

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

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.)

Effect of amendment.—The 1959 amendment added the words “a wife or” and deleted the word “the” after the word “of” and before the word “guardian” and added the words “or mortgage” after the word

“sell” and before the words “in like manner” in the first sentence of subsection IV.

Since the remainder of the section was not affected by the amendment, only subsection IV is set out above.

Sales by Guardians and Wives of Incapacitated Persons.

Sec. 12. Guardian may invest proceeds of her interest; trust enforced.—The guardian, with consent of the judge to whom he accounts, may agree in writing with such wife how to invest or otherwise dispose of a part of the proceeds of the sale of the whole estate for her sole use, equivalent to her interest therein. The superior court may enforce such agreement as a trust. (R. S. c. 150, § 12. 1961, c. 317, § 525.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, deleted “the supreme judicial court or” formerly appearing at the beginning of

the present second sentence and deleted “in equity” formerly following “agreement” near the end of the section.

General Provisions.

Sec. 28. Neglect or misconduct of person licensed.—If a person, interested in any estate sold as aforesaid, suffers damage by neglect or misconduct of the executor, administrator or guardian in such proceedings, he may recover compensation therefor in a civil action on the probate bond or otherwise as the case may require. (R. S. c. 150, § 28. 1961, c. 317, § 526.)

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

Chapter 164.

Probate Bonds.

Actions on Bonds.

Sec. 6. Actions on bonds in name of judge.—Actions on probate bonds of any kind payable to the judge shall be originally commenced in the superior court for the county where said judge belongs and in his name or that of his successor at the time. They shall not abate by the death of the plaintiff, his resignation or the expiration of his term of office, but the process may be amended and prosecuted, without notice, in the name of his successor. No costs shall be awarded against the judge therein. (R. S. c. 151, § 6. 1961, c. 317, § 527.)

Effect of amendment.—The 1961 amendment divided this section into three sen-

tences and substituted “Actions” for “Suits” at the beginning of the section.

Sec. 7. In action against surety, principal made party.—If the principal in any such bond resides in the state when an action is brought thereon, and is not made a party thereto, or if at the trial thereof, or on proceedings on a judgment against the sureties only, he is in the state, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring him into court. (R. S. c. 151, § 7. 1959, c. 317, § 289.)

Effect of amendment.—The 1959 amendment substituted the word “proceedings” for the words “scire facias” near the middle of this section.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter

317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the ex-