

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Effect of amendment.—The 1963 amendment deleted “or 7 days before the return day, when the action is brought before a trial justice” formerly appearing at the end of the first sentence.

Application of amending act.—Section

280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Actions Pending and Commenced.

Sec. 20. Claims not presented or not allowed, barred, except in case of further assets.—Claims not presented and claims disallowed without appeal are forever barred from recovery by civil action. Claims disallowed cannot be filed and proved in a counterclaim, except to the amount of counterclaims on behalf of the estate; but when, after distribution, further assets come into the hands of the administrator, claims not presented to the commissioners, on petition to the judge, and after due notice if proved or not disputed, may be allowed and paid like contingent claims. (R. S. c. 144, § 20. 1961, c. 317, § 513.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “suit” at the end of the first sentence of this

section and substituted “a counterclaim” for “setoff” in the second sentence.

Miscellaneous Provisions.

Sec. 22. Waste or trespass on real estate of insolvent.—When an administrator commits waste or trespass, although an heir or devisee, or consents that another may do it, on real estate of his intestate insolvent, he shall account for treble the amount of the damage. He may, in a civil action, recover damages of a person committing the same, to be accounted for as assets, although such person is heir or devisee of the estate. (R. S. c. 144, § 22. 1961, c. 317, § 514.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an

action of trespass” in the last sentence of this section.

Chapter 158.

Guardians. Adoption of Persons. Change of Name.

Guardians for Minors.

Cross reference.—See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

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.

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 resident 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 suffering 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 under foreign guardianship or conservatorship” 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.

Guardians Ad Litem; Next Friend.

Sec. 31. Guardian ad litem; next friend.—Nothing in this chapter affects the power of any court to appoint a guardian to defend the interests of any minor or other incapacitated person in any action pending in such court, nor their power to allow or appoint anyone as next friend of such person to commence, prosecute or defend any action in his behalf. (R. S. c. 145, § 30. 1961, c. 317, § 515.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in two places in this section.

Sec. 32. Settlement of action not valid unless approved by court.—No settlement of any action brought in behalf of an infant by next friend or defended on his behalf by guardian or guardian ad litem shall be valid unless approved by the court in which the action is pending, or to which the writ is returnable, or affirmed by an entry or judgment. The court may make all necessary orders for protecting the interests of the infant and may require the guardian ad litem or next friend to give bond to truly account for all money received in behalf of the infant. When the court in which such action is pending or to which it is returnable is in vacation, the judge of that court, or, if the action is pending in or returnable to the superior court, any justice of the superior court, shall have the power to approve a settlement of said action and to make all necessary orders for protecting the interests of the infant and may require the giving of a bond as provided. (R. S. c. 145, § 31. 1945, cc. 62, 272. 1961, c. 317, § 516.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in four places in this section and deleted

“above” preceding “provided” at the end of the section.

Sec. 33. Special guardians for married women.—Pending any proceedings in the probate court in which any married woman is interested, when, after personal notice and a hearing, the judge is satisfied that by reason of age or mental infirmity she is incompetent to manage her affairs or protect her rights, he may appoint her husband or other suitable person her guardian for the

special purpose, with power to institute or defend proceedings necessary for the interests of his ward, and no proceeding thus instituted shall be delayed or disposed of without the consent of such guardian. (R. S. c. 145, § 32. 1961, c. 317, § 517.)

Effect of amendment.—The 1961 amendment deleted “in law or equity” following “defend proceedings” in this section.

Adoption of Persons.

Sec. 36. Who may adopt person.

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

Sec. 38. Proceedings.—Upon the filing of a petition for adoption of a minor child, unless one of the petitioners is a blood relative of the child or the petitioners have received the child from the department of health and welfare or from a licensed adoption agency, the court shall notify the department of health and welfare which shall, either through its own workers or through a licensed adoption agency when practicable, investigate the conditions and antecedents of the child to determine whether he is a proper subject for adoption and to investigate whether the proposed home is suitable for the child. The court may refer any petition signed by a blood relative to said department. This information shall, within 45 days or within such further reasonable time as the court allows, be submitted to the court in writing and be available to counsel of record. In the event that the report of investigation is not submitted to the court within the time allowed, then the court may proceed with hearing upon the petition without such report. The aforesaid notification and investigation may be waived by the court and the reason therefor shall be stated in writing by the court and made a part of the record. Thereupon, if the judge is satisfied of the identity and relations of the parties, of the ability of the petitioners to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child is the child of the petitioners and that his name is thereby changed, without requiring public notice thereof. The court may require that the child shall have lived for 1 year in the home of the petitioners before the petition is granted, and may also require that the child, during all or part of said probationary period, shall be under the supervision of the bureau of social welfare or a licensed child placing agency.

A certified copy of the birth record of the child proposed for adoption shall be presented with the petition for adoption, provided such a certified copy can be obtained or can be made available by filing a delayed birth registration. After the adoption has been decreed the register of probate shall forthwith file a certificate of adoption with the state registrar of vital statistics on a form prescribed and furnished by the state registrar of vital statistics.

The petitioners shall furnish with the petition such information as the state registrar shall require, on a form prescribed and furnished by the state registrar, and shall certify to the truth of such information.

The register of probate shall furnish such information from the official court record as the state registrar shall require and shall certify to the court action under the seal of his court.

When the state registrar shall receive a certificate of adoption, or an annulment or revocation of adoption or amendment thereof from a court for a person born outside this state he shall forward such certificate, annulment, revocation or amendment to the appropriate registration authority in the state of birth. (R. S. c. 145, § 37. 1953, c. 341. 1959, c. 291, § 11. 1963, c. 314.)

Effect of amendments. — The 1959 and added the third, fourth and fifth paragraph rewrote the second paragraph graphs.

The 1963 amendment deleted the former first three sentences of the section and

substituted the present first five sentences therefor.

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.

And statute in force at time of death, etc.

The law is settled in this state that the right to inherit property from or by an adopted person is determined by the law of descent in effect at the time of the death of the intestate. In *re Williams*, 154 Me. 88, 144 A. (2d) 116.

But status of adoption and right of inheritance 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.

Sec. 43. Decree of adoption annulled. — Any judge of probate may, on petition of 2 or more persons, after notice and hearing and for good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted under this chapter.

After any decree of adoption has been annulled, the register of probate shall forthwith transmit a certified copy of the annulment to the state registrar of vital statistics. (R. S. c. 145, § 41. 1959, c. 291, § 12.)

Effect of amendment.—The 1959 amendment deleted the words "the provisions of", formerly appearing after the word "under"

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 descendents, then such part of the trust fund as would have vested in such lineal descendents, 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 158-A.

Uniform Gifts to Minors Act.

Sec. 1. Definitions.—In this chapter, unless the context otherwise requires: An "adult" is a person who has attained the age of 21 years.

A "bank" is a trust company, national banking association, savings bank or industrial bank.

A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying