

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

Sec. 10. Short title. — This chapter may be cited as the "Maine Uniform Gifts to Minors Act." (1959, c. 154.)

Chapter 159.

Uniform Veterans' Guardianship Act.

Sec. 2. Administrator as party in interest.—The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any action or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the Veterans Administration. Not less than 15 days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail, unless waived in writing, to the office of the Veterans Administration having jurisdiction over the area in which any such action or any such proceeding is pending. (R. S. c. 146. 1949, c. 230. 1961, c. 317, § 518.)

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

Chapter 160.

Testamentary Trustees and Voluntary Trusts.

Sections 27-33. The Rule against Perpetuities.

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

Testamentary Trustees.

Sec. 9. Reference or compromise. — The judge after a hearing, public or personal notice of which shall have been given in accordance with order of court, may authorize any trustee to refer or compromise any claim or action of whatsoever nature by or against the trust estate. Any such award or compromise, if found by the judge just and reasonable in its effect upon all persons who may then or at any time thereafter be or become interested in said trust estate, shall be valid and binding on such persons; provided, however, that where it shall appear that the interests of any persons under disability not represented by guardian or any future contingent interest may be affected, the court may appoint some suitable person or persons to represent such persons under disability or future interests. (R. S. c. 147, § 9. 1945, c. 73. 1961, c. 317, § 519.)

Effect of amendment.—The 1961 amendment deleted "either at law or in equity" following "claim or action" in the first sentence of this section.

Sec. 10. Courts may direct trust estates sold and moneys invested.—Any judge of probate having jurisdiction of the trust and the superior court on application of the trustee or of any person interested in the trust estate, after such notice as the judge or court shall order, may authorize or require him to sell any real or personal estate held by him in trust and to invest the proceeds thereof, with any other trust moneys in his hands, in real estate, in policies of life or endowment insurance or annuity contracts issued by life insurance companies authorized to transact business in the state, on the life of any beneficiary of the trust or on the life of any person in whose life such beneficiary has an insurable interest, or in any other manner most for the interest of all concerned therein; and may give such further directions as the case requires for managing, investing

and disposing of the trust fund, as will best effect the objects of the trust. (R. S. c. 147, § 10. 1947, c. 216. 1953, c. 74, § 2. 1961, c. 317, § 520.)

Effect of amendment.—The 1961 amendment deleted “in any county, or the supreme judicial court in equity” formerly following “superior court” near the beginning of this section.

Sec. 11. Power as to trusts.—Either of said courts may hear and determine all other matters relating to the trusts herein mentioned. (R. S. c. 147, § 11. 1961, c. 317, § 521.)

Effect of amendment.—The 1961 amendment deleted “in equity” formerly following “determine” in this section.

Sec. 12. Actions on bonds of trustees. — A civil action upon any bond given by a trustee may be brought by order of the judge of probate for the benefit of any person interested in the trust estate. The proceedings in such action shall be conducted in the manner prescribed with respect to bonds of administrators. (R. S. c. 147, § 12. 1961, c. 317, § 522.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, added “A civil action upon” at the beginning of the section, substituted “brought” for “put in suit” in the present first sentence and substituted “action” for “suit” in the present second sentence.

Voluntary Trusts.

Sec. 18. Fiduciary to exercise prudence; capital gains dividends.—In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Dividends received which represent capital gains realized from the sale of securities owned by any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, shall for all purposes be considered as principal unless otherwise provided by the will, agreement, court order or other instrument creating or defining the fiduciary’s duties and powers. (1945, c. 80. 1951, c. 24. 1963, c. 1.)

Effect of amendment.—The 1963 amendment added the last sentence.

Employee Trusts.

Sec. 22. Employee trusts; effect by rule against perpetuities.

No rule of law against perpetuities or suspension of the power of alienation of the title to property shall operate to invalidate any trust created or attempted to be created, prior to August 20, 1951, by an employer as a part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or

all of his employees to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees earnings or principal, or both earnings and principal, of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a civil action instituted within 3 years after August 20, 1951. (1951, c. 272. 1953, c. 308, § 107. 1961, c. 317, § 523.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “suit” near the end of the last paragraph of this section. As the first paragraph of the section was not affected by the amendment, it is not set out.

Trustees to Fill Vacancies.

Sec. 23. Vacancies under deed of trust or mortgage; property to vest in new trustee; record of decree.—Whenever vacancies shall occur by the death or resignation of any or all of the trustees named in any deed of trust or mortgage, and from any cause such vacancy cannot be filled by appointment by the surviving trustee or trustees named therein or such trustees neglect or refuse to make such appointment, the probate court or the superior court, on a complaint filed by any party interested in said trust, and upon such notice to all persons interested by publication or otherwise as the court shall order, and after hearing thereon, may appoint a trustee or trustees to fill such vacancy or vacancies. Upon and by virtue of said appointment the property described in said deed of trust or mortgage, held by said trustees at the time of such decease or resignation, shall vest in said trustees so appointed without further conveyance thereof, and they shall have the rights and powers and be subject to the duties relating to such trust to the same extent and for the same purpose as the same were held by the original trustees in said trust. The decree making such appointment shall confirm the transfer of title and shall be recorded as the original trust deed was recorded. The heirs at law and personal representatives of any deceased trustee shall not be necessary as parties to said complaint nor any proceedings thereunder, but may appear and be heard in relation to the matters therein contained, and such notice of said complaint and hearing shall be given them by publication or otherwise as the court may order. (R. S. c. 147, § 18. 1961, c. 317, § 524.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into three sentences, substituted “on a complaint filed by” for “or on the petition of” in the present first sentence, deleted “as hereinbefore provided” in the present third sentence and substituted “complaint” for “petition” in two places in the last sentence.

Amortization of Obligations in Trust.

Sec. 26. Obligations in trust; amortization. — Where any part of the principal of a trust consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value. Upon their respective maturities or upon their sale or other disposition any loss or gain realized thereon shall, unless otherwise provided in the instrument creating the trust, fall upon or inure to principal; except that in the case of bonds bearing no stated interest and payable at maturity or at a future time at an amount in excess of their issue price, the amount realized upon their respective maturities or upon their sale or other disposition which is in excess of their inventory value or in default thereof of their market value at the time the principal was established, or of their cost where purchased later, shall, unless otherwise provided in the instrument creating the trust, inure to income when received. (1947, c. 60. 1961, c. 395, § 54.)

Effect of amendment.—The 1961 amendment, effective on its approval, June 17, 1961, divided this section into two sentences and substituted “no” for “on” near the beginning of the exception in the present second sentence.

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.)

There is no conflict between the doctrine of “alternative contingencies” and this section. *First Portland Nat. Bank v. Rodrique*, 157 Me. 277, 172 A. (2d) 107.

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 as limited. This section shall not apply where both such fee simple determinable and such succeeding interest, or both such fee simple and such right of entry are for public, charitable or religious purposes; nor shall it apply to a deed, gift or grant to the state or any political subdivision thereof. (1955, c. 244.)

Sec. 30. Application of §§ 27-33.—Sections 27 to 33, inclusive, shall apply to both legal and equitable interests. (1955, c. 244.)

Sec. 31. Limitation of §§ 27-33.—Except as provided in the first sentence of section 29, sections 27 to 33, inclusive, shall not be construed to invalidate or modify the terms of any limitation which would have been valid prior to August 20, 1955. (1955, c. 244.)

Sec. 32. Severability of §§ 27-33.—If any of the provisions of sections 27 to 33, inclusive, shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or others of said sections; and to this end sections 27 to 33, inclusive, are declared to be severable. (1955, c. 244.)

Sec. 33. To what instruments effective.—Sections 27 to 33, inclusive, shall apply only to inter vivos instruments taking effect after August 20, 1955, to wills where the testator dies after August 20, 1955, and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before said effective date. (1955, c. 244.)

Income Earned during Period of Administration.

Sec. 34. Income earned during period of administration. — Unless otherwise expressly provided by the will of a testator dying after the effective

date of this act, all net income from real and personal property earned during the period of administration of the estate of such testator and not payable to others or otherwise disposed of by the will shall be distributed pro rata to or for the benefit of the immediate income beneficiaries of any trusts created out of the residuary estate of such testator and the other persons entitled to such residuary estate. None of such income shall, after such distribution, be added to the principal of the residuary estate the whole or any part of which is devised or bequeathed in trust or for life or for a term of years, but shall be paid ratably to the income beneficiary of a trust, or to the tenant for life or for a term of years, or to the absolute residuary distributee, as the case may be. Unless otherwise directed in the will, income shall be payable to the life beneficiaries of trusts, or to life tenants from the date of testator's death. Nothing contained in this section shall affect the right of any person to income on any portion of the estate not part of the residuary estate of such testator. (1957, c. 183.)

Effective date.—The act inserting this section is effective August 28, 1957.

Section codifies existing law.—This section does not alter the law but rather codifies in substance the existing law. *Swasey v. Chapman*, 155 Me. 408, 156 A. (2d) 395.

And enacts in substance the Massachusetts rule that the proportion of the net in-

come derived from property subsequently used in payment of debts, legacies and expenses shall be considered income for the life beneficiary. Under this rule the residue is formed at the death of the testator and the property so used is carved therefrom. *Swasey v. Chapman*, 155 Me. 408, 156 A. (2d) 395.

Sec. 35. Net income on general bequest in trust.—Where a general bequest other than of residue is given in trust or for life or for a term of years, that portion of the net income of the estate, except income from assets specifically devised or bequeathed, earned during the period of administration up to the time of distribution of such bequest, computed as hereinafter provided in this section, shall be distributed as income to or for the benefit of the immediate income beneficiary of such bequest. Such portion shall be that proportion of the net income of the estate earned to the time of distribution of such bequest, except income from assets specifically devised or bequeathed, which the value of such bequest bears to the total inventory value of the estate reduced by all debts, expenses and taxes payable out of the residue of the estate; by the amount of any general bequest other than of residue, which is not given in trust or for life or for a term of years; and by the inventory value of assets specifically devised and bequeathed. (1957, c. 183.)

Chapter 163.

Sales of Real Estate by License of Court.

Granting of License.

Sec. 1. Sale, lease, mortgage or exchange of real estate.

IV. Of a husband or guardian of an incapacitated wife, resident in the county, to sell or mortgage, on such terms and conditions as the judge thinks proper, for a sufficient consideration, any real estate held by him in right of his wife, or any of her right and interest by descent in any real estate owned by him; and of a wife or guardian of an incapacitated husband, resident in the county, to sell or mortgage in like manner the right and interest by descent, of such ward, in any real estate owned by his wife. For the purposes of this subsection, an insane husband or wife who has been committed to an asylum for insane persons within this state shall be deemed to remain a resident of the county in which he or she had a residence at the time he or she was committed, so long as he or she shall remain in such asylum by virtue of such commitment. (1959, c. 11.)