

STATUTES,

OF

Upper Canada,

PASSED IN THE FOURTH SESSION OF THE ELEVENTH PROVINCIAL
PARLIAMENT.

MET AT YORK ON THE NINETEENTH DAY OF NOVEMBER 1833, AND PROROGUED ON THE
SIXTH DAY OF MARCH 1834, IN THE FOURTH YEAR OF THE REIGN OF
WILLIAM IV.

SIR JOHN COLBORNE, K. C. B.

LIEUTENANT GOVERNOR.

ANNO DOMINI 1834.

CHAP. I.

*AN ACT to amend the Law respecting Real Property, and to render
the proceedings for recovering possession thereof in certain cases, less
difficult and expensive.*

[Passed, 6th March, 1834.]

WHEREAS it is expedient to amend the Law relating to Real Es-
tates, by making certain alterations in the Law of Inheritance, and re-
specting the conveyance of Real Property by Devise and by Deed, and
in regard to Dower, and the limitation of actions and suits relating to
Real Property, and for simplifying the remedies for trying the rights
thereto; *Be it therefore enacted* by the King's Most Excellent Majesty,
by and with the advice and consent of the Legislative Council and As-
sembly of the Province of Upper Canada, constituted and assembled by
virtue of and under the authority of an Act passed in the Parliament of

Preamble.

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

Great Britain, entitled, “An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s Reign, entitled, ‘An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province;” and by the authority of the same, That in every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried farther back than the circumstances of the case and the nature of the Title shall require, the person last entitled to the Land shall for the purposes of this Act be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case, the person from whom he inherited the same, shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and in like manner, the last person from whom the land shall be proved to have been inherited, shall in every case be considered to have been the Purchaser, unless it shall be proved that he inherited the same.

Heir entitled under a will shall take as devisee, and a limitation to the grantor or his heirs shall create an Estate by purchase.

II. *And be it further enacted by the authority aforesaid,* That when any Land shall have been devised by any Testator, who shall die after the first day of July, one thousand eight hundred and thirty-four, to the heir or to the person who shall be the heir of such Testator, such heir shall be considered to have acquired the Land as a Devisee and not by descent; and when any Land shall have been limited by any assurance, executed after the said first day of July, one thousand eight hundred and thirty-four, to the person, or to the heirs of the person who shall thereby have conveyed the same Land, such person shall be considered to have acquired the same as a purchaser, by virtue of such assurance, and shall not be considered to be entitled thereto, as of his former estate or part thereof.

When heirs take by purchase under limitations to the heirs of their ancestor, the land shall descend as if the ancestor had been the purchaser.

III. *And be it further enacted by the authority aforesaid,* That when any person shall have acquired any land by purchase, under a limitation to the heirs, or to the heirs of the body of any of his Ancestors, contained in an assurance, executed after the said first day of July, one thousand eight hundred and thirty-four, or under a limitation to the heirs, or to the heirs of the body of any of his Ancestors, or under any limitation having the same effect, contained in a Will of any Testator who shall depart this life after the said first day of July, one thousand eight hundred and thirty-four, then, and in any of such cases, such land shall descend, and the descent thereof shall be traced, as if the Ancestor named in such limitation had been the purchaser of such land.

IV. *And be it further enacted by the authority aforesaid,* That no Brother or Sister shall be considered to inherit immediately from his or her Brother or Sister, but every descent from a Brother or Sister shall be traced through the Parent.

Brothers and Sisters shall trace descent through their Parent.

V. *And be it further enacted by the authority aforesaid,* That every lineal Ancestor shall be capable of being heir to any of his issue, and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of their being no descendant of such lineal ancestor, so that the Father shall be preferred to a Brother or Sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

VI. *And be it further enacted and declared by the authority aforesaid,* That none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed, and also that no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting, until all his male paternal ancestors and their descendants shall have failed, and that no female maternal ancestor of such person nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

The male line to be preferred.

VII. *And be it further enacted and declared,* That where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor or her descendants; and when there shall be a failure of male paternal ancestors of such person and their descendants, the mother of his more remote male maternal ancestor and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor and her descendants.

The mother of the more remote male ancestor to be preferred to the mother of the less remote male ancestor.

VIII. *And be it further enacted by the authority aforesaid,* That any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall

Half-blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree; if on the part of a female ancestor, after her.

be a male, and next after the common ancestor when such common ancestor shall be a female, so that the brother of the half blood on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother, shall inherit next after the mother.

IX. And be it further enacted by the authority aforesaid, That when the person from whom the descent of any land is to be traced shall have had any relation who having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such Land shall have escheated in consequence of such attainder, before the first day of July, one thousand eight hundred and thirty four.

After the death of a person attainted his descendants may inherit.

X. And be it further enacted by the authority aforesaid, That after the passing of this Act proof of entry by the heir after the death of the ancestor shall in no case be necessary in order to prove title in such heir, or in any person claiming by or through him.

Entry by the heir shall not be necessary to complete a title by descent.

XI. And be it further enacted by the authority aforesaid, That this Act shall not extend to any descent which shall take place on the death of any person who shall die before the first day of July, one thousand eight hundred and thirty-four.

This Act not to extend to any descent before first July 1834.

XII. And be it further enacted by the authority aforesaid, That where any assurance executed before the said first day of July, one thousand eight hundred and thirty-four, or the Will of any person who shall die before that day, shall contain any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir, if this Act had not been made, shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living on or after the said first day of July, one thousand eight hundred and thirty four.

Limitations made before first July 1834 to the heirs of a person then living, shall take effect as if this Act had not been made.

XIII. And be it further enacted by the authority aforesaid, That where a Husband shall die beneficially entitled to any land for an interest which shall not entitle his Widow to dower out of the same at Law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of

Widows to be entitled to dower out of equitable estates.

inheritance in possession, (other than an estate in joint tenancy,) then his Widow shall be entitled in equity to dower out of the same land.

XIV. *And be it further enacted by the authority aforesaid,* That when a Husband shall have been entitled to a right of entry or action in any land, and his Widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her Husband shall not have recovered possession thereof; *Provided* that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

Seisin shall not be necessary to give title to Dower.

XV. *And be it further enacted by the authority aforesaid,* That no Widow shall hereafter be entitled to dower ad ostium ecclesie, or dower ex assensu patris.

Certain descriptions of Dower abolished.

XVI. *And be it further enacted by the authority aforesaid,* That after the first day of July, one thousand eight hundred and thirty four, no person shall make an entry or distress, or bring an action to recover any land or rent but within twenty years next after the time at which the right to make such entry or distress or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action shall have first accrued to the person making or bringing the same.

No Land or Rent to be recovered but within twenty years after the right of action accrued to the claimant, or some person whose Estate he claims.

XVII. *And be it further enacted by the authority aforesaid,* That in the construction of this Act, the right to make an entry or distress, or bring an action to recover any Land or Rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say, when the person claiming such Land or Rent, or some person through whom he claims shall, in respect of the Estate or Interest claimed, have been in possession or in the receipt of the profits of such Land, or in receipt of such Rent, and shall, while entitled thereto, have been dispossessed or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or Rent were or was so received; and when the person claiming such Land or Rent shall claim the Estate or Interest of some deceased person who shall have continued in such possession or receipt, in respect of the same Estate or Interest, until the time of his death, and shall have been the last person entitled to such Estate or Interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued

When the right shall be deemed to have accrued—

in the case of an Estate in possession;

on dispossession;

on abatement or death;

at the time of such death; and when the person claiming such Land or Rent shall claim in respect of an Estate or Interest in possession, granted, appointed, or otherwise assured by any Instrument other than a Will, to him or some person through whom he claims, by a person, being in respect of the same Estate or Interest, in the possession or receipt of the profits of the Land, or in receipt of the Rent, and no person entitled under such Instrument shall have been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such Instrument; and when the Estate or Interest claimed shall have been an Estate or Interest in reversion or remainder, or other future Estate or Interest, and no person shall have obtained the possession or receipt of the profits of such Land, or the receipt of such Rent, in respect of such Estate or Interest, then such right shall be deemed to have first accrued at the time at which such Estate or Interest became an Estate or Interest in possession; and when the person claiming such Land or Rent, or the person through whom he claims shall have become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken: *Provided always*, that until the person deriving title to Land in this Province as the Grantee of the Crown, or his Heirs or Assigns, or some or one of them, by themselves, their Servants or Agents, shall have taken actual possession of the Land granted, by residing thereupon or by cultivating some portion thereof, the lapse of twenty years shall not bar the right of such Grantee, or any person claiming by, under or through him, to bring an action for the recovery of such Lands, unless it can be shewn that such Grantee or person claiming by, under or through him, while entitled to the Land, had knowledge of the same being in the actual possession of some other person not claiming to hold by, from or under the Grantee of the Crown, (such possession having been taken while the said Lot was in a state of nature,) in which case, the right to bring such action shall be deemed to have accrued from the time that such knowledge was obtained: *Provided also*, that when any right to make an entry or distress, or to bring an action to recover any Land or Rent, by reason of any forfeiture or breach of condition, shall have first accrued in respect of any Estate or Interest in reversion or remainder, and the Land or Rent shall not have been recovered by virtue of such right, the right to make an entry or distress, or bring an action to recover such Land or Rent, shall be deemed to have first accrued in respect of such Estate or Interest, at the time when the same shall have become an Estate or Interest in possession, as if no such forfeiture or breach of condition had happened: *Provided also*, that a right to make an entry or distress, or to bring an action to recover any

on alienation;

in case of future Estates;

in case of forfeiture or breach of condition.

in case of Lands granted by the Crown and not yet cultivated or improved;

where advantage of forfeiture is not taken by remainder man, he shall have a new right when his Estate comes into possession.

Reversioner to have a new right.

Land or Rent, shall be deemed to have first accrued in respect of an Estate or Interest in reversion, at the time at which the same shall have become an Estate or Interest in possession, by the determination of any Estate or Estates, in respect of which such Land shall have been held or the profits thereof, or such Rent shall have been received, notwithstanding the person claiming such Land, or some person through whom he claims shall, at any time previously to the creation of the Estate or Estates which shall have determined, have been in possession or receipt of the profits of such Land, or in receipt of such Rent.

XVIII. *And be it further enacted by the authority aforesaid,* That for the purposes of this Act, an Administrator claiming the Estate or Interest of the deceased person of whose Chattels he shall be appointed Administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of Administration.

An Administrator to claim as if he obtained the Estate without interval after death of deceased.

XIX. *And be it further enacted by the authority aforesaid,* That when any person shall be in possession or in receipt of the profits of any Land, or in receipt of any Rent, as Tenant at Will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such Land or Rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined: *Provided always,* that no Mortgagor or Cestui que Trust shall be deemed to be a Tenant at Will, within the meaning of this clause, to his Mortgagor or Trustee.

In the case of a Tenant at Will, the right shall be deemed to have accrued at the end of one year;

case of Mortgagor or Cestui que Trust.

XX. *And be it further enacted by the authority aforesaid,* That when any person shall be in possession or in receipt of the profits of any Land, or in receipt of any Rent as Tenant from year to year or other period, without any Lease in writing, the right of the person entitled, subject thereto, or of the person through whom he claims to make an entry or distress, or to bring an action to recover such Land or Rent, shall be deemed to have first accrued, at the determination of the first of such years or other periods, or at the last time when any Rent payable in respect of such tenancy shall have been received, (which shall last happen.)

No person after a Tenancy from year to year to have any right but from the end of the first year or last payment of Rent.

XXI. *And be it further enacted by the authority aforesaid,* That when any person shall be in possession or in receipt of the profits of any Land, or in receipt of any Rent by virtue of a Lease in writing, by which a Rent

Where rent amounting to Twenty Shillings reserved by a Lease in writing shall have been wrongfully received, no right to accrue on the determination of the Lease, but at the time the Rent was wrongfully received.

amounting to the yearly sum of Twenty Shillings or upwards shall be reserved, and the Rent reserved by such Lease shall have been received by some person wrongfully claiming to be entitled to such Land or Rent in reversion, immediately expectant on the determination of such Lease, and no payment in respect of the Rent reserved by such Lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such Land or Rent, subject to such Lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such Lease, shall be deemed to have first accrued at the time at which the Rent reserved by such Lease was first so received by the person wrongfully claiming as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such Lease to the person rightfully entitled.

A mere entry not to be deemed possession.

XXII. *And be it further enacted by the authority aforesaid,* That no person shall be deemed to have been in possession of any Land within the meaning of this Act, merely by reason of having made an entry thereon.

No right to be preserved by continual claim.

XXIII. *And be it further enacted by the authority aforesaid,* That no continual or other claim upon or near any Land shall preserve any right of making an entry or distress, or of bringing an action.

Possession of one Coparcener, &c. not to be the possession of the others.

XXIV. *And be it further enacted by the authority aforesaid,* That when any one or more of several persons entitled to any Land or Rent as co-parceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such Land or of the profits thereof, or of such Rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same Land or Rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them.

Possession of a younger brother, &c. not to be the possession of the heir.

XXV. *And be it further enacted by the authority aforesaid,* That when a younger brother or other relation of the person entitled, as heir to the possession, or receipt of the Profits of any Land, or to the receipt of any Rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

XXVI. *Provided always, and be it further enacted by the authority aforesaid,* That when any acknowledgment of the Title of the person

entitled to any land or rent shall have been given to him or his Agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt, or by the person by whom such acknowledgment shall have been given, shall be deemed according to the meaning of this Act to have been the possession or receipt of, or by the person to whom or to whose Agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at, and not before the time at which such acknowledgment or the last of such acknowledgments, if more than one was given.

Acknowledgment in writing given to the person entitled, or his Agent, to be equivalent to possession or receipt of rent.

XXVII. Provided also, and be it further enacted by the authority aforesaid, That when no such acknowledgment as aforesaid shall have been given before the passing of this Act, and the possession or receipt of the profits of the land or the receipt of the rent shall not at the time of the passing of this Act have been adverse to the right or title of the person claiming to be entitled thereto, then such person or the person claiming through him may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or interest, at any time within five years next after the passing of this Act.

Where possession is not adverse at the time of passing this Act, the right shall not be barred until the end of five years afterwards.

XXVIII. Provided always, and be it further enacted by the authority aforesaid, That if at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, that is to say,—Infancy, Coverture, Idiocy, Lunacy, unsoundness of Mind, or absence from this Province, then such person or the person claiming through him may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall have first accrued as aforesaid, shall have ceased to be under any such disability, or shall have died, (which shall have first happened).

Persons under disability of infancy, lunacy, coverture or absence from the Province, and their representatives to be allowed ten years from the termination of their disability or death.

XXIX. Provided nevertheless, and be it further enacted by the authority aforesaid, That no entry, distress, or action, shall be made or brought by any person who at the time at which his right to make an entry or distress, or to bring an action to recover any Land or Rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any

But no action, &c. shall be brought beyond forty years after the right of action accrued.

person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years; or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

No further time to be allowed for a succession of disabilities.

XXX. *Provided always, and be it further enacted by the authority aforesaid,* That when any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring an action to recover any Land or Rent, shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such Land or Rent beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such Land or Rent, shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

When the right to an Estate in possession is barred, the right of the same person to future Estates shall also be barred.

XXXI. *And be it further enacted by the authority aforesaid,* That when the right of any person to make an entry or distress, or bring an action to recover any Land or Rent to which he may have been entitled for an Estate or interest in possession, shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right, or possibility, in reversion, remainder or otherwise, in or to the same Land or Rent, no entry, distress or action shall be made or brought by such person, or any person claiming through him, to recover such Land or Rent in respect of such other estate, interest, right or possibility, unless in the mean time such Land or Rent shall have been recovered by some person entitled to an estate, interest or right, which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

No suit in Equity to be brought after the time when the Plaintiff, if entitled at law, might have brought an action.

XXXII. *And be it further enacted by the authority aforesaid,* That after the said first day of July, one thousand eight hundred and thirty-four, no person claiming any Land or Rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry or distress, or brought an action to recover the same respectively, if he had been entitled at Law to such estate, interest or right, in or to the same as he shall claim therein in equity.

XXXIII. *Provided always, and be it further enacted by the authority aforesaid,* That when any Land or Rent shall be vested in a Trustee upon any express trust, the right of the Cestui que trust, or any person claiming through him, to bring a suit against the Trustee, or any person claiming through him, to recover such Land or Rent, shall be deemed to have first accrued, according to the meaning of this Act at, and not before, the time at which such Land or Rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser.

XXXIV. *And be it further enacted by the authority aforesaid,* That in every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any Land or Rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before the time at which such fraud shall, or with reasonable diligence, might have been first known or discovered: *Provided,* that nothing in this clause contained shall enable any owner of Lands or Rents to have a suit in equity for the recovery of such Lands or Rents, or for setting aside any conveyance of such Lands or Rents, on account of fraud against any bona fide purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase, did not know, and had no reason to believe that any such fraud had been committed.

In cases of fraud, no time shall run whilst the fraud remains concealed.

XXXV. *Provided always, and be it further enacted by the authority aforesaid,* That nothing in this Act contained shall be deemed to interfere with any Rule or Jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

Saving the jurisdiction of Equity on the ground of acquiescence or otherwise.

XXXVI. *And be it further enacted by the authority aforesaid,* That when a Mortgagee shall have obtained the possession or receipt of the Profits of any Land, or the receipt of any Rent, comprised in his Mortgage, the Mortgagor, or any person claiming through him, shall not bring a suit to redeem the Mortgage but within twenty years next after the time at which the Mortgagee obtained such possession or receipt, unless in the mean time an acknowledgment of the title of the Mortgagor, or of his right of redemption, shall have been given to the Mortgagor, or some person claiming his Estate, or to the Agent of such Mortgagor or person, in writing, signed by the Mortgagee or the person claiming through him; and in such case, no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the

Mortgagor to be barred at the end of twenty years from the time when the Mortgagee took possession, or from the last written acknowledgment.

last of such acknowledgments, if more than one was given; and when there shall be more than one Mortgagor, or more than one person claiming through the Mortgagor or Mortgagors, such acknowledgment, if given to any of such Mortgagors or persons, or his or their Agent, shall be as effectual as if the same had been given to all such Mortgagors or persons; but when there shall be more than one Mortgagee, or more than one person claiming the Estate or interest of the Mortgagee or Mortgagees, such acknowledgment, signed by one or more of such Mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the Mortgage money, or Land, or Rent, by, from or under him or them, and any person or persons entitled to any Estate or Estates, Interest or Interests, to take effect after or in defeasance of his or their Estate or Estates, Interest or Interests, and shall not operate to give to the Mortgagor or Mortgagors a right to redeem the Mortgage as against the person or persons entitled to any other undivided or divided part of the money, or Land, or Rent; and when such of the Mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the Land or Rent comprised in the Mortgage, or some Estate or Interest therein, and not to any ascertained part of the Mortgage money, the Mortgagor or Mortgagors shall be entitled to redeem the same divided part of the Land or Rent, on payment, with interest, of the part of the Mortgage money which shall bear the same proportion to the whole of the Mortgage money as the value of such divided part of the Land or Rent shall bear to the value of the whole of the Land or Rent comprised in the Mortgage.

At the end of the period of limitation, the right of the party out of possession to be extinguished.

XXXVII. *And be it further enacted by the authority aforesaid,* That at the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the Land or Rent, for the recovery whereof such entry, distress, action or suit, respectively, might have been made or brought within such period, shall be extinguished.

Receipt of rent to be deemed receipt of profits.

XXXVIII. *And be it further enacted by the authority aforesaid,* That the receipt of the rent payable by any tenant from year to year, or other Lessee, shall, as against such Lessee, or any person claiming under him, but subject to the Lease, be deemed to be the receipt of the Profits of the Land for the purposes of this Act.

Real and mixed actions abolished after the 1st July, 1835.

XXXIX. *And be it further enacted by the authority aforesaid,* That no writ of right patent, writ of right quia dominus remisit curiam, writ of right close, writ of right de rationabili parte, writ of right upon dis-

claimer, writ of right of ward, writ of Cessavit, quod permittat, formedon in descender, remainder, or in reverter, writ of Assize of novel disseisin, nuisance, or mort d'ancestor, writ of entry sur disseisin in the quibus, in the per, in the per and cui, or in the post, writ of entry sur intrusion, writ of entry sur alienation, dum fuit non compos mentis, dum fuit infra etatem, dum fuit in prisona, ad communem legem, in casu proviso, in consimili casu, cui in vita, sur cui in vita, cui ante divortium, or sur cui ante divortium, writ of entry sur abatement, writ of entry quare ejecit infra terminum, or ad terminum qui praeteriit, or causa matrimonii praelocuti, writ of aiel, besaiel, tresaiel, cosinage, or nuper obiit, writ of waste, writ of partition, except such as is or shall be authorised by any Statute of this Province; writ of disceit, writ of quod ei deforceat, writ of covenant real, writ of warrantia chartae, writ of curia claudenda, and no other action, real or mixed, except a writ of dower, or writ of dower unde nihil habet, or an Ejectment; and no Plaint in the nature of any such writ or action, except a plaint for dower, shall be brought after the first day of July, one thousand eight hundred and thirty-five.

Except for Dower and Ejectment.

XL. Provided always, and be it further enacted by the authority aforesaid, That when on the said first day of July, one thousand eight hundred and thirty five, any person who shall not have a right of entry to any Land shall be entitled to maintain any such writ or action as aforesaid, in respect of such Land, such writ or action may be brought at any time before the first day of January, one thousand eight hundred and thirty six, in case the same might have been brought if this Act had not been made, notwithstanding the period of twenty years hereinbefore limited shall have expired.

Real actions may be brought until the 1st January, 1836.

XLI. Provided also, and be it further enacted by the authority aforesaid, That when on the said first day of January, one thousand eight hundred and thirty-six, any person whose right of entry to any Land shall have been taken away, by any descent cast, discontinuance or warranty, might maintain any such writ or action as aforesaid, in respect of such Land, such writ or action may be brought after the said first day of January, one thousand eight hundred and thirty six, but only within the period during which by virtue of the provisions of this Act, an entry might have been made upon the same land, by the person bringing such writ or action, if his right of entry had not been so taken away.

Saving the rights of persons entitled to real actions only at the commencement of the act, &c.

XLII. And be it further enacted by the authority aforesaid, That no descent cast, discontinuance, or warranty, which may happen or be made after the said first day of July, one thousand eight hundred and thirty four, shall toll or defeat any right of entry or action for the recovery of Land.

No descent, warranty, &c. to bar a right of entry.

Money charged upon land and legacies to be deemed satisfied at the end of twenty years, if there shall be no interest paid or acknowledgment in writing in the mean time.

XLIII. *And be it further enacted by the authority aforesaid,* That after the said first day of July, one thousand eight hundred and thirty-four, no action or suit or other proceeding shall be brought to recover any sum of money secured by any Mortgage, Judgment or Lien, or otherwise charged upon or payable out of any Land or Rent at Law or in Equity, or any Legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the mean time some part of the principal money, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his Agent, to the person entitled thereto, or his Agent, and in such case no such action or suit or proceeding shall be brought, but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was given: *Provided always,* that in respect to persons now entitled to an Equity of Redemption or to any Legacy, the right to bring an action or to pursue a remedy for the same shall not be deemed to be extinguished or barred by lapse of time until the expiration of five years from the time that an equitable jurisdiction shall be established in this Province, and in the exercise of its powers: *Provided* that shall happen within ten years from the passing of this Act.

No arrears of dower to be recovered for more than six years.

XLIV. *And be it further enacted by the authority aforesaid,* That after the said first day of July, one thousand eight hundred and thirty-four, no arrears of Dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

No arrears of rent or interest to be recovered for more than six years.

XLV. *And be it further enacted by the authority aforesaid,* That after the said first day of July, one thousand eight hundred and thirty-four, no arrears of Rent, or of interest in respect of any sum of money charged upon or payable out of any Land or Rent, or in respect of any Legacy, or any damages in respect of such arrears of Rent or interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his Agent, signed by the person by whom the same was payable or his Agent: *Provided nevertheless,* that where any prior Mortgage or other Incumbrancer shall have been in possession of any Land or in the receipt of the profits thereof within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same Land, the person entitled to such subsequent mortgage or incumbrance, may recover in such action or suit the arrears of

interest which shall have become due during the whole time that such prior Mortgagor or Incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years.

XLVI. *And be it further enacted by the authority aforesaid,* That any Corporation aggregate in this Province, capable of taking and conveying Land, shall be deemed to have been and shall be deemed to be capable of taking and conveying Land by deed of bargain and sale, in like manner as any person in his natural capacity, subject nevertheless to any general limitations or restrictions as to holding or conveying real Estate which may be applicable to such Corporation.

Corporations aggregate may convey by bargain and sale.

XLVII. *And be it further enacted by the authority aforesaid,* That after the passing of this Act, a deed of bargain and sale of Land in this Province shall not be held to require enrollment or to require registration to supply the place of enrollment for the mere purpose of rendering such bargain and sale a valid and effectual conveyance for passing the Land thereby intended to be bargained and sold: *Provided always, nevertheless,* that the necessity of registering such deed of bargain and sale in the Register of the County in which the Land is situated, in order to guard against a subsequent purchaser of the same Lands obtaining title by prior registry, shall continue as before the passing of this Act.

Deed of bargain and sale shall not require enrollment to render it a valid conveyance.

but the necessity for registering, to prevent a subsequent purchaser from gaining priority, shall continue as before.

XLVIII. *And be it further enacted by the authority aforesaid,* That whenever by any Letters Patent, Assurance or Will, made and executed after the first day of July, one thousand eight hundred and thirty-four, Land shall be granted, conveyed or devised to two or more persons other than Executors or Trustees, in fee simple, or for any less Estate, it shall be considered that such persons take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such Letters Patent, Assurance or Will; that they shall take as joint tenants.

Grantees, devisees, &c. shall not take as joint Tenants, unless such intention be expressed.

XLIX. *And be it further enacted by the authority aforesaid,* That when the Will of any person who shall die after the passing of this Act shall contain a devise, in any form of words, of all such real Estate as the Testator shall die seized or possessed of, or of any part or proportion thereof, such Will shall be valid and effectual to pass any Land that may have been or may be acquired by the Devisor after the making of such Will, in the same manner as if the title thereto had been acquired before the making thereof.

Estates acquired after the making of a Will, may pass by the Will where such intention is expressed.

A devise of Land shall be taken to carry as large an Estate as the Testator had in the Land, unless a contrary intention be expressed.

L. And be it further enacted by the authority aforesaid, That whenever Land is or shall be devised in a Will made by any person who shall die after the passing of this Act, it shall be considered that the Devisor intended to devise all such Estate as he was seized of in the same Land, whether fee simple or otherwise, unless it shall appear upon the face of such Will that he intended to devise only an Estate for life, or other Estate less than he was seized of at the time of making the Will containing such devise.

Not more than two Witnesses shall be necessary to a Will,

LI. And whereas by the adoption in this Province of the Law of England, it is made necessary that a Will of real Estate shall be executed in the presence of three Witnesses, which provision there is reason to believe operates in many instances injuriously in this Province, by reason that Lands are held in small portions by persons of all conditions and degrees of intelligence, many of whom, not aware of this positive provision of the Law, are only careful to provide two Witnesses, as is customary with respect to Sealed Instruments in general, and in all such cases the intentions of the Testator fail of their effect, frequently to the great injury of families: *Whereas*, on the other hand, it is doubtful whether any intended fraud is in fact prevented* by requiring an attestation by three Witnesses: *Be it therefore enacted by the authority aforesaid,* That any Will affecting Land executed after the passing of this Act, in the presence of and attested by two or more Witnesses, shall have the same validity and effect as if executed in the presence of and attested by three Witnesses, any former Law to the contrary notwithstanding, and that it shall be sufficient if such Witnesses subscribe their names in presence of each other, although their names may not be subscribed in presence of the Testator.

and they need not subscribe in the presence of the Testator.

Defendants in Ejectment setting up no title, shall not be allowed to take formal exceptions to the title of the Lessor of the Plaintiff, against the merits of the case.

LII. And whereas Plaintiffs in Actions of Ejectment brought against persons who are merely intruders, are subject to be defeated in the recovery of Land to which they have just claim, as purchasers or heirs, on account of some want of technical form in their title, or some imperfection not affecting the merits of their case, and of which it is desirable that mere strangers to the title, having no claim or color of legal claim to the possession, should not be encouraged or permitted to take advantage: *Be it therefore enacted by the authority aforesaid;* That it shall and may be lawful for the Lessor of the Plaintiff, or his Attorney, in any Action of Ejectment hereafter to be brought, to serve a notice upon the Defendant in such Ejectment, in these words:—

“ Take notice, that I claim the premises for which this action is brought, as the bona fide purchaser thereof, from A. B.— or as Heir-

“ at-Law of A. B. of —, (or otherwise as the case may be,) and that
 “ you will be required to shew upon the trial of this cause, what legal
 “ right you have to the possession of the premises,”

or a notice in any other form of words to the same effect, and that if upon the trial of such Ejectment to be afterwards had, the evidence of title given by the Lessor of the Plaintiff shall shew to the satisfaction of the Court and Jury that he is entitled in justice to be regarded as the proprietor of the Land, or is entitled to the immediate possession thereof for any term of years, but that he cannot shew a perfect legal title by reason of some want of legal form in any Instrument produced, or by reason of the defective Registration of any Will or Instrument produced, or from any cause not within the power of the Lessor of the Plaintiff to remedy by using due diligence, it shall be competent to the Jury, under the direction of the Court, to find a verdict for the Plaintiff, unless the Defendant or his Counsel, upon being required by the other party so to do, shall give such evidence of title as shall shew that he is the person legally entitled, or does bona fide claim to be the person legally entitled to the Land, by reason of the defect in the title of the Lessor of the Plaintiff, or that he holds or does bona fide claim to hold under the person so entitled: *Provided always, nevertheless*, that when a verdict shall be rendered under the authority of this provision, it shall be indorsed as given under this Act, and it shall be stated in the postea and entry of the judgment to have been so given, and in any action which may thereafter be brought for the mesne profits, such judgment in ejectment shall not be evidence to entitle the Plaintiff to recover.

Defendant may be called upon to shew what title he has to the possession.

Provision respecting action for mesne profits.

LIII. *And whereas* the wrong committed by Tenants, in holding over vexatiously and without color of right, after their term has expired, requires a more speedy and less expensive remedy than is now provided by Law: *Be it therefore further enacted by the authority aforesaid*, That it shall and may be lawful for any Landlord, or the Agent of any Landlord, whose Tenant shall, after the expiration of his term, (whether the same was created by writing or parol,) wrongfully refuse, upon demand made in writing, to go out of possession of the Land demised to him, to apply to the Court of King's Bench in Term, or to a Judge thereof in vacation, setting forth on Affidavit the terms of the demise, if by parol, and annexing a copy of the Instrument containing such demise, if the same were in writing, and also a copy of the demand made for the delivering up possession, and stating also the refusal of the Tenant to go out of possession, and the reason given for such refusal, (if any were given,) adding such explanation in regard to the ground of refusal as the truth of the case may require; and if upon such Affidavit it shall appear to the Court or Judge, that such Tenant does wrongfully hold over, without color

More easy remedy against Tenants who wrongfully hold over.

Application to the Court of King's Bench, or a Judge in vacation.

Affidavit.

of right, it shall be lawful for such Court or Judge to order a Writ to issue in the name of the King, and tested in the name of the Chief Justice or Senior Puisne Judge of such Court on the day that the same shall actually issue, directed to such person as the Court or Judge shall appoint, and commanding him to issue his Precept to the Sheriff of the District in which the Land is situated for the summoning of a Jury of twelve men, to come before the Commissioner at a day and place by such Commissioner to be named, to inquire and say upon their oaths whether such person complained of was Tenant to the Complainant for a term which has expired, and whether he does wrongfully refuse to go out of possession, having no right or color of right to continue in possession, or how otherwise; which Writ shall be made returnable whensoever the same shall be duly executed before any one of the Judges of the said Court: and that notice in writing of the time and place of holding such inquisition shall be served upon the Tenant, or left at his place of abode, at least three days before the day appointed, to which notice shall be annexed a copy of the Affidavit on which the Writ was obtained, and of the papers attached thereto, and that the Commissioner shall have power to administer an oath to the persons summoned on such Jury, well and truly to try, and a true verdict to give upon the matters and things in the said Writ contained, according to the evidence; and shall also have power to administer an Oath to the Witnesses produced by either party; and that the Jurors shall, under their hands, either with or without their Seals, indorse their finding upon the back of the Writ, or return the same upon a paper attached thereto by such Commissioner, and if it shall appear to the Court, or any Judge thereof, upon the return of the said Writ made by the said Commissioner, and upon a consideration of all the evidence, which shall also be certified and returned by such Commissioner, to be filed with such commission and the proceedings thereupon in the Office of the Clerk of the Crown and Pleas, that the case is clearly one coming within the true intent and meaning of this Act, then it shall be lawful for such Court or Judge to issue a Precept to the Sheriff in the King's name, commanding him forthwith to place the Landlord in possession of the premises in question.

LIV. And be it further enacted by the authority aforesaid, That when such Precept shall have been made by a Judge, the Court shall have power, on motion before the end of the second Term after such Precept shall have been issued, to examine into the proceedings, and, if they shall find cause, to set aside the same, and to issue their Precept to the Sheriff, if it be necessary, commanding him to restore the Tenant to his possession, in order that the question of right, if any appear, may be tried as heretofore by Ejectment.

Writ to issue.

Notice of holding Inquisition.

Jury to be sworn.

Witnesses.

Verdict.

Evidence to be returned with Commission.

Landlord to be placed in possession.

Court of King's Bench may revise the proceeding,

and if proper, order Tenant to be restored to possession.

LV. *And be it further enacted by the authority aforesaid,* That the Judges of the Court of King's Bench, in Term time or in vacation, shall have power to devise, and from time to time to alter and amend the form of the Writ, Inquisition and Return, and of the Precepts to be issued under the authority of this Act, and to make such orders respecting costs as to them may seem just, and to issue a Writ to the Sheriff, commanding him to levy such costs of the goods and chattels, or to issue an Attachment for the non-payment thereof against the Landlord or Tenant, or person described as Landlord or Tenant, as to them shall seem just.

The Judges of the King's Bench may devise forms of proceedings, and make orders respecting costs, and enforce their payment.

LVI. *And be it further enacted by the authority aforesaid,* That before any Commissioner shall hold an Inquisition under this Act, he shall take the following Oath before some one of the Justices of the Peace in and for the District in which the Inquisition shall be holden, which Oath shall be indorsed on the said Writ, that is to say:—

Commissioners to be sworn.

“I, A. B. do solemnly swear, that I will impartially, and to the best of my judgment, discharge my duty as Commissioner under this Writ.—
“So help me God.”

LVII. *And be it further enacted by the authority aforesaid,* That if any Witness sworn and examined before a Commissioner holding an Inquisition under this Act shall wilfully swear falsely, he shall, on conviction thereof, be liable to the penalties of wilful and corrupt perjury, and that if any person upon being required by notice from such Commissioner to attend as a Witness upon the Inquisition, shall refuse or wilfully omit to attend, he shall be liable to be committed upon the Warrant of such Commissioner to the Common Gaol of the District, for a time not exceeding one calendar month.

Witnesses swearing falsely may be convicted of perjury.

Punishment of Witnesses for not attending.

LVIII. *And be it further enacted by the authority aforesaid,* That the remedy afforded under this Act shall not be construed to take away or interfere with any other remedy, action or right of action, which a Landlord might have or bring, under the Laws in force before the passing of this Act.

This Act not to take away any other remedy which Landlords have by Law.

LIX. *And be it further enacted by the authority aforesaid,* That the words and expressions in this Act mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say, the word “Land” shall extend to Messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the pur-

Meaning of words in this Act.

“Land.”

chase of Land, (and to chattels and other personal property transmissible to heirs,) and also to any share of the same hereditaments and properties, or any of them, and to any Estate of inheritance, or Estate for any life or lives, or other Estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same Estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser" shall mean the person who last acquired the Land otherwise than by descent or than by any partition, by the effect of which the Land shall have become part of or descendible, in the same manner as other Land acquired by descent; and the word "descent" shall mean the title to inherit Land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression "descendants" of any ancestor, shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to Land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "Assurance" shall mean any Deed or Instrument (other than a Will) by which any Land shall be conveyed or transferred at Law or in Equity; and the word "Rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any Land; and the "person through whom another person is said to claim," shall mean any person by, through, or under, or by the Act of whom the person so claiming became entitled to the Estate or Interest claimed, as heir, issue, in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as a male.

"The purchaser."

"Descent."

"Descendants."

"Person last entitled."

"Assurance."

"Rent."

"Person through whom another claims."

Number and gender.

This Act not to operate retrospectively in certain cases.

LX. *And be it further enacted by the authority aforesaid,* That this Act shall not have operation retrospectively, so as by force of any of its provisions to render any title valid, which in regard to any particular Estate has been adjudged, or may in any suit now depending be adjudged invalid, on account of any defect, imperfection, matter or thing which is by this Act altered, supplied or remedied; but that in every such case the Law, in regard to any such defect, imperfection, matter or thing, shall, as applied to such title, be deemed and taken to be as if this Act had not been passed.