Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbishire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 6

An Act to abolish the Right of Primogeniture in the succession to Real Estate held in fee simple or for the life of another, in Upper Canada, and to provide for the division thereof amongst such of the relatives of the last proprietor as may best accord with the relative claims of such parties in the division thereof. 2d August, 1851.

Whereas it is expedient to abolish the right of Primogeniture in the succession to real estate held in fee simple or for the life of another, in Upper Canada, as such right now exists according to the laws in force in that section of the Province, and to provide for the division of such real estate amongst such of the relatives of the person last seized or possessed, and who shall have died without leaving any testamentary disposition thereof, as may best accord with the relative claims of such parties in the division thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That whenever on or after the first day of January which will be in the year of our Lord one thousand eight hundred and fifty-two, any person shall die seized in fee simple or for the life of another of any real estate in Upper Canada, without having lawfully devised the same, such real estate shall descend or pass by way of succession in manner following, that is to say:

Firstly—To his lineal descendants, and those claiming by or under them, *per stirpes*;
Secondly—To his father;
Thirdly—To his mother; and
Fourthly—To his collateral relatives;
Subject in all cases to the rules and regulations hereinafter prescribed.

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

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

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

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

VI. And be it enacted, That if the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brother or sister of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided; and if the intestate in such case shall leave no brother or sister, nor any descendant of any brother or sister, the inheritance shall descend to the mother.

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

VIII. And be it enacted, That if all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; and if any of them be living and any be dead, then to the brothers and sisters and every of them who are living, and to the descendants of such brothers and sisters as shall have died, so that each brother or sister who shall be living, shall inherit such share as would have descended to him or her, if all the brothers or sisters of the intestate who shall have died leaving issue had been living, and so that such descendants shall inherit the share which their parent would have received, if living, in equal shares.

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

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

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

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

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

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

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

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

XIV. And be it enacted, That relatives of the half blood shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are hot of the blood of such ancestors shall be excluded from such inheritance.

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

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

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

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

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

XX. And be it enacted, That if any child of an intestate shall have been advanced by the intestate by settlement, or portion of real or personal estate, or of both of them, and the same shall have been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate descendable to his heirs, and to be distributed to his next of kin according to law; and if such advancement he equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate.

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

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

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

XXIV. And be it enacted, That it shall be lawful and competent for the parties authorized to make partition of any such real estate according to law, and they are hereby required to receive from any of the persons entitled to a share of such real estate, an offer or proposition to purchase the share or shares of the other parties interested therein, giving the preference, however, to the person who would have been the heir-at-law thereto, had this Act not been passed; and after such heir-at-law, then giving such preference to the several persons successively who would have been such heirs-at-law, had this Act not been passed, and after such heir-at-law, then giving such preference to the several persons successively who would have been such heirs-at-law had this Act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate; and the parties so authorized to make such partition, shall certify particularly to the Court in which proceedings for such partition may be commenced or pending, the particulars of such offer or proposition for purchase, the nature, quantity and value of the estate or share proposed to be purchased, and whether they advise such offer or proposition to be accepted or rejected, and their reasons therefor: Provided always, nevertheless, firstly, that it shall be competent to any Court authorized to make partition of real estate, to direct a sale of the same if they shall think it right so to do, upon the application of any of the parties beneficially interested therein, giving however the preference at all times to the person who would have been the heir-at-law to such real estate had this Act not been passed, and after such heir-at-law, then giving such preference to the several persons successively who would have been such heirs-at-law, had this Act not been passed, and had those persons preceding them respectively in the series of such preference, been dead at the time of the death of the intestate: And provided also, secondly, that every such preference shall be upon and subject to such terms, security and conditions as such Court may think it right to direct.

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

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

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

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