions which secured his property. If one only out of six (or any number of) children inherited the whole of their father's land, the others would feel less interest to prevent and suppress intestine convulsions, or to repel an enemy, than if they had succeeded to a share of the patrimonial property. What interest, indeed, could they have in maintaining a system of law, that was unjust in principle and injurous to them in its operation? Nothing in his opinion, could be more desirable, as a matter of domestic policy, than to encourage among the lower orders, who constituted the mass of the community, and who composed the physical force of the country, the acquirement of a permanent landed estate. Instead of a peasantry, let us have a yeomanry; and the country, on the one hand, would be more free, and all its liberal and popular institutions be supported with more spirit; and, on the other, the Government, within the just limits of its constitutional power and influence, would be vastly stronger. Mr. Bidwell here referred to the late revolution in France, and spoke with admiration of the conduct of the French people, their jealous love of liberty and detestation of despotism, their enthusiastic and heroic resistance of a cruel but otherwise contemptable tyrant, and, more than all, their wonderful moderation, forbearance and self-restraint in the moment of victory, although they were under the direction and control of no regular authority, were intoxicated with success, with arms in their hands, and smarting under a deep sense of the most unprovoked cruelties and the most atrocious injuries. The law of primogeniture had been abolished in France during the time of Napoleon; and he could not but believe that this moderation and forbearance, which formed such a striking contrast to the fury and horrors of their former revolution, were caused by the equal division of property among the people, by which

it had become the interest, not merely of a few wealthy aristocrats, but emphatically of the people, of the great body of the nation, to prevent, as far as possible, tumult and disorder, and all violation of the rights of property. And so much were the French people, after a trial of both systems, attached to their present law, in preference to the law of primogeniture, that, even in the House of Peers, notwithstanding the natural prejudices of that body in favor of any measure of an aristocratic tendency, a proposition, emanating he believed from the Government, to restore the law of primogeniture, was rejected. He had understood that the present law of France not only parted the property equally in cases of intestacy, but absolutely prevented a man from disposing of it by will in any other way. He thought this an unjust restriction. The law of equal partibility had not, therefore, in that country, altogether a fair experiment. It labored under some disadvantages; yet, notwithstanding those disadvantages, the French people, after witnessing the practical operations of both, preferred their present system to the old rule of primogeniture. And as one of the advantages of the former over the latter, it might be observed, that, at this moment, the number of paupers was by no means so great in France as in England, in proportion to their respective populations.

An equal division of property in a country was most favorable to its morality and happiness. There were two conditions in life dangerous to virtue and hostile to real and lasting comfort and peace. The one was, vast wealth, which enabled its master to gratify every desire of his heart: the other, extreme poverty, which exposed its victim, by his urgent wants and his abject penury, to strong temptations. He would not, to be sure, interfere with a man's right to dispose of his property; nor would he limit the extent of wealth, which an individual might possess. So far, he would not legislate against the accumulation of property. But, on the other hand, he would not, by municipal regulations which were certainly not demanded, and which he thought were forbid by natural affection and justice, increase and promote a disparity of property in the country. He was sure the country would be more free, more moral, more happy, if there was a pretty equal diffusion of property, than if it were principally accumulated in the hands of a few. He wished there might be none very wealthy, and none very poor.

He took notice of the objections to the bill which were contained in a report made last session by a Committee of the Legislative Council. A number of those objections, which were urged against the details of the measure and the mode of carrying it into execution, would be entirely obviated by the amendments, which he had mentioned to the bill. The committee, indeed, admitted that by proper provisions those difficulties might be removed. No argument, therefore, could be derived from them against the measure itself. And they deserved no further notice; for the occasion for them no longer existed, as they were now, at all events, sufficiently guarded against, in the measure in its present shape.

That Committee could not perceive any difference between the state of society and the circumstances of the people in this province and those of England, which would render it more expedient to abolish the law of primogeniture here than there. He could mention, however, some reasons for such a step here, which would not apply there. In that country, a great proportion of its wealth was embarked in commercial pursuits, or invested in the funds, and was therefore exempt from the operations of the law of primogeniture; but in this country, where men were chiefly engaged in agricultural pursuits, and laid out the greatest part of their gains in the improvement of their farms, there was comparatively but little personal property, and of course but little property not under the operation of this law. The evils and injustice of this exclusive law reached, therefore, a greater proportion of cases here than in England.

That country was oppressed by a burthensome and redundant population. One of the arguments which was regularly urged in favor of the law of primogeniture there was, that a contrary system would promote more than the existing law, an increase of their population. Just so far, however, as it would produce such an effect, it would be expedient and wise to adopt it here, where it was a capital object to promote and favor an increase of our population.

The accumulation of landed property had already been felt to be a great evil in this country. One of the arguments in defence of the assessment law was its strong and manifest tendency to resist and destroy this accumulation, and to divide the land more equally. The same policy recommended his bill; for it had the same tendency, though its operation was more gradual and less violent. He could not see how any one could consistently support the principle of the assessment law, and yet oppose this bill, on the ground of its influence being adverse to the formation of a landed aristocracy.

Almost the whole of the argument against the bill, in the report of the committee of the Legislative Council, rested on the assumption, that the bill would produce a minute and inconvenient subdivision of property. Estates, it was supposed, would, in a short time, be frittered away, so that the share of each individual would be too small to be of any value; and great confusion, uncertainty, and vexation would be the inevitable, and not very distant result. Now all this was mere assumption. And although numerous cases were supposed, to illustrate the argument, they were chiefly imaginary cases, and certainly were extreme cases. Such were the instances taken from the county of Kent in England, where the law of Gavel Kind prevailed. There were various incidents also to that law, which rendered it unpopular; such as its peculiar rules of Dower, Tenancy by the Curtesy, alienation of minors &c. The evils, besides, of this minute and vexatious subdivision would be effectually guarded against by the provision he had mentioned for the sale of the property, and a distribution of its avails, instead of a division of the property itself, in those cases, which, after all, must be rare, where such evils could reasonably be apprehended. Moreover, the experience of other countries furnished a complete and satisfactory answer to this objection to the bill. The principle of

the equal division of intestate estates prevailed in the United States. It existed among them while they were British Colonies. It had been long tried, and its effects well ascertained. These evils of a minute subdivision of property would be as great there, and as certain consequences of the law, as if their form of Government were like ours. But none of these inconveniences were found to follow. On the contrary, notwithstanding the operation of this law, there was a manifest tendency there to an accumulation of property in the hands of a few, and to a gradual creation of an aristocracy. Indeed there was a constant tendency, in the natural course of things, in all countries, to accumulation, rather than to the subdivision and diminution of estates. In France, where the right of primogeniture was done away, and estates were partible, Baron De Stael says, that in spite of the law as it is, by which an equal division takes place among the children, it seems that property has a tendency to accumulate. The example and experience of our sister colonies also are equally opposed to these imaginary evils; and the opinion not merely of prejudiced persons, but of candid and enlightened men, who have had great opportunities of observing its actual, and practical operation, is decidedly in favor of the system existing there, of an equal division of intestate estates. Mr. Bidwell here read from the evidence before the Committee of the House of Commons on Canada affairs, the sentiments of Mr. Grant, a Montreal lawyer, in support of this position. However plausible, therefore, the statement of these evils may be in speculation, they are not found to exist, to any serious extent, where the mode proposed in the bill for the regulation of intestate property has been tried.

Sometimes it has been argued that the law of primogeniture was conducive to a high state of agriculture in a country, and that a law of equal partibility of property, such as the bill before the Committee, prevented its being carried to the same degree of perfection, and was, in fact, quite unfavorable in that respect. But upon this subject, besides the example of the U. S., which, probably, as it respected agricultural operations, would not suffer in comparison with this province, he should refer to the Netherlands. Here he cited an opinion given by an English lawyer, Mr. Humphreys. That gentleman, in the preface to the 2d edition of his work on real property, says he has left out the comparison between primogeniture and equal partibility, because, "since the former publication, he has perused the civil code of the Netherlands, and has traversed the country, in almost every direction. The one establishes equal partibility; the other exhibits a country cultivated like a garden, with a peasantry thoroughly at its ease."

It has sometimes been said, that, though the principle of the bill was just and good, there was no necessity for such a law, as any one who chose could make a will, and thereby prevent the injustice of the present system. But, in the first place, he denied that every person could make a will. A married woman or a person under the age of 21 years could not make a will, however strongly they might wish to direct their property in a more equitable mode of descent. In the next place, a great proportion of those who had a legal capacity to divide their property, neglected to do it. Some were prevented by superstitious notions; some by indecision as to the particulars of their wills; some by a reluctance to do any thing which brought them, as it were, near to the close of life; some, by a habit and temper of procrastination, and some, by a consciousness of their ignorance and inability to draw a will properly, or by the expectation of some change in their property or family. From these, and other causes, many persons died without a will, who would by no means have been satisfied with the rule of descent which the law applied to their property.

Again, it should be remembered, that in many cases, where wills were made, they would, from various causes, fail to accomplish the Testator's intentions. In the first place, it was not in general an easy matter, by any means, to draw a will correctly. It required no ordinary professional skill. To employ a person possessing the necessary qualifications was expensive certainly, and frequently inconvenient. Others, therefore, were employed. The consequence was, that many wills were altogether void; others were defective and incomplete, and so uncertain and ambiguous, as to lay a foundation for disputes and law suits. And here it should be observed, that in case of doubt on the construction of a will, the Courts were bound to lean in favor of the heir. A will might be good as it respected personal property, and void as to lands. Such was the case of a will having but two witnesses. If a man, who has provided for his eldest son during his life, should, by such a will, leave the homestead to his youngest son, and the principal part of his goods and chattels to his eldest son, the latter would take the goods by virtue of the will and the land by virtue of the law of primogeniture. Wills, too, were often made on a death bed; and then they were made hastily, and amidst circumstances of gloom, and pain, and distraction, and weakness of mind and body. A disposal of property, made under such circumstances, could rarely be just or prudent. Besides, when a will was made with all suitable deliberation, and with all necessary care and skill, it was subject to occurrences, which might render it nugatory, or even make it operate contrary to the Testator's intention. A change in his family by death, marriage, birth, &c. the purchase or sale of a lot of land, or the alteration which time alone might produce in the value of property, might have this effect. It was difficult also to foresee all the contingencies, which might arise after his death. He illustrated this remark by a case just mentioned to him, where a father, by his will, left his property among his children equally. The eldest son became prodigate, and soon spent his share. The youngest son died before he was of age. He wished his property not to go to his eldest brother, to be squandered away; but he was under age, and could not prevent it. The elder brother took it all, and soon spent it. In this case the father, no doubt, thought that he had guarded carefully against the unjust operation of the present law; yet his wishes and intentions in a certain degree, were nevertheless frustrated. These considerations showed, that the necessity for a more just law of descent was not superceded by the right which men possessed of disposing of their estate by will, and which afforded only a partial and uncertain relief.

While the evils and injustice of the present law had too often been witnessed, no one had seen any good effects from it. The attempt to build up an aristocracy in this province, by giving all to the eldest son, and thus making an aristocrat of him and democrats of his brothers and sisters, was ridiculous and absurd. Many of our honorable Legislative Councillors, the aristocratic branch of the Provincial Legislature, selected from the whole province, in the manner prescribed by the constitution, were not oldest sons, and therefore not aristocrats, according to the doctrine of primogeniture aristocracy; which single fact disproved the alleged constitutional necessity of such a law, and demonstrated its political inutility in this province. Its unhappy effects generally had been to make the eldest son a rogue, and prodigate spendthrift. He had heard of some such melancholy instances; and the exceptions, though highly honorable, were few. It might, indeed, be said that he would be a protector of the family; that he would employ the patrimonial estate with affectionate and generous care in their support, which he could not do, if he had only an equal share with the others. This was all very fine; but, unfortunately, it was assumed contrary to our daily observation, and general experience and the known principles of human nature; and it was visionary and imprudent to have our laws founded upon such a very charitable but erroneous assumption. The youngest children had just as good a right, by nature and justice, to a share of their father's property, as their older brother; frequently they had a better right, from his having been provided for, and established in the world, by his father, before his death, and their not having received any such assistance. Indeed, if one must be preferred, it certainly ought to be the youngest and weakest. To leave the younger children dependent on the mere charity and liberality of the eldest was therefore inhuman and unjust. Such a state of dependence was unfavorable to virtue. It was a miserable condition. It inspired contempt, on the one side, and suspicion and jealousy, on the other. Those who were thus dependent would feel themselves intruders, and perhaps be so regarded by their brother; and, from that moment, there must be an end of all cordial affection.

By the present law, the personal property was equally divided; so was the real estate, when there were only females. Suppose any one should propose to alter the law in this respect, and in both of

these cases to give all to the eldest child. Would not such an attempt be universally scouted? But he could not see, if the principle of the law of primogeniture was good in one case, why it was not good in another.

Again, suppose the law of primogeniture was not in force here, but a law like this bill. Would any one, he asked, would any one now seriously attempt to introduce the law of primogeniture? And, if not, why should we retain a law introduced by an indiscriminate adoption of English laws, but not suited to the state and circumstances of the province?

He maintained that the English Parliament had themselves, to a certain extent, even in England, adopted and sanctioned the principle of this bill. When a man, who had an estate in land during the life of another, died before the death of the other, the Parliament had said that the estate should not go entirely to the eldest son, but be equally divided among all the children. All the inconveniences apprehended from the bill would equally result from such a law; yet we see the opinion of the Parliament on the subject. We had their authority, therefore, in favor of the principle of the present bill.

When an older son succeeded to all his father's estate, in consequence of there being no will, he was expected to divide it fairly with his brothers and sisters. If he refused to do it, he was branded as an unfeeling and dishonest wretch. What could be a stronger proof of the injustice of our law than this general sentiment? Must not a law be unjust, and in its tendency unfavorable to morals, which tempts a man to be inhuman and dishonest? He really wished honorable members would think of its injustice. Let them once look at a family bereaved of a father's kind care and affection, expelled from their native home, which was endeared by a thousand tender recollections, and turned out, beggars and outcasts, upon the cold charities of the world, merely that we might have a lordly aristocracy of land holders built up in this province.

They might be told to adhere to the institutions of the mother country, and to introduce no innovations. He would certainly be in favor of every institution calculated to make the people happy and the Crown respected.

[redacted] cumstances of the country; and some of the best we had not, at least in practice; such as Judges holding their offices during good behavior, &c. He asked, who would argue in favor of the adoption of the game laws, though they were a part of her institutions? So in England, land could not be sold for debt and was not liable upon a man's death to be taken in any way for debts, unless they were secured by an instrument under seal. This was a part of the same feudal system as the law of primogeniture, quite as ancient, reasonable and just. Yet the British Parliament themselves abolished it in their Colonies; so little respect had they for the establishment of a landed aristocracy here.

It was sometimes objected against the bill, that after all it would not meet the wants of the people. Look at wills, it was said, and see how few are drawn on the principle of this bill—but this was a mistake. In general, property was divided upon this very principle. It was divided equally among children, except when some of them had received their share or a part of it, which was in such a case deducted. He appealed to honorable members, whether they would dispose of their property in this mode? Did not they love one child as much as another? and if so, would not they be as kind to one as another? It was not to be expected that it would be exactly adapted to every case. No law could do this. But it would answer in general better than any other. This, however, was not the question. It was not, whether this bill was the best of all systems that could be devised; but whether it was better than the present law. If it was, it should be adopted and established, until a better was proposed.

An objection, which had been made on a former occasion, just then occurred to his remembrance. It was said, the country was small, and if the bill became a law, it would lead to a division of the land, and the country would be stripped of its wood. Gentlemen, he saw, were smiling; but he would assure them that the objection was seriously urged. For his own part, in anticipation of it, he would only say, that, if the country were small, there was a greater necessity for a division of estates; and he would ask, where was the member who wished to have large tracts of land remain a wilderness, uncleared of its wood and uncultivated? Which of these alternatives did honorable gentlemen desire? that the great body of the people should be landholders and electors? or that they should be a dependent population, hanging loose upon society, and without any considerable interest in its prosperity and peace?

He took notice of an objection which had been urged against the clause in the bill which authorized an heir, who had been compelled to pay a debt of his ancestor, to recover from his co-heirs a rateable proportion of such debt. It had been said that this would open the door for immense litigation. He was satisfied that this objection was not well founded. There were not many cases, where an heir would be compelled to pay such a debt; and in these cases, the other heirs would seldom refuse to pay their share, especially as they knew it could be recovered from them with costs, if they were obstinate; so that really there would hardly ever be a law suit from this cause. The justice of the clause was evident.

He said that the people very generally desired such a law. This was a strong argument in favor of any measure, especially if it related chiefly to the regulation merely of their property, and was not unjust in its principles. They were dissatisfied with the present law. They considered it unjust, absurd and burdensome; and they wanted to be relieved from it. Why could not this relief be given? Would it curtail the prerogatives or constitutional influence of the Crown? No—Would it [redacted] the powers of the popular branch? No! Why then could not the wishes of the people, in a matter concerning themselves chiefly, be gratified? Why, merely because a few persons, who happened to be in influential stations, under the influence of prejudices, thought they could judge what the people wanted better than the people themselves.

He did not know that the bill would pass into a law this session, or next session, or the following session. He was not sure even that it would be entertained by the House, at that time; but he was confident, that at no remote period a measure so much called for would be adopted. No man or body of men could long successfully resist public opinion, in any country, much less in a country where there could be a free discussion of public matters. They might, indeed, for a time oppose and obstruct the stream; but it would be continually accumulating and acquiring greater strength, until finally it would sweep away all opposition. When he depended upon the force of public opinion, to carry this measure into a law, he relied upon a principle, as simple, to be sure, but as certain and as powerful, as the law of gravitation. He knew that the voice of the people was in favor of this measure. The more their attention was called to the injustice and evils of the present law, by discussion, and by its practical operation, the stronger would be their desire and their demand for something like the bill before the committee. He had no doubt, therefore, of the ultimate result.

S. MILES, PRINTER.

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