AN ACT

Long Title.

Respecting the descent of Real Property

WHEREAS, it is expedient to make provision for the descent of the Real Property of Intestates. Preamble.

BE IT THEREFORE ENACTED by the Governor, by and with the advice and consent of the Legislature and Assembly of Vancouver Island and its Dependencies as follows:— Enacting Clause.

I. Whenever, after the first day of August, in the year of our Lord one thousand eight hundred and sixty-five, any person shall die seized in fee simple, or for the life of another, of any real estate in Vancouver Island or its Dependencies, without having lawfully devised the same, such estate shall descend or pass, by way of succession in manner following, that is to say:— How Real Estate of an Intestate after Aug. 1st, 1865, shall descend.

FIRSTLY. To his lineal descendants, and those claiming by or under them per stirpes.

SECONDLY. To his Father.

THIRDLY. To his Mother.

FOURTHLY. To his collateral relatives.

Subject in all cases to the rules and regulations hereinafter prescribed.

II. 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. As to descendants in equal degrees of consanguinity.

III. If any one or more of the children of such intestate be living, and any one or more be dead, the inheritance shall descend to the children who are living and to the descendants of such children as 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 have died leaving issue had been living; and so that the descendants of each child who shall be dead shall inherit in equal shares the share which their parent would have received if living. If some children be living and others dead, leaving issue.

IV. The rule of descent prescribed in the last preceding section, shall apply in every case where the descendants of the intestate entitled to share in the inheritance shall be of equal 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 have died leaving issue, been living, and so that the issue of the descendants who have died shall respectively take the shares which their parents, if living, would have received. Same rule as to other descendants in unequal degrees of consanguinity.

V. In case the intestate 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. If the intestate leaves no descendants, rights of father and mother

VI. 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 a sister, or the descendants 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 leaves no brother or sister, nor any descendant of any brother or sister the inheritance shall descend to the mother. If there be no father entitled to inherit.

VII. 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. And if there be neither father or mother

Succession of brothers and sisters and their descendants.

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

As to such descendants in equal degrees

IX. 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

If there be no heir under the preceding sections.

X. If there is no heir entitled to take, under any of the preceding nine 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 numbers, if all be living.

SECONDLY. If one or more be living, and one or more have died leaving issue, then to such brothers and sisters as are living, and to the descendants of such of the said brothers and sisters as have died, in equal shares.

THIRDLY. If all such brothers and sisters have died, then to their descendants, and 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.

Further provision.

XI. If there be no brothers or sisters, or any of them, of the father of the intestate, and no descendants of such brothers or 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 have died, or if all 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.

Further provisions if the estate came by the mother's side

XII. In all cases not provided for by the eleven next 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 last 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.

If it came neither on the father's nor mother's side

XIII. 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.

Half blood to succeed with the whole blood

XIV. 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 one of his ancestors, in which case all those who are not of the blood of such ancestors, shall be excluded from such inheritance.

If there be failure of heirs

XV. 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 statute of distribution of the personal estate.

Coheirs to take as tenants in common

XVI. 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 whenever an inheritance, or a share of an inheritance, shall descend to several persons under such provisions, they shall take as tenants in common, in proportion to their respective rights.

Descendants &c. born after death of intestate to inherit.

XVII. 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 lifetime of the intestate, and had survived him.

Illegitimate persons not to inherit.

XVIII. Children and relatives who are illegitimate, shall not be entitled to inherit, under any of the provisions of this Act.

Curtesy, dower, and estates by deed or will, &c. excepted

XIX. The estate of the husband, as tenant by the curtesy 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.

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

XX. If any child of an intestate shall have been advanced by the intestate by settlement, a portion of real or personal estate, or both of them, and they shall have been 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 advancements be 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.

If such advancement be not equal

XXI. 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.

Value of property advanced, how estimated

XXII. 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 any instrument in writing, otherwise such value shall be estimated according to the value of the property when given.

Education, &c., not advancement.

XXIII. 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.

As to the purchase by any of the parties interested of real estate subject to partition.

XXIV. The parties authorized to make partition of any such real estate by the Supreme Court of Civil Justice in Equity, shall 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 to the person who would have been the heir at law thereto, had this Act not been passed, and next after such heir-at-law, giving such preference to the several persons successively who would have been such heir-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.

Particulars of offer to purchase to be certified by the Court.

XXV. The parties so authorized to make such partition, shall certify particularly to the Court 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.

The Court authorised to make partition may direct a sale giving preference

XXVI. The said Court may direct a sale of the same, if they 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 heir 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.

Terms on which preference to be given

XXVII. Every such preference shall be upon, and subject to such terms, security and conditions, as the Court may think it right to direct.

Interpretation of words

XXVIII. In this Act the term "Real Estate" 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 is before excepted) in lands, tenements, and hereditaments in Vancouver Island or its dependencies, but not to such as shall be 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 therein used shall be understood to mean real estate as herein defined, descended or succeeded to according to the provisions of this Act.

Interpretation of words 'living' and "died"

XXIX. Whenever any person is described as living, it shall be understood that he was living at the time of the death of the intestate, from whom the descent or succession came, and whenever any person is described as having died, it shall be understood that he died before such intestate.

Interpretation of expressions where the estate shall have come to the intestate on the part of the "Father" or "mother"

XXX. Whenever, in the expressions "where the estate shall have come to the intestate on the part of the 'father' or 'mother,'" as the case may be, are used, the same 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.

Short Title

This Act may be cited for all purposes as "The Intestate's Real Property Act, 1865."