

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

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1841.

CHAPTER 92.

OF WILLS, TESTAMENTS AND DEVISES.

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SECTION 1. Every person of the age of twenty one years and of sound mind, lawfully seized of any lands, tenements or hereditaments, or of any right or interest therein in his own right, in fee simple or for the life of another person, or being the owner of any personal estate, may dispose of the same, by his last will and testament; and all such estate, not so devised or bequeathed by any will, shall be distributed, as the estate of an intestate.

Who may make a will.
1821, 38, § 1, 16.
12 Mass. 525.

SECT. 2. All wills of lands or personal estate shall be in writing and signed by the deviser, or testator, or by some person in his presence, and by his express direction, and shall be attested and subscribed in his presence by three credible witnesses, or the same shall be void: and if the witnesses are competent at the time of attestation, their subsequent incompetency shall, in no case, prevent the probate of the will, if it be otherwise satisfactorily proved.

Form, and mode of execution.
1821, 38, § 2.
1 Mass. 258.
5 Mass. 219.
12 Mass. 358.
9 Pick. 350.
17 Pick. 134, 373.
21 Pick. 98.

SECT. 3. No will, in writing, of real or personal estate, or any part of it, shall be revoked, except by some subsequent will, codicil or other writing declaring the same, or by burning, canceling, tearing or obliterating the same by the testator, or in his presence and by his direction, with the intention of revoking; or unless the same be altered by some writing of the testator, by him signed and attested, as in case of a will.

Express revocation.
1821, 38, § 2.
14 Mass. 208.
7 Pick. 61.

SECT. 4. Revocations of wills, implied by law, from subsequent changes in the condition and circumstances of the testator, shall not be deemed or construed as embraced in the provisions of the preceding section.

Implied revocation.

SECT. 5. All devises and legacies to a subscribing witness to a will or codicil shall be void, unless there be three other competent subscribing witnesses to the same; but a mere charge on the lands of the deviser, for the payment of his debts, shall not prevent any of his creditors, whose debt is so charged, from being a competent witness.

Devise or legacy to a subscribing witness, void in certain cases.
1821, 38, § 8, 9.

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If legacy be paid, or refused, legatee may be a witness.
1821, 38, § 10.

Attestation good, if such witness die before probate.
1821, 38, § 11.

If witness be admitted to prove the will, he cannot afterwards claim the legacy.
1821, 38, § 12.

Nuncupative will.
1821, 38, § 5.
2 Greenl. 298.
8 Greenl. 167.

Wills by soldiers or mariners.
1821, 38, § 4.

Limitation of proof of such will.

Devise of land, of which testator is disseized.

Devise will pass an estate, subsequently acquired.

Contribution, in case property be taken from a devisee.
1821, 38, § 13.
10 Mass. 450.

SECT. 6. But if any such subscribing witness shall, before he give his testimony, have been paid, or have accepted or released, or shall refuse to accept, any legacy given to him in the will, upon tender thereof, he shall be admitted as a witness to the execution of the will; the credit of such witness being a subject for the consideration of the court or jury, who may try the cause.

SECT. 7. Any such subscribing witness to a will, who shall have died before having refused, received or released any legacy given him by such will, shall be deemed a legal witness to the execution of the same.

SECT. 8. No person, to whom any property or beneficial interest, in this chapter declared null and void, or who has refused to receive the same, and has been admitted a witness, concerning the execution of the will or codicil, in which it was given, shall, ever after, receive any benefit from such legacy or bequest, or receive from any person any satisfaction or compensation for the same.

SECT. 9. No nuncupative will, excepting those of soldiers and mariners, as hereinafter mentioned, shall be good and allowed, where the property bequeathed shall exceed the value of one hundred dollars, unless proved by the oath of three witnesses who were present at the making; nor, unless the testator, at the time of pronouncing the same, requested the persons present or some of them, to bear witness that such was his will; nor, unless the will was made in the last sickness of the deceased, and at his home, or the place where he had resided for ten days or more, next before the making of the will; except where the person is suddenly taken sick, being from home, and dies before returning to his home.

SECT. 10. But any soldier, being in actual military service, and any mariner, being at sea, may dispose of his personal estate and wages, as he might have done before.

SECT. 11. No testimony shall be received to prove any testamentary words, as a nuncupative will, after the lapse of six months from the time they were spoken, unless the words or the substance of them were reduced to writing, within six days after they were spoken.

SECT. 12. When any person shall devise lands, of which he may not then be seized, but to or for which he has any right of entry, or when, after the making of any devise, the deviser shall be disseized or ousted of the devised premises, they shall, nevertheless, pass to the devisee in like manner, as they would have descended to the heirs of the deviser, if he had died intestate: and the devisee shall have the like remedy for the recovery thereof, either by entry or action, as the heirs might have had.

SECT. 13. Any estate, right or interest in lands, acquired by the testator, after the making of his will, and of which he died seized as aforesaid, shall pass thereby, in like manner, as if owned by him at the time of making the will, if such clearly appear by the will to have been the testator's intention.

SECT. 14. When any real estate or personal estate, devised, shall be taken from the devisee or legatee by execution, or sold by order of court for payment of the testator's debts, all the other legatees, devisees and heirs shall refund their average proportion of

such loss to the person, from whom such estate shall be taken, so as to make the loss fall equally on such devisees, or legatees, according to the value of the property received by each; subject to the exception in the following section.

SECT. 15. If, in such case, the deviser shall, by making a specific devise or bequest, have virtually exempted any devisee or legatee from his liability to contribute with the others, for the payment of the debts; or if he shall, by any provisions in his will, have prescribed or required any appropriation of his estate for the payment of his debts, different from that in the preceding section, the estate shall be appropriated in conformity to the will.

Restriction of this provision.
8 Pick. 478.

SECT. 16. Nothing in the two preceding sections shall impair, or affect, the liability of the whole estate of the testator, for the payment of all his debts; but the provision in these sections shall apply only to the marshaling of the assets, as between those holding and claiming under the will.

Qualification of the two preceding sections.

SECT. 17. When any child of a testator, born after the father's death, shall have no provision made in his will, he shall take the same share of his father's estate, as he would have been entitled to, if his father had died intestate; and the same shall be assigned him by the judge of probate, as in case of intestate estates; and the same shall be taken, equally, from all the devisees and legatees, in proportion to the value of what they shall respectively receive under the will; unless, in consequence of a specific devise or bequest, or some other provisions in the will, a different apportionment among the devisees and legatees shall be found necessary, to give effect to the intention of the testator, as to that part of his estate, which shall pass by the will.

Provision for posthumous children.
1821, 38, § 14.

SECT. 18. Any child, or the issue of any deceased child, not having any devise or legacy to him in his father's or mother's will, shall have the same share of the testator's estate, as he would have been entitled to, if he had died intestate; unless it shall appear that such omission was intentional, or not occasioned by any mistake, or unless such child or grandchild shall have had an equal proportion of the testator's estate bestowed on him, during the life of the testator.

Effect, if an heir have no provision in a will.
1821, 38, § 15.
1 Mass. 145.
3 Mass. 17.
14 Mass. 357.
18 Pick. 162.

SECT. 19. If any child or other relation of a testator, having a devise of real or personal estate, made to him in the will, shall die before the testator, leaving lineal descendants, they shall take the estate devised, in like manner as such devisee would have taken it, if he had survived the testator.

Heir of devisee, entitled to the devise.
1821, 38, § 15.
7 Mass. 86.

SECT. 20. When any part of the estate of a testator descends to a child or other descendant, by reason of his having no provision made for him in the will, or when it descends to a posthumous child, such child shall be bound to contribute with the devisees and legatees, as provided in section, fourteen, of this chapter, and shall be entitled to claim contribution from them accordingly.

Such share liable to contribution.

SECT. 21. When any person liable to contribute toward the discharge of a debt of the testator, according to the provisions of the fourteenth section, shall be insolvent, or unable to pay his just proportion thereof, the others shall be severally liable for the loss occasioned by such insolvency, each one in proportion to the value

Provision, in case a devisee, liable to contribute, be insolvent.

CHAP. 92. of the property received by him from the estate of the deceased; and if any one of the persons, so liable, shall die without having paid his proportion of such debt, his executors and administrators shall be liable therefor, in like manner, as though it had been his proper debt, to the extent of which he would have been liable, if living.

Undevised property, how appropriated.

SECT. 22. When any part of the real estate of a testator shall descend to his heirs, not having been devised or disposed of by his will, and his personal estate shall be insufficient for the payment of his debts, the undivided real estate shall be first chargeable with the debts, in exoneration, as far as it will go, of the real estate devised, unless it shall appear from the will, that a different arrangement of his assets for the payment of his debts was made by the testator: in which case, they shall be applied for the purpose, according to the provisions of the will.

Meaning of the words, "real estate."

SECT. 23. The words, "real estate," as used in this chapter, include lands, tenements, and hereditaments, and all rights to, and interests therein, which by law are devisable.

Questions under this chapter, how decided.

SECT. 24. All cases arising under this chapter, in which devisees or legatees may be required to contribute, to make up the share of any child of the testator, or of the issue of any such child, or, in which contribution is to be made among devisees, legatees and heirs, or any of them, may be decided in an action at law, when the case is such as to allow it; or may be heard and determined in the probate court, allowing an appeal to the supreme court of probate, as in other cases; or may be originally brought and finally determined in the supreme judicial court, as a court of equity jurisdiction.

Effect of probate of a will. 16 Mass. 433.

SECT. 25. No will shall be effectual to pass real or personal estate, unless it shall have been duly proved and allowed in the probate court; and the probate of such will shall be conclusive, as to the due execution thereof.

Construction of devises.

SECT. 26. Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will, that the devisor intended to convey a less estate.

CHAPTER 93.

OF TITLE BY DESCENT.

- SECT. 1.** How lands of an intestate descend.
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5. Descent of estate of an alien, afterwards naturalized.
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