

Some Legislative History of the:

Descent of Property Act

RSNS 1851, Ch. 115 (p. 314)

RSNS 1858, Ch. 115 (p. 391)

RSNS 1864, Ch. 115 (still in force – see Appendix. p. 747)

SNS 1865, Ch. 3 (p. 17) (amendment – one-third to widow or widower)

RSNS 1873, Ch. 82 (p. 371)

RSNS 1884, Ch. 90 (p. 643)

SNS 1899, Ch. 17 (p. 43) (amendment – all in same degree of kindred inherit equally)

SNS 1900, Ch. 34 (p. 192) (amendment – 1899 change takes effect when Act commenced, not passed)

RSNS 1900, Ch. 140 (p. 401)

SNS 1923, Ch. 25 (p. 72) (amendment regarding personal property only)

RSNS 1923, Ch. 147 (p. 1234)

SNS 1934, Ch. 35 (p. 79) (amendment changes “next of kin” in s. 6(4) of 1923 Act to father, mother, brother, sister, nor child of any deceased brother or sister)

RSNS 1954, Ch. 69 (p. 1027)

RSNS 1967, Schedule at p. 23 says RSNS 1954, Ch. 69 is still in force.

RSNS 1989, Appendix (p. 8955) says RSNS 1954, Ch. 69 is still in force.

No further amendments to and including 2005.

Intestate Succession Act

SNS 1966, Ch. 8 (in force 1-9-1966)

RSNS 1967, Ch. 153 (p. 2135) (s. 2 says *Descent of Property Act* doesn't apply to cases of death after the commencement of this Act)

SNS 1975, Ch. 61 (p. 308) (amendment to ss. 3-5: widow may elect to take home in lieu of \$50,000, etc.)

RSNS 1989, Ch. 236 (p. 3965)

SNS 1999 (2nd Sess.), Ch. 8 (p. 117) (amendment adding “or father” in last line of s. 16).

No further amendments to and including 2005.

R. S. N. S. 1923

CHAP. 147 for each month during which such suppression continues.

R. S., c. 139, s. 34.

Sales by execu- tors.

35. (1) Where lands are willed to be sold by executors and part of them refuse to be executors and to accept the administration of the will, all sales by the executors that accept such administration shall be as valid as if all the executors had joined.

(2) The foregoing sub-section shall have the same force and effect as though the same had been contained in "The Wills Act" when originally enacted, and shall be so construed. 1917, c. 37, ss. 1, 2.

SCHEDULE.

(R. S., c. 139).

[Form A.]

(Section 15).

CERTIFICATE OF MARRIED WOMAN'S ACKNOWLEDGMENT OF EXECUTION OF WILL.

Province of Nova Scotia, }
County of.....SS. }

Be it remembered that, on this.....day of.....A. D., 19..... before me, the subscriber..... personally came and appeared C. D., of..... wife of A. B., of..... the testatrix mentioned in the foregoing (or within) will, who having been by me examined separate and apart from her said husband, did declare and acknowledge that she executed the same of her free will, and without any fear, threat, compulsion, or other undue influence of, from or by her said husband.

CHAPTER 147.

OF THE DESCENT OF REAL AND PERSONAL PROPERTY.

INTERPRETATION.

Rules for descent of real property when deceased leaves issue.

1. (1) In this Chapter unless the context otherwise requires the expression "issue" includes all lawful lineal descendants of the ancestor.

(2) For the purposes of this Chapter degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree. R. S., c. 140, s. 1.

REAL PROPERTY.

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2. (1) Where any person dies entitled to any real property in fee simple or for the life of another, not having devised the same, it shall descend to his children in equal shares, and in case of the death of any of his children to the legal representatives of such child, such representatives to take the share of the deceased parent in equal proportions, and if there is no child of the intestate living at the time of his death to the other lineal descendants of such intestate. Where no issue.

(2) If all such descendants are in the same degree of kindred to the intestate they shall share the property equally, otherwise they shall take according to the right of representation. R. S., c. 140, s. 2.

3. If the intestate leaves no issue, one half of his real property shall go to his widow in lieu of dower, and the other half shall go in equal shares to his father and mother, or if only one of his parents is living at the time of the intestate's death, one half of his real property shall go to that one; and if there is no widow, the whole shall go in equal shares to his father and mother, and if only one of them is living at the time of the intestate's death, the whole shall go to that one. 1919, c. 51, s. 1. Collateral kindred.

4. (1) If the intestate leaves no issue nor father nor mother, one half of his real property shall go to his widow, and the other half in equal shares to his brothers and sisters, and the children of any deceased brother or sister by right of representation. Where no issue nor father nor mother, etc.

(2) If the intestate leaves no issue nor father nor mother nor widow, the whole of such property shall go to his brothers and sisters, and the children of any deceased brother or sister by right of representation.

(3) If the intestate leaves no issue and no widow, father, mother, brother or sister, the whole of such property shall go to the children of any deceased brothers and sisters in equal shares and not by right of representation.

(4) If the intestate leaves no issue and no widow, father, mother, brother or sister, nor the children of any brother or sister, such property shall go in equal shares to his next of kin in equal degree, excepting that where there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote; but in no case shall representatives be admitted among collaterals after brothers' and sisters' children.

(5) If the intestate leaves no issue, father, mother, brother, sister, nor child of any deceased brother or sister

CHAP. 147 the whole of his property shall go to his widow. 1919, c. 51, s. 2.

Degrees of kindred, how to be computed.

5. (1) If the intestate leaves several children, or one child and the issue of one or more other children, and any such surviving child dies under age, and not having been married, all the real property that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

(2) If at the death of such child who dies under age, and not having been married, all the other children of his parent are also dead, and any of them have left issue, the real property that came to such child by inheritance from his parent shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to such child, they shall have his estate equally, otherwise they shall take according to the right of representation. R. S., c. 140, s. 5.

PERSONAL PROPERTY.

Rules for distribution of personal property.

6. The personal property of any intestate, except such as is by "The Probate Act" directed to be omitted from the inventory of the property of the deceased, shall be distributed according to the following rules:—

(1) If he leaves issue, one third of such property shall go to his widow.

(2) If he leaves no issue, one-half of such property shall go to his widow.

(3) In either of the two foregoing cases the residue of such property, after deducting the widow's share, shall be distributed among the persons other than the widow who would be entitled to any real property of the intestate in the proportions in which they would respectively be entitled to the same.

(4) If he leaves no issue or next of kin, the whole of such property shall go to his widow.

(5) If he leaves no issue and no widow, the whole of such property shall go to his next of kin in the proportions in which they would respectively be entitled to take any real property of the intestate. R. S., c. 140, s. 6.

Distribution of property of married women

7. If a married woman dies intestate, leaving real or personal property or both, owned by her in her own right, or held for her separate use, such property shall be distributed according to the following rules:—

(1) If she leaves issue, her husband, in addition to his estate as tenant by the courtesy in her real property, shall take one-third of her personal property; and the residue

of her personal property and her real property, subject to CHAP. 147 such tenancy by the courtesy, shall go to her children, and in the case of the death of any such child, to the legal representatives of such child.

(2) If she leaves no issue, one-half of her real and personal property shall go to her husband, and the other half shall go:—

(a) in equal shares to her father and mother, if both are living at the time of her death; or, if only one of them is living at the time of her death to that one of them who is living; or

(b) if she leaves no father nor mother, to her brothers and sisters in equal shares, and the children of any deceased brother or sister by right of representation, or

(c) if she leaves no father, mother, brother or sister, to the children of any deceased brothers and sisters in equal shares and not by right of representation.

(3) If she leaves no issue, father, mother, brother or sister or child of any deceased brother or sister, the whole of her property shall go to her husband. 1919, c. 51, s. 3.

ADVANCEMENT.

8. Any real or personal property given by an intestate as an advancement to any child or grandchild, shall in the division and distribution of the estate of such intestate be considered a portion of such estate, and shall be taken by such child or grandchild towards his share thereof. R. S., c. 140, s. 8. Advancement, how treated.

9. If such advancement exceeds the share of the child or grandchild to whom such advancement is made, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any such advancement; and, if the amount so received is less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased. R. S., c. 140, s. 9. Advancement in excess of share.

10. If the advancement was of real property, the value thereof shall, for the purposes of the next preceding section, be considered as part of the real property to be divided; and if in either case it exceeds the share of real or of personal property respectively that would have come to the child or grandchild so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to the shares of the other heirs who are in the same degree with him. R. S., c. 140, s. 10. Advancement in real property.

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Valuation of advancement.

11. If the value of the property so advanced is expressed in the conveyance, or in any charge or valuation thereof made by the intestate, it shall be considered as of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given. R. S., c. 140, s. 11.

When person to whom advancement made dies before intestate.

12. If any child or grandchild to whom any such advancement is made dies before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate of the intestate, and the amount thereof shall be allowed accordingly by the representatives of such child or grandchild as so much received towards his share of the estate, in like manner as if the advancement had been made directly to them. R. S., c. 140, s. 12.

Gifts, etc., when deemed advancement.

13. Every gift or grant made by an intestate in his life time to a child or grandchild shall be deemed to have been made in advancement if,—

- (a) it is so expressed in writing in a grant thereof;
- or
- (b) it is so charged in writing by the intestate; or
- (c) it is so acknowledged in writing by such child or grandchild; or
- (d) it is proved to have been so made by evidence taken upon oath before a court of justice, and not otherwise. R. S., c. 140, s. 13.

MISCELLANEOUS.

Equitable estate, to descend how.

14. The interest of any person in lands held in trust for him in fee simple shall descend and be chargeable with his debts in like manner as if he had died seised thereof. R. S., c. 140, s. 14.

Posthumous children.

15. (1) 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.

(2) Any child born after the death of his father for whom no provision is made in the will of the father, shall have the like interest in the real and personal property of his father as if the father had died intestate, and all the devisees and legatees under such will shall abate in proportion their respective devises and bequests.

(3) The share of such posthumous child shall be set out and assigned by the court of probate or other court having jurisdiction so as to affect as little as possible the disposition made by the testator of his property. R. S., c. 140, s. 15.

Curtesy and dower, not affected.

16. Nothing in this Chapter contained shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower. R. S., c. 140, s. 16.

17. Lands held as dower by the widow shall after her decease be divided as in this Chapter provided in case of the other lands of the intestate. R. S., c. 140, s. 17.

18. All such property, real or personal, as is not devised by will, shall be distributed as if the testator had died intestate. R. S., c. 140, s. 18.

19. (1) When any person dies seised of or entitled to any estate or interest in any real property which at the time of his death is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real property descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal property, or any other real property of such person; but the real property so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) Nothing in this section contained shall affect or diminish any right of the mortgagee on such real property to obtain full payment or satisfaction of his mortgage debt, either out of the personal property of the person so dying as aforesaid, or otherwise; and nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed or document made before the first day of January, A. D., 1882.

(3) In the construction of any will or deed, or other document to which this section relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal property shall not be deemed to be a declaration of an intention contrary to or other than the rule in this section contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real property. R. S., c. 140, s. 19.

20. (1) Notwithstanding any law to the contrary, of any place or jurisdiction which is outside the Province of Nova Scotia, and in which a deceased person is domiciled at the time of such person's death, it shall not in respect of any personal property which has passed or which shall after the enactment of this section pass on the death of such person and over or in respect of which authority in this behalf is at the time of such death vested in the Legislature of said province, be a condition precedent or necessary to the right of any person (hereinafter called the beneficiary) whether domiciled in said province or elsewhere, to have a

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Dower lands, how divided on death of doweress.

Undevised property.

Mortgaged property primarily liable.

Where person domiciled outside leaves personal property within the province.

CHAP. 148 bequest or legacy to such beneficiary by or from or under the will of such deceased person or to have the claim of such beneficiary as and being an heir or next of kin of such deceased person, satisfied, whether in whole or in part, that any court, judge, tribunal, or officer having authority in such place or jurisdiction outside said province shall have made or granted any judgment, order or decree putting the beneficiary in possession or granting the beneficiary legal delivery or the like.

(2) If by any such law it is a condition precedent or necessary to any such right that any such judgment, order or decree shall have been made or granted then the beneficiary shall have in respect of such personal property and the proceeds thereof and against all persons, including the executors or administrators of such deceased person, all the rights and remedies that such beneficiary would have had if the making or granting of such judgment, order or decree had not been a condition precedent or necessary to such right; and such property and proceeds shall be fully and finally administered and distributed in said province. 1923, c. 25.

CHAPTER 148.

OF THE ADMINISTRATION BY THE ATTORNEY-GENERAL OF ESTATES OF INTESTATES.

When administration may be granted to Attorney-General.

1. Where any person dies in Nova Scotia intestate, or intestate as to some part of his estate, and without leaving any known relative living within the province, or any known relative who can be readily communicated with, living elsewhere, any court of probate may, upon application without any previous advertisement grant administration, general or limited, to the Attorney-General for the use and benefit of His Majesty, or of such persons as may ultimately appear to be entitled thereto. 1909, c. 2, s. 1; 1910, c. 41, s. 1.

Powers of Attorney-General to vest in his successor.

2. The administration so granted, and the office of administrator under the grant, with all the estates, rights, duties and liabilities of such administrator, shall, upon the death, resignation, or removal of the Attorney-General for the time being, devolve upon and become vested and continue in the succeeding Attorney-General, by virtue of his appointment, and so in perpetual succession, without any further grant of administration or any assignment or transfer of the estates of the administrator; and all actions, and other proceedings by or against the Attorney-General for the time being, as such administrator at the time of his

death, resignation or removal, shall continue, and may be proceeded with, by, in favor of, and against the succeeding Attorney-General; saving always, the effect of every limitation in duration or otherwise under the terms of the grant of such administration, and saving to every court having jurisdiction in this behalf all such right and authority to revoke or repeal such administration as the court has and exercises during the continuance of an ordinary administration. 1909, c. 2, s. 2.

3. It shall not be necessary for the Attorney-General to give security for the due administration of the estate, but he shall have all the rights and powers of and be subject to all the liabilities and duties imposed on an administrator. 1909, c. 2, s. 3.

4. Where administration is granted to the Attorney-General, the Governor-in-Council may at any time after the expiration of one year from the date of such administration, direct the sale, by auction, of any real estate or interest therein in Nova Scotia to which the intestate died entitled; and the Attorney-General shall thereupon be authorized to sell, in accordance with the directions of the Order-in-Council, the whole or any part of such real estate or interest, and to convey the same to the purchaser; and every conveyance by the Attorney-General shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same. 1909, c. 2, s. 4.

5. If, after the granting of letters of administration to the Attorney-General, and before the final settlement of the estate, the husband, widow, next of kin or an heir of the deceased claims the right of administration, or requests the appointment of some other suitable person to the trust, or if a will of the deceased is thereafter proved and allowed, the Probate Court shall grant letters of administration or letters testamentary accordingly; and when the person to whom such letters are so granted gives the bond required by law, the powers of the Attorney-General as such administrator over the estate shall cease, except as hereinafter provided. 1909, c. 2, s. 5.

6. The Attorney-General shall, upon the appointment and qualification of an executor or administrator as his successor, surrender into the Probate Court his letters of administration, in such case, with an account under oath of his doings therein; and, upon a just settlement of such account, shall pay over and deliver to his successor all money remaining in his hands, and all property, effects and credits of the deceased not then administered. 1909, c. 2, s. 6.

7. Where subsequently to the grant of administration, it is alleged or ascertained that the deceased has relatives

Security not necessary.

Real estate, how sold.

Administration may be revoked before final settlement.

Attorney-General to render account to successor.

Rights of relatives after issue of administration.

CHAPTER 69

Descent Of Property Act

INTERPRETATION

1 (1) In this Act "issue" includes all lawful lineal descendants of the ancestor. Rules for descent of real property when deceased leaves issue.

(2) For the purposes of this Act degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree. R.S., c. 147, s. 1.

REAL PROPERTY

2 (1) Where any person dies entitled to any real property in fee simple or for the life of another, not having devised the same, it shall descend to his children in equal shares, and in case of the death of any of his children to the legal representatives of such child, such representatives to take the share of the deceased parent in equal proportions, and if there is no child of the intestate living at the time of his death to the other lineal descendants of such intestate. Where no issue.

(2) If all such descendants are in the same degree of kindred to the intestate they shall share the property equally, otherwise they shall take according to the right of representation. R.S., c. 147, s. 2.

3 If the intestate leaves no issue, one half of his real property shall go to his widow in lieu of dower, and the other half shall go in equal shares to his father and mother, or if only one of his parents is living at the time of the intestate's death, one half of his real property shall go to that one; and if there is no widow, the whole shall go in equal shares to his father and mother, and if only one of them is living at the time of the intestate's death, the whole shall go to that one. R.S., c. 147, s. 4. Collateral kindred.

4 (1) If the intestate leaves no issue nor father nor mother, one half of his real property shall go to his widow, and the other half in equal shares to his brothers and sisters, and the children of any deceased brother or sister by right of representation. Where no issue nor father nor mother.

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of NOVA SCOTIA

1954

(2) If the intestate leaves no issue nor father nor mother nor widow, the whole of such property shall go to his brothers and sisters, and the children of any deceased brother or sister by right of representation.

(3) If the intestate leaves no issue and no widow, father, mother, brother or sister, the whole of such property shall go to the children of any deceased brothers and sisters in equal shares and not by right of representation.

(4) If the intestate leaves no issue and no widow, father, mother, brother or sister, nor the children of any brother or sister, such property shall go in equal shares to his next of kin in equal degree, excepting that where there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote; but in no case shall representatives be admitted among collaterals after brothers' and sisters' children.

(5) If the intestate leaves no issue, father, mother, brother, sister, nor child of any deceased brother or sister the whole of his property shall go to his widow. R.S., c. 147, s. 4.

Degrees of kindred, how to be computed.

5 (1) If the intestate leaves several children, or one child and the issue of one or more other children, and any such surviving child dies under age, and not having been married, all the real property that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

(2) If at the death of such child who dies under age, and not having been married, all the other children of his parent are also dead, and any of them have left issue, the real property that came to such child by inheritance from his parent shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to such child, they shall have his estate equally, otherwise they shall take according to the right of representation. R.S., c. 147, s. 5.

PERSONAL PROPERTY

Rules for distribution of personal property.

6 The personal property of the intestate, except such as is by the Probate Act directed to be omitted from the inventory of the property of the deceased, shall be distributed according to the following rules:

(a) If he leaves issue, one third of such property shall go to his widow.

(b) If he leaves no issue, one-half of such property shall go to his widow.

(c) In either of the two foregoing cases the residue of such property, after deducting the widow's share, shall be distributed among the persons other than the widow who would be entitled to any real property of the intestate in the proportions in which they would respectively be entitled to the same.

(d) If he leaves no issue, father, mother, brother, sister, nor child of any deceased brother or sister, the whole of such property shall go to his widow.

(e) If he leaves no issue and no widow, the whole of such property shall go to his next of kin in the proportions in which they would respectively be entitled to take any real property of the intestate. R.S., c. 147, s. 6; 1934, c. 35, s. 1.

7 If a married woman dies intestate, leaving real or personal property or both, owned by her in her own right, or held for her separate use, such property shall be distributed according to the following rules: Distribution of property of married women.

(a) If she leaves issue, her husband, in addition to his estate as tenant by the courtesy in her real property, shall take one-third of her personal property; and the residue of her personal property and her real property, subject to such tenancy by the courtesy, shall go to her children, and in the case of the death of any such child, to the legal representatives of such child.

(b) If she leaves no issue, one-half of her real and personal property shall go to her husband, and the other half shall go:

(i) in equal shares to her father and mother, if both are living at the time of her death; or, if only one of them is living at the time of her death to that one of them who is living; or

(ii) if she leaves no father nor mother, to her brothers and sisters in equal shares, and the children of any deceased brother or sister by right of representation; or

(iii) if she leaves no father, mother, brother or sister, to the children of any deceased brothers and sisters in equal shares and not by right of representation.

(c) If she leaves no issue, father, mother, brother or sister or child of any deceased brother or sister, the whole of her property shall go to her husband. R.S., c. 147, s. 7.

ADVANCEMENT

Advance-
ment, how
treated.

8 Any real or personal property given by an intestate as an advancement to any child or grandchild, shall in the division and distribution of the estate of such intestate be considered a portion of such estate, and shall be taken by such child or grandchild towards his share thereof. R.S., c. 147, s. 8.

Advance-
ment in ex-
cess of share.

9 If such advancement exceeds the share of the child or grandchild to whom such advancement is made, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any such advancement; and, if the amount so received is less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased. R.S., c. 147, s. 9.

Advance-
ment in real
property.

10 If the advancement was of real property, the value thereof shall, for the purposes of Section 9, be considered as part of the real property to be divided; and if in either case it exceeds the share of real or of personal property respectively that would have come to the child or grandchild, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to the shares of the other heirs who are in the same degree with him. R.S., c. 147, s. 10.

Valuation of
advance-
ment.

11 If the value of the property so advanced is expressed in the conveyance, or in any charge or valuation thereof made by the intestate, it shall be considered as of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given. R.S., c. 147, s. 11.

When person
to whom ad-
vancement
made dies
before
intestate.

12 If any child or grandchild to whom any such advancement is made dies before the intestate, leaving issue, the advancement shall be taken into consideration in the

division and distribution of the estate of the intestate, and the amount thereof shall be allowed accordingly by the representatives of such child or grandchild as so much received towards his share of the estate, in like manner as if the advancement had been made directly to them. R.S., c. 147, s. 12.

13 Every gift or grant made by an intestate in his life-time to a child or grandchild shall be deemed to have been made in advancement if,

Gifts, etc.,
when
deemed ad-
vancement.

(a) it is so expressed in writing in a grant thereof;

(b) it is so charged in writing by the intestate;

(c) it is so acknowledged in writing by such child or grandchild; or

(d) it is proved to have been so made by evidence taken upon oath before a court of justice,

and not otherwise. R.S., c. 147, s. 13.

MISCELLANEOUS

14 The interest of any person in lands held in trust for him in fee simple shall descend and be chargeable with his debts in like manner as if he had died seised thereof. R.S., c. 147, s. 14.

Equitable
estate, to
descend how.

15 (1) Descendants and relatives of the intestate be- gotten 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.

Posthumous
children.

(2) Any child born after the death of his father for whom no provision is made in the will of the father, shall have the like interest in the real and personal property of his father as if the father had died intestate, and all the devisees and legatees under such will shall abate in proportion their respective devises and bequests.

(3) The share of such posthumous child shall be set out and assigned by the court of probate or other court having jurisdiction so as to affect as little as possible the disposition made by the testator of his property. R.S., c. 147, s. 15.

16 Nothing in this Act contained shall affect the title of a husband as a tenant by the curtesy, nor that of a widow as tenant in dower. R.S., c. 147, s. 16.

Curtesy and
dower not
affected.

Dower lands,
how divided
on death of
doweress.

17 Lands held as dower by the widow shall after her decease be divided as in this Act provided in case of the other lands of the intestate. R.S., c. 147, s. 17.

Undevised
property.

18 All such property, real or personal, as is not devised by will, shall be distributed as if the testator had died intestate. R.S., c. 147, s. 18.

Mortgaged
property
primarily
liable.

19 (1) When any person dies seised of or entitled to any estate or interest in any real property which at the time of his death is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real property descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal property, or any other real property of such person; but the real property so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) Nothing in this Section contained shall affect or diminish any right of the mortgagee on such real property to obtain full payment or satisfaction of his mortgage debt, either out of the personal property of the person so dying as aforesaid, or otherwise; and nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed or document made before the first day of January, 1882.

(3) In the construction of any will or deed, or other document to which this Section relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal property shall not be deemed to be a declaration of an intention contrary to or other than the rule in this Section contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real property. R.S., c. 147, s. 19.

Where
person
domiciled
outside
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the province.

20 (1) Notwithstanding any law to the contrary, of any place or jurisdiction which is outside the Province of Nova Scotia, and in which a deceased person is domiciled at the time of such person's death, it shall not in respect of

any personal property which has passed or which shall after the enactment of this Section pass on the death of such person and over or in respect of which authority in this behalf is at the time of such death vested in the Legislature of said province, be a condition precedent or necessary to the right of any person (hereinafter called the beneficiary) whether domiciled in said province or elsewhere, to have a bequest or legacy to such beneficiary by or from or under the will of such deceased person or to have the claim of such beneficiary as and being an heir or next of kin of such deceased person, satisfied, whether in whole or in part, that any court, judge, tribunal, or officer having authority in such place or jurisdiction outside said province shall have made or granted any judgment, order or decree putting the beneficiary in possession or granting the beneficiary legal delivery or the like.

(2) If by any such law it is a condition precedent or necessary to any such right that any such judgment, order or decree shall have been made or granted then the beneficiary shall have in respect of such personal property and the proceeds thereof and against all persons, including the executors or administrators of such deceased person, all the rights and remedies that such beneficiary would have had if the making or granting of such judgment, order or decree had not been a condition precedent or necessary to such right; and such property and proceeds shall be fully and finally administered and distributed in said Province. R.S., c. 147, s. 20.