

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.

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.

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| <p>SECT. 1. How lands of an intestate descend.</p> <p>2. Degrees, how computed.</p> <p>3. Heirship of an illegitimate child.</p> <p>4. Descent of his property.</p> <p>5. Descent of estate of an alien, afterwards naturalized.</p> <p>6. Provision, if he die, after filing his intention.</p> <p>7. Certain property, not to escheat.</p> <p>8. What is an advancement.</p> | <p>SECT. 9, 10. To be considered part of the estate.</p> <p>11. Effect, if it exceed the child's share.</p> <p>12. Effect upon distribution of real or personal estate.</p> <p>13. If such heir die, how advancement is to be reckoned.</p> <p>14. Tenancy by curtesy or dower, not affected.</p> |
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SECT. 15. How personal estate shall descend.

16. Personal estate of a married woman.

17. If intestate leave widow and issue.

18. If no issue.

SECT. 19. If no kindred.

20. If no husband, widow nor kindred.

21. Debt due from an heir, to be a lien on the heir's share.

22. Proceedings in such case.

SECTION 1. When any person shall die, seized of any lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, the same shall descend, subject to his debts, in the following manner :

First. In equal shares to his children, and to the lawful issue of any deceased child, by right of representation ; and, when there is no child of the intestate at the time of his death, his estate shall descend to all his lineal descendants ; and if they are all in the same degree of kindred to the intestate, they shall share the estate equally ; otherwise, they shall take according to the right of representation.

Secondly. If he shall have no issue, his estate shall descend to his father.

Thirdly. If he shall leave no issue nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation ; provided, if he shall leave a mother also, she shall take an equal share with his brothers and sisters.

Fourthly. If the intestate shall leave no issue, nor father, and no brother or sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers and sisters.

Fifthly. If the intestate shall leave no issue, nor father, mother, brother or sister, his estate shall descend to his next of kin in equal degree ; excepting when 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 under an ancestor more remote.

Sixthly. Provided however, that if any person shall die, leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, not having been married, all the estate, which 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 such other children, who shall have died, by way of representation ; and provided also, that when the issue or next of kin to the intestate child, to whom the estate came by inheritance from his father, as above stated, are all in the same degree of kindred, they shall share the said estate equally ; otherwise, they shall take according to the right of representation.

Seventhly. If the intestate shall leave no kindred, his estate shall escheat to the state.

SECT. 2. The 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.

How lands of an intestate descend. 1821, 38, § 17.

Children.

Father.

Brothers and sisters, and mother. 3 Mass. 13. 12 Mass. 490. 14 Maine, 309.

Mother.

Next of kin.

Proviso.

Escheat. 3 Pick. 224.

Degrees, how computed. 1821, 38, § 17.

CHAP. 93.

Heirship of an illegitimate child.
1838, 338.

SECT. 3. Every illegitimate child shall be considered, as an heir of the person, who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall, in all cases, be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral; unless, before his death, his parents shall have intermarried and had other children, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case, such child and all the legitimate children shall be considered as brothers and sisters, and, on the death of either of them, intestate and without issue, the others shall inherit his estate, and he theirs, as provided in the first section of this chapter, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the said children, as provided in the first section, in like manner as if all had been legitimate.

Descent of his property.
1838, 338.
4 Pick. 93.

SECT. 4. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

Descent of estate of an alien, afterwards naturalized.
1834, 105, § 1.

SECT. 5. Any alien, who has purchased real estate, and afterwards become naturalized, shall have power to hold the same in fee, if no claim shall have been interposed by the state, previous to his naturalization; and, in case he should make no disposition of it in his life time, on his dying seized thereof, or of any right or interest, therein or thereto, the same shall descend to his heirs, subject to his debts, in like manner as if he were a native born citizen.

Provision, if he die after filing his intention.
1834, 105, § 2.

SECT. 6. Any alien, who shall have filed, in any court of record, a declaration of his intention to become a citizen of the United States, and shall die before the expiration of three years, if during that time he shall have become seized and possessed of any real estate, the same shall descend to his heirs, or follow the disposition thereof in his will, in like manner, as if he were a native citizen.

Certain property not to escheat.
1834, 105, § 3.

SECT. 7. No title or claim of any citizen of this state, who was in actual possession of any lands, on or before the first day of January, eighteen hundred and thirty four, shall escheat or be defeated, on account of the alienage of any person, through or from whom such title or claim shall have been derived.

What is an advancement.
1821, 51, § 40.
2 Pick. 337.
3 Pick. 450.
4 Pick. 21.
22 Pick. 508.

SECT. 8. All gifts and grants of real or personal estate shall be deemed to have been made, in advancement, to a child or grand child, if they are expressed in such gift or grant to be so made, or charged by the intestate, in writing, as an advancement, or acknowledged, in writing, as such by the child or grand child.

To be considered part of the estate.
1821, 51, § 40.

SECT. 9. Any real or personal estate, thus given, by way of advancement, to a child or grand child, shall be considered as a part of the intestate's estate, so far as it regards the division and distribution thereof, and shall be taken by such child, towards his share of the intestate's estate.

Same subject.
1821, 51, § 40.

SECT. 10. The value of the estate advanced, if expressed by the intestate in his gift or charge, or in the acknowledgment of the

child or grand child, shall be considered the value, to be allowed in the distribution of the estate; if no value be so expressed, then it shall be estimated according to its value, when given.

SECT. 11. If the amount of the advancement shall exceed the share of such child or grand child, 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 part of such advancement; and, if the amount so received shall be less than his share, he shall be entitled to as much more as will make all the shares equal.

Effect, if it exceed the child's share.

SECT. 12. If any such advancement shall be made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, it shall be considered as part of the personal estate; and if, in either case, it shall exceed the share of real or personal estate, respectively, that would have come to the party 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 those of the other heirs, who are in the same degree with him.

Effect upon distribution of real or personal estate.

SECT. 13. If any child or grand child, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

If such heir die, how advancement is to be reckoned.

SECT. 14. Nothing contained in this chapter shall affect the title of a husband, as tenant by the curtesy, nor that of the widow, as tenant in dower.

Tenancy by curtesy or dower, not affected. 1821, 38, § 18.

SECT. 15. When any person shall die possessed of any personal estate, or right or interest therein, not lawfully disposed of by his will, the same, after allowing to the widow, if any, her wearing apparel, according to the degree and estate of her husband, and such further necessaries, as the judge of probate shall order, having regard to the state of the family, and also such sum, when she rejects the provision made for her in her husband's will, as may be allowed to her according to the eighteenth section of chapter, one hundred and eight, shall first be applied to the payment of the debts of the intestate, and the charges of his funeral, and settlement of his estate; and the residue shall be distributed to the same persons, in the same proportion, to whom the real estate shall descend, but subject however to the provisions contained in the following sections.

How personal estate shall descend. 1821, 38, § 19.

SECT. 16. If the intestate were a married woman, the husband shall be entitled to the whole of such residue.

Personal estate of a married woman. 1821, 38, § 19.

SECT. 17. If the intestate leave a widow and issue, the widow shall be entitled to one third part of said residue.

If intestate leave widow and issue. 1821, 38, § 19. 1 Pick. 157.

SECT. 18. If he leave no issue, then she shall be entitled to one half part thereof.

If no issue. 1821, 38, § 19.

SECT. 19. If he leave no kindred, the widow shall be entitled to the whole of said residue.

If no kindred. 1821, 38, § 19.

CHAP. 93.

If no husband, widow, nor kindred.
1821, 38, § 19.
Debt due from an heir, to be a lien on the heir's share.

Proceedings in such case.

SECT. 20. If there be no husband, widow nor kindred of the intestate, the whole shall escheat to the state.

SECT. 21. When any person shall die intestate, whose estate shall not be insolvent, and any heir, to whom a share of such estate, whether real or personal, by law descends; was indebted to the intestate at the time of his decease, in such case the debt, so due, shall be and remain a lien upon such share until the debt shall be paid; which lien shall have priority to any attachment on said share.

SECT. 22. The administrator on such estate may realize the benefit of such lien on the descended share of such heir, by an attachment of the same in a suit, brought within two years after the grant of administration, for the recovery of the debt; and a levy and satisfaction of the execution issued on the judgment in such suit, within thirty days after such judgment; and, in such action, if the heir has any claim against the estate, he shall file the same by way of set off; or, if the heir should claim to be a creditor of the estate, and shall bring his action for the recovery of the same against the administrator within said two years, then the administrator may file the claim of the intestate against such heir, by way of set off; and in this manner both claims shall be settled, and the balance be established.

CHAPTER 94.

OF TITLE TO REAL ESTATE TAKEN BY EXECUTION.

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| <p>SECT. 1, 2. What interests in real estate may be levied upon.</p> <p>3. Exception of burying ground.</p> <p>4, 5, 6. Levy of execution, and appraisal.</p> <p>7. Appraisers' certificate to describe the estate.</p> <p>8. How appraised, if in several parcels.</p> <p>9. Majority of appraisers to decide.</p> <p>10. What shall pass by the levy.</p> <p>11. Levy on property held in common.</p> <p>12. Levy on land, which cannot be set off by metes and bounds.</p> <p>13. Levy on mills and privileges.</p> <p>14. Levy on a life estate.</p> <p>15. Levy on land under a lease.</p> <p>16. Levy on part of a reversion.</p> <p>17. Delivery of seizin and possession.</p> <p>18. Same, when levy is on a right of entry. Proceedings, when the debt has been assigned.</p> <p>19. Return, and record of execution and levy.</p> <p>20, 21. Effect, if not recorded.</p> | <p>SECT. 22. When creditor may waive the levy.</p> <p>23. Creditor may have scire' facias, if title fail.</p> <p>24. Form of officer's return.</p> <p>25. When debtor may redeem.</p> <p>26. Mode of deciding the sum due.</p> <p>27. Remedy, if creditor will not release.</p> <p>28. Equity process, to adjust claims.</p> <p>29. Costs in such cases.</p> <p>30. Proceedings, when levy is on rents and profits.</p> <p>31. Mode of setting off land under mortgage.</p> <p>32. Remedy, if mortgage was larger than was estimated.</p> <p>33. Time of redemption. Remedy, if debtor pay the mortgage.</p> <p>34. Mortgages, and lands of banks and other corporations, may be sold on execution.</p> <p>35. No conveyance or assignment by the corporation, to be valid, after seizure.</p> <p>36. Sale of possessory interests, or equities of redemption.</p> |
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