

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1955 SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

**Place in Pocket of Corresponding
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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1955

thorized by commission from the judge, shall be competent evidence in the absence of such witnesses. (R. S. c. 141, § 6. 1955, c. 4.)

Effect of amendment.—The 1955 amendment inserted in this section the words “or any other witness whose testimony is required to prove the signatures of the testator or of the witnesses of such will.”

Special Administrators.

Sec. 56. Powers and duties.—The special administrator shall collect all the goods, chattels and debts of the deceased, control and cause to be improved all his real estate, collect the rents and profits thereof and preserve them for the executor or administrator thereafter appointed; and for that purpose may maintain suits and sell such perishable and other goods as the judge orders; and shall have such powers to vote stock owned by the deceased as the deceased would have if living, at all corporation meetings, and the authority to sell and transfer any specific rights which may have accrued to the estate of said deceased as such stockholder and the judge may authorize and direct that the business of the deceased, in whole or in part shall, for a limited time to be determined by him, be carried on by such special administrator as a going business; pay the expenses of the funeral and last sickness and of his administration; debts preferred under the laws of the United States; public rates and taxes, and money due the state from the deceased; and pay to the widow or widower, if any, and if not, to the guardian of the children under 14 years of age, for their temporary support, such sums as the judge orders, having regard to the state and the amount of the property; and sums so paid to the widow, widower or guardian shall be deducted, if the estate is solvent, from the share of the widow, widower or children, but if insolvent, shall be considered by the judge in his allowance to them. (R. S. c. 141, § 50. 1955, c. 276.)

Effect of amendment.—The 1955 amendment inserted the words “or widower” in line fourteen and the word “widower” in lines seventeen and eighteen.

Chapter 155.

Inheritance, Succession and Estate Taxes.

Property Taxable.

Sec. 2. Property taxable; exemptions.

I.

C. By survivorship in any form of joint ownership including joint bank deposits in which the decedent joint owner contributed during his lifetime any part of the property held in such joint ownership or of the purchase price thereof, excepting transfers by survivorship described in paragraph D hereof; (1955, c. 430, § 1)

D. By survivorship in any form of joint ownership, other than joint bank deposits and joint building and loan shares, created on or after the effective date of this act, the value of decedent's interest in such joint ownership to be determined for the purpose of this chapter as provided by section 10-A. (1955, c. 430, § 2)

II. All proceeds of life insurance policies upon the life of a decedent payable to his estate or to his executors or administrators except, if testate, such part thereof as is bequeathed to a widow or widower, or issue, or, if intestate, such part thereof as descends under the provisions of section 21 of chapter 170. All property which shall pass to or for the use of societies, corporations and institutions now or hereafter exempted by law from taxation, or to a public

corporation, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, religious, benevolent, educational, public or other like work, pecuniary profit not being its object or purpose, or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, or the care or maintenance of cemeteries, cemetery lots or structures therein or thereon, shall be exempted; provided, however that such society, corporation, institution or association be organized and existing under the laws of this state or that the property transferred be limited for use within this state; provided further, that if such society, corporation, institution or association be organized or existing under the laws of a territory or state of the United States, other than this state, or of a foreign state or country, all property transferred to said society, corporation, institution or association shall be exempted, if at the date of decedent's death the said state or territory, or foreign state or country under the laws of which said society, corporation, institution or association was organized or existing did not impose a legacy or succession tax or a death tax of any character, in respect of property passing to or for the use of such society, corporation, institution or association organized or existing under the laws of this state, or if at the date of decedent's death the laws of the state or territory or foreign state or country under which said society, corporation, institution or association was organized or existing, contained a reciprocal provision under which such passing of property to said society, corporation, institution or association organized or existing under the laws of another state or territory or foreign state or country shall be exempt from legacy or succession or death taxes of every character, providing such other state or territory, or foreign state or country, allowed a similar exemption to such a society, corporation, institution or association organized or existing under the laws of another state or territory or foreign state or country. [1955, c. 154] (R. S. c. 142, § 2. 1949, c. 86. 1955, c. 154; c. 430, §§ 1, 2.)

I. GENERAL CONSIDERATION.

Effect of amendments.—The first 1955 amendment deleted the words "by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy to any such property or the income thereof," which formerly appeared following the word "thereon" in line twelve of subsection II. The second 1955 amendment added the words "excepting transfers by survivorship described in paragraph D hereof" at the end of paragraph C of subsection I and added paragraph D of subsection I. As the rest of the section was not changed by the amendments, only paragraphs C and D of subsection I and subsection II are set out.

III. PROPERTY PASSING TO ORGANIZATIONS.

Burden of proving exemption is on claimant.—The burden of proving an exemption from tax under the inheritance tax law is upon the claimant even though the exemption statute be liberally construed. *Thirkell v. Johnson*, 150 Me. 131, 107 A. (2d) 489.

But corporation cannot take free of inheritance tax, etc.

In accord with original. See *Thirkell v. Johnson*, 150 Me. 131, 107 A. (2d) 489.

Gift which may be used for general expenses of Masonic lodge not exempt.—A Masonic lodge is not entitled to exemption from tax upon a gift which may be used for the general expenses of the lodge on the ground that it is a charitable or benevolent institution. *Thirkell v. Johnson*, 150 Me. 113, 107 A. (2d) 489.

The conditions of a gift cannot be altered by the beneficiary so as to turn an otherwise taxable into an exempted gift. *Thirkell v. Johnson*, 150 Me. 131, 107 A. (2d) 489.

By-law of beneficiary organization cannot turn unrestricted gift into charitable trust.—An unrestricted gift under a will does not become a trust fund for charitable or benevolent purposes by reason of a by-law of the beneficiary organization that all moneys bequeathed to the organization shall become part of a permanent charity fund. *Thirkell v. Johnson*, 150 Me. 131, 107 A. (2d) 489.

Value for Taxation.

Sec. 10-A. Value of share of joint owner.—If the decedent, at the time of his death, shall be the co-owner of any form of property, other than joint bank deposits or joint building and loan shares, in any form of joint ownership created on or after the effective date of this act, the value of such joint ownership shall be determined by dividing the whole value of the property by the number of co-owners, regardless of the amount, if any, contributed by any individual co-owner. (1955, c. 430, § 3.)

Lien.

Sec. 18. Lien.—Property subject to taxes as aforesaid, in whatever form of investment it may happen to be, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not attach to any personal property after the same has been sold or disposed of for value by the executor, administrator or trustee, or to real estate after it has been conveyed by the executor, administrator or trustee under license of the probate court. The lien charged by sections 1 to 44, inclusive, upon any real estate or separate parcel thereof may be discharged by the payment of all taxes and interest due and to become due upon said real estate or separate parcel and the cost of recording the certificate hereinafter mentioned; and upon payment thereof, the state tax assessor shall cause a certificate showing such payment to be recorded in the registry of deeds in each county where said real estate is located.

Such lien shall expire 5 years after an inventory of the property with respect to which the lien exists is filed with the state tax assessor; provided, however, the state tax assessor may record in the registry of deeds in the county where such property is located, within said 5-year period, a certificate of lien, which shall extend said lien for an additional period of 5 years beginning at the termination of the first 5-year period, and the assessor may further extend said lien 5 years at a time by filing additional certificates of lien. Such certificate of lien shall be sufficient if it states the name of the decedent, identifies the property, states that the assessor claims a lien thereon for unpaid inheritance or estate taxes, and shall state the name of the record owner of such property at the time of decedent's death if other than decedent.

If the lien shall not have been terminated as above set forth, it shall in any event expire 10 years after decedent's death, unless further extended by the filing of a lien certificate as above set forth, as to any property in the hands of a purchaser for value.

The limitations herein established shall apply to liens heretofore as well as hereafter created; provided, however, that no lien heretofore created shall expire prior to 6 months after the effective date of this act. (R. S. c. 142, § 17. 1947, c. 354, § 6. 1955, c. 272.)

Effect of amendment.—The 1955 amendment deleted the words "of which a decedent dies seized or possessed" after the word "property" at the beginning of the first sentence and the words "and all prop-

erty acquired in substitution therefor" before the word "shall" where it first appears in the first sentence. The amendment also added the second, third and fourth paragraphs.

Payment.

Sec. 21. Action of debt by state; bond.—An action of debt may be maintained in the name of the state against an administrator, executor, trustee, grantee or donee for the recovery of all taxes imposed by the provisions of sections 1 to 44, inclusive, with interest thereon. Administrators and executors shall be liable to the state on their administration bonds for all taxes assessable under the provisions of said sections and interest thereon. Whenever an administration bond is waived by testamentary provision or by the assent of interested

parties, the judge of probate, notwithstanding such waiver, before granting letters testamentary or of administration may, and unless he shall find that any inheritance or estate tax due and to become due the state is reasonably secured by the lien upon real estate hereinbefore provided shall, require a bond payable to him or his successor sufficient to secure the payment of all inheritance taxes and interest conditioned in substance to pay all inheritance and estate taxes due to the state from the estate of the deceased with interest thereon. An action for the recovery of inheritance and estate taxes and interest shall lie on either of said bonds without the authority of the judge of probate. (R. S. c. 142, § 20. 1955, c. 173.)

Effect of amendment.—The 1955 amendment substituted, in the third sentence, the words “unless he shall find that any inheritance or estate tax due and to become due the state is reasonably secured by the

lien upon real estate” for the words “if in his judgment the amount of any bequest or distributive share of the estate may be subject to a tax as.”

Chapter 158.

Guardians. Adoption of Persons. Change of Name.

Guardians for Minors.

Sec. 3. Power over minor's persons and property.

Petition insufficient.—A probate petition for custody of a minor child alleging merely that there is “occasion” for the ap-

pointment of a guardian is insufficient under this section. *Legault v. Levesque*, 150 Me. 192, 107 A. (2d) 493.

Chapter 160.

Testamentary Trustees and Voluntary Trusts.

Sections 27-33. The Rule against Perpetuities.

The Rule against Perpetuities.

Sec. 27. When rule applied.—In applying the rule against perpetuities to an interest in real or personal property limited to take effect at or after the termination of one or more life estates in, or lives of, persons in being when the period of said rule commences to run, the validity of the interest shall be determined on the basis of facts existing at the termination of such one or more life estates or lives. In this section an interest which must terminate not later than the death of one or more persons is a “life estate” even though it may terminate at an earlier time. (1955, c. 244.)

Sec. 28. Age may be reduced to 21.—If an interest in real or personal property would violate the rule against perpetuities as modified by section 27 because such interest is contingent upon any person attaining or failing to attain an age in excess of 21, the age contingency shall be reduced to 21 as to all persons subject to the same age contingency. (1955, c. 244.)

Sec. 29. Contingent fees.— A fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken shall become a fee simple absolute if the specified contingency does not occur within 30 years from the date when such fee simple determinable or such fee simple subject to a right of entry becomes possessory. If such contingency occurs within said 30 years the succeeding interest, which may be an interest in a person other than the