

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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prior grantee has an unrecorded deed or other evidence of title, may give the latter personal notice in writing to have the same recorded, and tender to him, or leave with the register, the legal fees therefor; and if he neglects to have it so recorded for thirty days, a justice of the supreme judicial court, in session or vacation, on complaint, may cause said grantee or his heirs to be brought before him for examination, and unless sufficient cause is shown for such neglect, may order such deed or other evidence of title to be recorded, and the cost paid by the respondent.

SEC. 28. The register shall certify, on each deed by him recorded, the time when it was received, and it shall be considered as recorded at that time. Within one hour after its delivery to him, he shall enter such time, the names of the grantor and grantee, and their places of residence, in a book kept for that purpose, and open to inspection in business hours.

SEC. 29. Pews and rights in houses of public worship are real estate. Deeds of them, and levies by execution upon them, may be recorded by the clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds.

CHAP. 73.
holding an unrecorded deed, may be compelled to have it recorded.
R.S., c. 73, § 27.

Register to certify on deed when received, also in book open to all.
R.S., c. 73, § 28.
12 Me., 501.
17 Me., 395.

Pews, real estate.
—deeds and levies may be recorded in town clerk's office.
R.S., c. 73, § 29.

CHAPTER 74.

WILLS, THEIR EXECUTION, AND DEVISES.

WILLS AND DEVISES.

- SEC. 1. Will, by whom and how to be made.
2. Witnesses competent at the time, are sufficient. Property not disposed of, how to be distributed.
3. Will, how rendered invalid, or revoked.
4. What lands pass, although testator is not seized, or is disseized.
5. Lands subsequently acquired, pass.
6. Property taken from a devisee for payment of debts, loss to be borne equally.
7. Assets, how to be marshalled for payment of debts.
8. Posthumous child takes a share of an estate.
9. Child or issue of deceased child, having no devise, takes; exception.
10. When devisee dies before testator, his lineal heirs take the devise.
11. Who shall contribute to the loss of a devisee.
12. When one cannot pay, loss shall be borne equally by the others.
13. Real estate not devised, shall be first applied to pay debts. Exceptions.
14. Cases of contribution, how determined.
15. Will is not effectual unless proved and allowed in probate court. Proof there, conclusive.
16. Devise of land construed to convey all the estate of devisor.
17. When executors are directed to pay legacy on conditions, and no time is stated in will, reasonable time shall be allowed, not exceeding five years; if condition is not performed, how administered.

NUNCUPATIVE WILLS.

- SEC. 18. Nuncupative wills, where and when to be made; exceptions.
19. Testimony to prove, not receivable after six months; exception.
20. Not effectual to dispose of property exceeding one hundred dollars, unless three witnesses were present.

CHAP. 74.

WILLS AND DEVISES.

Will, by whom and how to be made.
R.S., c. 74, § 1.

SEC. 1. A person of sound mind, and of the age of twenty-one years, may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will. (a)

Competency of witnesses.—property not willed, distributed.
R.S., c. 74, § 2.
22 Me., 441.

SEC. 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will shall be distributed as the estate of an intestate.

Will, how rendered invalid, or revoked.
R.S., c. 74, § 3.
4 Me., 341.
22 Me., 426.
57 Me., 453.
73 Me., 597.

SEC. 3. A will so executed is valid, until it is destroyed, altered, or revoked by being intentionally burnt, cancelled, torn, or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil, or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

What lands of testator pass by will.
R.S., c. 74, § 4.

SEC. 4. Lands, into which the testator, at the time, has a right of entry although not seized of them, and lands of which he is subsequently disseized, pass by his will, as they would, if not devised, have descended to his heirs; and his devisee has the same remedy for their recovery, as his heirs would have had.

Lands subsequently acquired, pass by will.
R.S., c. 74, § 5.
69 Me., 309.

SEC. 5. Real estate owned by the testator, the title to which was acquired after the will was executed, will pass by it, when such appears to have been his intention.

Property taken from a devisee for payment of debts, loss to be borne equally.
R.S., c. 74, § 6.

SEC. 6. When property is taken by execution from a devisee or legatee thereof, or is sold by order of court for payment of debts, all the other devisees, legatees, and heirs shall pay him their proportion thereof, so as to make the loss fall equally on all, according to the value of the property received by each from the testator, except as provided in the following section.

Assets for payment of debts, how marshalled.
R.S., c. 74, § 7.
61 Me., 472.
67 Me., 503.

SEC. 7. If the testator has made a specific bequest, so that, by operation of law, it is exempted from liability to contribute for payment of debts, or if he has required an application of his estate for that purpose different from the provisions of the preceding section, the estate shall be appropriated according to the will. No part of the estate can be exempted from liability for payment of debts, if required therefor.

Posthumous child takes share of estate, as if no will; how to be taken.
R.S., c. 74, § 8.
63 Me., 159.

SEC. 8. A child of the testator, born after his death and not provided for in his will, takes the same share of his estate, as he would if his father had died intestate, to be assigned by the judge of probate and taken from all the devisees in proportion to the value of what they respectively receive under the will, unless, by a specific devise or some other provision thereof, a different apportionment is necessary to give effect to the intention of the testator respecting that portion of his estate which passes by the will.

A child or his issue, having no devise, takes as an heir.

SEC. 9. A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate, which he would

(a) 21 Me., 463; 22 Me., 440; 27 Me., 24; 34 Me., 162; 42 Me., 74; 45 Me., 585; 46 Me., 244; 47 Me., 476; 48 Me., 194; 57 Me., 573; 66 Me., 294; 70 Me., 548.

have taken if no will had been made, unless it appears that such omission was intentional, or was not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator. (a)

SEC. 10. When a relative of the testator, having a devise of real or personal estate, dies before the testator, leaving lineal descendants, they take such estate as would have been taken by such deceased relative if he had survived. (b)

SEC. 11. When a share of the testator's estate descends as provided in sections eight and nine, the person taking it is liable to contribute, and may claim contribution, as provided in section six.

SEC. 12. When a person, liable to contribute as provided in section six, cannot pay his proportion, the others bear the loss, each in proportion to the value of the property received by him. If any one liable to contribute dies without having paid his proportion, his executor or administrator is liable therefor as for a debt of the deceased.

SEC. 13. When a part of the real estate of a testator is not disposed of by his will, and the personal estate is not sufficient to pay his debts, such undevisee real estate shall be applied for that purpose in exoneration of the real estate devised, unless it appears that a different arrangement was made in the will for that purpose, and then the assets shall be applied according to its provisions.

SEC. 14. All cases of contribution, arising under this chapter, may be determined in an action at law, if the case will allow it, or in the probate court subject to appeal, or in the supreme judicial court by a bill in equity.

SEC. 15. No will is effectual to pass real or personal estate, unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution.

SEC. 16. A devise of land conveys all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate. (c)

SEC. 17. When executors or trustees are directed to pay a legacy to a person or a corporation, on conditions precedent, and no time is stated in the will, or in the charter or by-laws of the corporation for their performance, a reasonable time is allowed therefor, not exceeding five years from the probate of a will; and if not so performed, it shall be administered as undivided estate, unless otherwise disposed of by the will.

NUNCUPATIVE WILLS.

SEC. 18. A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to this chapter.

CHAP. 74.
R.S., c. 74, § 9.
—exceptions.

When devisee dies before testator, lineal heirs take devise.
R.S., c. 74, § 10.

Who contributes to loss of devisee.
R.S., c. 74, § 11.

When one cannot contribute, loss to be borne equally by the others.
R.S., c. 74, § 12.

Real estate not devised, shall be applied to pay debts, before what is devised; exception.
R.S., c. 74, § 13.

Cases of contribution, how to be determined.
R.S., c. 74, § 14.

Will must be proved, and allowed.
R.S., c. 74, § 15.

Devise of land conveys all devisor's estate.
R.S., c. 74, § 16.

Legacy payable on condition, and no time stated, how to be administered.
R.S., c. 74, § 17.
72 Me., 167.

Nuncupative wills, where and when to be made.
R.S., c. 74, § 18.
See c. 64, § 16.
2 Me., 299.
8 Me., 168.
53 Me., 569.

(a) 32 Me., 269; 70 Me., 550.

(b) 49 Me., 164; 64 Me., 498.

(c) 36 Me., 216; 59 Me., 482; 69 Me., 491.

CHAP. 74.

Must be proved within six months; exception. R.S., c. 74, § 19. See c. 64, § 16. Cannot dispose of property over \$100, unless three witnesses were present. R.S., c. 74, § 20. 2 Me., 299. See c. 64, § 16.

SEC. 19. No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time when they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken.

SEC. 20. No nuncupative will is effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will.

CHAPTER 75.**TITLE BY DESCENT.****DESCENT OF REAL ESTATE.**

- SEC. 1.** Rules of descent established.
2. Degrees of kindred are according to civil law. Half blood inherits.
3. Heirship of an illegitimate child.
4. Descent of estate of an illegitimate child.
5. Advancements, how established; considered part of the estate.
6. Advancements, how to operate on distribution; not to be refunded.
7. Advancements, when one receiving dies; proceedings.

DESCENT OF PERSONAL ESTATE.

- SEC. 8.** Personal estate to be distributed as real estate is; exceptions.
9. Widow's or widower's share of it.
10. Disposal of money received for insurance on life.
11. When an heir owes the estate, a lien is created; how enforced.

DESCENT OF REAL ESTATE.

SEC. 1. The real estate of a person deceased intestate, being subject to the payment of debts, descends according to the following rules:

I.—In equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation.

II.—If no such issue, it descends to his father.

III.—If no such issue or father, it descends in equal shares to his mother, brothers, and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

IV.—If no such issue, father, brother, or sister, it descends to his mother to the exclusion of the issue of deceased brothers and sisters.

V.—If no such issue, father, mother, brother, or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor, in preference to those claiming through an ancestor more remote.

VI.—When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent,

Rules of descent. R.S., c. 75, § 1. 58 Me., 259. 61 Me., 472. To children and lineal descendants. 14 Me., 310.

Father.

Mother, brothers and sisters. 14 Me., 310. 57 Me., 352. Mother. 57 Me., 351.

Next of kin. 53 Me., 495. 67 Me., 583.

Unmarried minor. 60 Me., 162.