

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

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CHARLOTTESVILLE, VIRGINIA
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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 un- der this section. Legault v. Levesque, 150 Me. 192, 107 A. (2d) 493.

Guardians and Conservators for Adults.

Sec. 4. Appointment of guardians for adults. — The judge of probate may appoint guardians to the following persons resident in his county, or resi- dent out of the state, and having estate in his county, although over 21 years of age, on written application of any of their friends, relatives or creditors or of the municipal officers or overseers of the poor of the town where they reside; but when the judge is interested, either in his own right, in trust or in any other manner, or is within the 6th degree of kindred, said application shall be made to and such appointment shall be made by the judge in any adjoining county and the record of said appointment shall show why it was so made:

- I. All persons, including those insane or of unsound mind and married women who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates or to protect their rights;
- II. Persons who, by excessive drinking, gambling, idleness or debauchery of any kind, have become incapable of managing their own affairs, or who so spend or waste their estate as to expose themselves or families to want or suf- fering or their towns to expense;
- III. Convicts committed to the state prison for a term less than for life.

The judge may, on said application, appoint the husband or wife of such a person to be his or her guardian. (R. S. c. 145, § 4. 1953, c. 218, § 1. 1957, c. 216.)

Effect of amendment. — The 1957 amendment deleted the words "being un- der foreign guardianship or conservator- ship" which formerly appeared preceding the words "and having estate in his county" in the introductory paragraph.

Powers and Duties.

Sec. 29. Disability of adults under guardianship; dismissal of guardian.

Quoted in Wattrich v. Blakney, 151 Me. 289, 118 A. (2d) 332.

Adoption of Persons.

Sec. 36. Who may adopt person.

Cited in Jones v. Thompson, 151 Me. 462, 121 A. (2d) 366.

Sec. 40. Legal effect of adoption of child; descent of property.

But this section places child, etc.

This section by its terms makes the adopted child in relation to his adopting parents the same as a child of blood. New England Trust Co. v. Sanger, 151 Me. 295, 118 A. (2d) 760.

But status of adoption and right of in-

heritance are distinguishable.

The status of the adopted child is fixed by the law of the adoption but the adopted child's rights of inheritance shall be determined by the law of the state of inheritance. New England Trust Co. v. Sanger, 151 Me. 295, 118 A. (2d) 760.

Law governing right of inheritance.—The question whether an adopted child (irrespective of where he is adopted) can inherit and the extent of such right of inheritance will be determined, not by the law of the state where the adoption took place, but by the law of the state where the property is located, or by the law of the domicile of the decedent, as the case may be. *New England Trust Co. v. Sanger*, 151 Me. 295, 118 A. (2d) 760.

Legally adopted children are heirs at law of a deceased adopting parent within the meaning of a clause of a will providing for "if any of my said children should die, leaving at the time of such death no lineal descendants, then such part of the trust fund as would have vested in such lineal descendants, had any such existed, shall vest free of any trust in his or her heirs at law." *New England Trust Co. v. Sanger*, 151 Me. 295, 118 A. (2d) 760.

Interpretation of words "child or children," etc.

In accord with 2nd paragraph in original. See *Fiduciary Trust Co. v. Brown*, 152 Me. 360, 131 A. (2d) 191.

Interpretation of the word "issue" in a trust indenture may be due in a large measure to whether the settlor was himself the adopting parent, or whether the word related to adopted children of a beneficiary, since by adoption, adopters can make for themselves an heir, but they cannot thus make one for their kindred. *Fiduciary Trust Co. v. Brown*, 152 Me. 360, 131 A. (2d) 191.

Whether adopted children are "issue" of their adoptive mothers, depends upon the intention of the testator as expressed in the language used in the trust indenture. *Fiduciary Trust Co. v. Brown*, 152 Me. 360, 131 A. (2d) 191.

Chapter 160.

Testamentary Trustees and Voluntary Trusts.

Sections 27-33. The Rule against Perpetuities.

Sections 34-35. Income Earned during Period of Administration.

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 person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. But if a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, said interests shall take effect