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. Evidence of husband and wife. — Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage. (1955, c. 328.)

Sec. 11. Rights additional to those now existing.—The rights herein created are in addition to and not in substitution for any other rights. (1955, c. 328.)

Sec. 12. Uniformity of interpretation. — This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1955, c. 328.)

Sec. 13. Short title. — This chapter may be cited as the Uniform Civil Liability for Support Act. (1955, c. 328.)

Chapter 168.

Conveyances by Deed. Form and Construction. Trusts.

Sec. 1. Conveyances by deed; what passes as realty.

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

Sec. 13. Conveyances to 2 or more.—Conveyances not in mortgage, and devises of land to 2 or more persons, create estates in common, unless otherwise expressed. Deeds in which two or more grantees are named as joint tenants shall be construed as vesting an estate in fee simple in such grantees with right of survivorship.

(1955, c. 431.)

Effect of amendment.—The 1955 amendment rewrote the second sentence of the first paragraph. As the rest of the section was not changed by the amendment, only the first paragraph is set out.

This section does not abolish joint tenancies, but the intent to create such an estate must be clear and convincing. Palmer v. Flint, 156 Me. 103, 161 A. (2d) 837.

Which are looked upon with favor.—It may well be said that joint tenancies in this jurisdiction, for many practical reasons, are now being looked upon with favor rather than with disfavor. Palmer v. Flint, 156 Me. 103, 161 A. (2d) 837.

Elements of joint tenancy.—In the creation of joint tenancies, four essential elements are necessary, to wit: unity of time, unity of title, unity of interest, and unity of possession. Palmer v. Flint, 156 Me. 103, 161 A. (2d) 837.

And incidents.—Two incidents of a joint tenancy are the right of survivorship and the right of severance. Palmer v. Flint, 156 Me. 103, 161 A. (2d) 837.

Language creating joint tenancy.—Where the granting and habendum clauses in a deed conveyed to husband and wife "as joint tenants, and not as tenants in common, to them and their assigns and to the survivor, and the heirs and assigns of the survivor forever," all of the elements of a joint tenancy were present and the deed conveyed the entire estate disposed of by the grantor to the grantees as joint tenants with all the incidents and attributes of such tenancy at common law. Palmer v. Flint, 156 Me. 103, 161 A. (2d) 837.

Sec. 14. Priority of recorded deeds and leases; memorandums of leases.

A memorandum of lease of real estate may be recorded, and if so recorded, the lease shall be considered recorded for all purposes. Said memorandum shall be executed and acknowledged by one of the lessors, name all the parties to the lease, contain an intelligible description of the property leased, state the date and the term of the lease, describe any provisions related to renewals or extensions, describe any provisions relating to options to purchase or the transfer of title, but need not describe any provisions relating to rent. The recording of

said memorandum shall constitute notice of all terms of the lease including all provisions relating to rental, price, considerations and default, as effectively as if said lease had been recorded in full. Nothing herein contained shall be deemed to affect the validity of the recording of an abstract, memorandum or statement of lease prior to the effective date of this act, but any such abstract, memorandum or statement of lease recorded prior to the effective date of this act shall be deemed to meet the requirements of a memorandum of lease made and recorded hereunder if it reasonably describes the parties to the lease and contains a reasonable description of the leased property. (R. S. c. 154, § 14. 1963, c. 239.)

Effect of amendment.—The 1963 amendment added the second paragraph. As the first paragraph was not affected by the amendment, it is not set out.

Sec. 16. No estate in lands greater than tenancy at will, unless by writing.

Estoppel to set aside title. — As to owner of real estate or person claiming under owner being estopped to bring suit to set aside title because owner had not granted or surrendered his title by a writing signed according to the provisions of this section, see Wood v. LeGoff, 152 Me. 19, 121 A. (2d) 468.

Sec. 23. Deeds and other instruments acknowledged; admitted to record.—Deeds and all other written instruments before recording in the registries of deeds, except those issued by a court of competent jurisdiction and duly attested by the proper officer thereof, and excepting plans and notices of foreclosure of mortgages and certain financing statements as provided in chapter 190, section 9-401 and excepting notices of liens for internal revenue taxes and certificates discharging such liens as provided in chapter 89, section 240, shall be acknowledged by the grantors, or by the persons executing any such written instruments, or by one of them, or by their attorney executing the same, or by the lessor in a lease or one of the lessors or his attorney executing the same, before a justice of the peace, or notary public having a seal, in the state; or before any clerk of a court of record having a seal, notary public, justice of the peace or commissioner appointed by the governor of this state for the purpose, or a commissioner authorized in the state where the acknowledgment is taken, within the United States; or before a minister, vice-consul or consul of the United States or notary public in any foreign country. The seal of such court or the official seal of such notary public or commissioner, if he has one, shall be affixed to the certificate of acknowledgment, but if such acknowledgment is taken outside the state before a justice of the peace, notary public not having a seal or commissioner, a certificate under seal from the secretary of state, or clerk of a court of record in the county where the officer resides or took the acknowledgment, authenticating the authority of the officer taking such acknowledgment and the genuineness of his signature, must be annexed thereto.

Any person who is in the armed forces of the United States, and who executes a general or special power of attorney, deed, lease, contract or any instrument that is required to be recorded, may acknowledge the same as his true act and deed before any lieutenant or officer of senior grade thereto in the army, U. S. marine corps or air force, or before any ensign or officer of senior grade thereto in the navy or coast guard, and the record of such acknowledgment by said officers shall be received and have the same force and effect as acknowledgments under the other provisions of this section, and all such instruments heretofore executed are hereby validated as to acknowledgment and authenticity. Provided further, that powers of attorney and other instruments requiring seals executed by such members of the armed forces may be accepted for recordation in registries of deeds and other offices of record in cases where no seal is affixed after the name of the person or persons executing the instrument with like force and effect as though seals were affixed thereto.

(1955, c. 2. 1957, c. 332, § 1. 1963, c. 362, § 30; c. 414, § 146-A.)

Effect of amendments. — The 1955 amendment inserted in the first sentence of this section the words "and excepting notices of liens for internal revenue taxes and certificates discharging such liens as provided in section 240 of chapter 89."

The 1957 amendment rewrote the first sentence of the second paragraph.

The first 1963 amendment, effective December 31, 1964, substituted "financing statements" for "chattel mortgages" near the beginning of the first sentence, substituted "chapter 190, section 9-401" for "section 1 of chapter 178" in such sentence and made other minor changes. The second 1963 amendment inserted "vice-consul" near the end of the first sentence and made other minor changes.

As the rest of the section was not changed by the amendments, only the first and second paragraphs are set out.

Sec. 35. Deed lost before recording.—If a deed, duly executed and delivered, is lost or destroyed before being recorded, the grantee or person claiming under him may file a copy of it in the registry of deeds in the county where the land lies. It shall have the same effect as a record for 90 days. He may thereupon proceed to have the deposition of the subscribing witnesses and others knowing the facts taken, as depositions are taken in perpetuam; but if any person supposed to have an adverse interest lives out of the state in an unknown place, the superior court may order notice of the taking of such depositions by publication as he [it] deems proper. The filing and recording of such depositions and copy within said 90 days shall have the same effect as if the deed itself had been recorded when said copy was first filed. Certified copies thereof are evidence when the original would be. (R. S. c. 154, § 35. 1961, c. 317, § 558.)

Effect of amendment.—The 1961 amendment divided this section into five sentences and substituted "the superior court" for "a justice of the superior court in term time or vacation" in the present third sentence.

Sec. 37. Person holding unrecorded deed compelled to record.—A person having an interest in real estate of which any prior grantee has an unrecorded deed or other evidence of title may give the latter personal notice in writing to have the same recorded. If he neglects to have it so recorded for 30 days, the superior court, on complaint, may cause said grantee or his heirs to be brought before it for examination and, unless sufficient cause is shown for such neglect, may order such deed or other evidence of title to be recorded, and the cost paid by the defendant, together with the legal fees of the register for recording such deed or other evidence of title. (R. S. c. 154, § 37. 1961, c. 317, § 559; c. 417, § 183.)

Effect of amendments.—The first 1961 amendment divided this section into two sentences and substituted "the superior court" for "a justice of the superior court, in term time or vacation" and "it" for "him" in the present second sentence. The second 1961 amendment substituted "defendant" for "respondent" in the second sentence.

Sec. 40. Records of deeds with certain kinds of defective acknowledgments validated.—All records of all deeds and other instruments, including powers of attorney, heretofore made prior to January 1, 1957, for the conveyance of real property in this state, or of any interest therein, and recorded or written out at length in the books of record in registry of deeds of the county in which said real property lies, the acknowledgment of which was not completed, or was erroneously taken, or was taken by a person not having authority to take such acknowledgment, or where the authority of the person taking such acknowledgment was not completely stated, or was errroneously stated, or where it does not appear whether the authority taking such acknowledgment acted as a notary public, a justice of the peace or other duly authorized authority for the taking of such acknowledgment, or where no acknowledgment of such deed or other instrument was taken, or where the authority taking such acknowledgment had not signed the same but had attached or had affixed or had stamped thereon his seal of authority, or where the acknowledgment was taken by the grantor or grantee, or

by the husband or wife of the grantor or grantee, or the acknowledgment was taken by a magistrate who was a minor, or an interested party or whose term of office had expired at the time of such acknowledgment, or an acknowledgment of which was taken by a proper officer but outside of the territory in which he was authorized to act, or was taken before any person who, at the time of such acknowledgment had received an appointment, election or permission authorizing him to take such acknowledgment, but had not qualified, but who has since such time duly qualified, or where the grantor was acting as a duly authorized agent or in a fiduciary or representative capacity, or was acting as an officer of a corporation and acknowledged said instrument individually, or where the acknowledgment was taken without the state before any person authorized to take acknowledgments, and using the form of acknowledgment prescribed by the laws of the state or country in which such instrument was executed, or such person has failed to affix to such instrument a proper certificate, showing his authority to act as such magistrate; or where such acknowledgment was not signed by a magistrate of this state or any other state or territory of the United States, or any foreign country, authorized to take such acknowledgment, but such acknowledgment was signed by an ambassador, minister, charge d'affaires, consul, vice-consul, deputy consul, consul-general, vice-consul-general, consular agent, vice-consular-agent, commercial agent or vice-commercial agent of the United States in any foreign country, who was not qualified to take such acknowledgment, but has since become qualified by law to do so, but which acknowledgment was complete in every other respect; or where the acknowledgment was signed by a proper magistrate but there has been omitted therefrom, his official seal, if he had one, or the names of the grantors, the date and place of acknowledgment, or the words, "personally appeared before me," or a statement that it was acknowledged as the grantor's "free act and deed"; or such certificate of acknowledgment is in the form of an oath, or states merely that the said instrument was subscribed in his presence, or is otherwise informal or incomplete, if signed by a proper magistrate; and all records in any such registry of instruments relating to the title to real property which fail to disclose the date when received for record or the record of which has not been signed by the register of deeds for said county or other duly authorized recording officer, such records are validated. (R. S. c. 154, § 40. 1957, c. 332, § 2. 1963, c. 414, § 146-B.)

Effect of amendments. — The 1957 amendment inserted "between April 15, 1927 and January 1, 1957" near the beginning of this section.

The 1963 amendment substituted "prior to January 1, 1957" for "between April 15, 1927 and January 1, 1957" near the beginning of the section.

Sec. 41. Deeds lacking statements of consideration or seals validated; informal discharges, deeds of irregularly formed corporations, deeds executed by attorney but no record of power of attorney, validated.—All deeds and other instruments, including powers of attorney, heretofore made prior to January 1, 1957, for the conveyance of real property in this state or any interest therein, and otherwise valid except that the same omitted to state any consideration therefor or that the same were not sealed by the grantors or any of them, are validated. Every duly recorded satisfaction piece or instrument made prior to January 1, 1957, with intent to cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage so intended to be canceled and discharged or assigned, but not drawn in formal accordance with statutory requirements, shall be held a valid discharge or assignment of such mortgage and a release or assignment of the mortgage interest in such real estate. All corporations organized or attempted to be organized under and by virtue of any of the statutes of this state more than 20 years prior to January 1, 1957, and not heretofore, between April 15, 1927 and January 1, 1957, declared to be invalid, shall be held to all intents and purposes as if the same had in all respects been properly and rightfully organized and existing as lawful corporations, and the deeds or

other instruments of such corporations organized or attempted to be organized, given in their corporate names, affecting real estate in this state or conveying the same, and heretofore between April 15, 1927 and January 1, 1957 recorded, or written out at length upon the books of record in the registry of deeds in the county in which such real estate lies, shall not be held invalid by reason of any lack of authority or informality for or in their execution or delivery, if taken bona fide from the acting officers of such corporation or attempted organization as such, which such taking shall be presumed, but such corporations, attempted organizations as such, with such deeds and their records made as aforesaid, are validated. Any deed or other instrument made for the purpose of conveying real property in this state or any interest therein, and heretofore recorded or spread at length in the books of record in the registry of deeds for the county in which said real property lies, prior to January 1, 1957, which said deed or other instrument or said records fail to disclose authority by such corporation for the conveyance of such real estate, or which deed or other instrument fails to bear the corporate seal, or is executed or acknowledged by the person executing such deed in his individual capacity, or which fails to disclose the official capacity of the person executing such deed, or which was not signed by the officer duly authorized to sign such deed, with its record made as aforesaid, is validated. All deeds and other instruments made prior to January 1, 1957 for the conveyance of real property in this state, or any interest therein and executed by a person or persons purporting to act as the agent or attorney of the grantors, their spouses, or any of them, which such deeds have been recorded or written at length in the books of record in the registry of deeds for the county in which said real property lies more than 40 years prior to January 1, 1957, but no power of attorney authorizing and empowering such agent or attorney to make such conveyance or execute and deliver such deed, appears of record, but such real estate has in the meantime been occupied, claimed or treated by the grantees and those claiming by, through or under them as other property of like kind and similarly situated would be held or claimed by the owners thereof, shall be held to all intents and purposes as if executed and delivered under and by virtue of proper power of attorney duly recorded and given for the purpose, and the records thereof are validated. All instruments written or recorded in the books of record in the registry of deeds in the county in which the real estate affected thereby lies, more than 40 years prior to January 1, 1957, signed or executed by any person or persons purporting to act as the agent or attorney of the holder of any mortgage of real estate and purporting to operate as a discharge of such mortgage, shall be held as if executed and delivered under and by virtue of a proper power of attorney given for the purpose, although no power of attorney authorizing such agent or attorney thereto shall appear of record, and the records thereof are validated. In all cases in which an executor, administrator, guardian or conservator or trustee, master or receiver or similar officer has been authorized or ordered by a court of probate or other competent court to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing such sale, or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such executor, administrator, guardian, conservator, trustee, master or receiver, or other similar officer, appointed as aforesaid, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts heretofore done are validated. (R. S. c. 154, § 41. 1957, c. 332, § 3. 1963, c. 414, § 146-C.)

Effect of amendments. — The 1957 amendment inserted "between April 15, 1927 and January 1, 1957" in six places in this section and substituted "January 1, 1957" for "April 15, 1927" where it formerly appeared in three places.

The 1963 amendment substituted "prior to January 1, 1957" for "between April 15, 1927 and January 1, 1957" in the first, second, fourth and fifth sentences, substituted "made" for "heretofore executed" near the beginning of the second sentence, and deleted "heretofore" following "instruments" near the beginning of the fifth sentence.

Chapter 169.

Wills.

Sections 1 to 17-A. Wills.

Wills.

Sec. 1. Will, by whom and how made.—A person of sound mind and of the age of 21 years and a married person, widow or widower of any age may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request and in his presence, and subscribed in his presence by 3 credible attesting witnesses. All beneficial devises, bequests and legacies to a subscribing witness are void except that if such interested witness would be entitled to any share of the estate in case the person making the will had died intestate, he shall take only that part of the devise or bequest made to him in the will that equals but does not exceed in value the share of the estate of the person making the will which he would have taken if such person had died intestate. (R. S. c. 155, § 1. 1951, c. 375, § 1. 1957, c. 302.)

I. GENERAL CONSIDERATION.

Cross references.—See c. 27, § 7-A, re amendment of words "insane" and "insanity" to "mentally ill" and "mental illness", except when the word "insane" is in reference to the word "criminal." See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

Effect of amendment. — The 1957 amendment deleted the words "not beneficially interested under said will" which formerly appeared at the end of the first sentence, and added the second sentence.

And court is not at liberty, etc.

In accord with original. See First Portland Nat. Bank v. Kaler-Vaill Memorial Home, 155 Me. 50, 151 A. (2d) 708.

Undue influence.

See In re Royal's Appeal, 152 Me. 242, 127 A. (2d) 484; Thibault v. Fortin, 152 Me. 59, 122 A. (2d) 545.

Applied in Jordan v. Jordan, 155 Me. 5, 150 A. (2d) 763; Canal Nat. Bank v. Chapman, 157 Me. 309, 171 A. (2d) 919.

Cited in Boston Safe Deposit & Trust Co. v. Johnson, 151 Me. 152, 116 A. (2d) 656.

II. TESTAMENTARY CAPACITY.

"Disposing mind."

In accord with 1st paragraph in original. See Waning, Appellant, 151 Me. 239, 117 A. (2d) 347; In re Royal's Appeal, 152 Me. 242, 127 A. (2d) 484.

In accord with 2nd paragraph in original. See In re Royal's Appeal, 152 Me. 242, 127 A. (2d) 484.

"Disposing memory."

In accord with original. See Waning, Appellant, 151 Me. 239, 117 A. (2d) 347.

The word sanity is used, etc.

In accord with original. See Waning, Appellant, 151 Me. 239, 117 A. (2d) 347.

Mere intellectual feebleness, etc.

In accord with 1st paragraph in original. See Waning, Appellant, 151 Me. 239, 117 A. (2d) 347.

Want of capacity must relate to time of testamentary act.

In accord with 1st paragraph in original. See In re Royal's Appeal, 152 Me. 242, 127 A. (2d) 484.

Effect of proof that testator was of unsound mind before making will.

There may be no direct evidence that on the day and at the hour the will was signed, testator was not sane, but it does not follow that proof of incapacity that the very moment must be made by eye witnesses on that occasion. Proof of insanity prior thereto, permanent in kind and progressive, raises a presumption of continuity. Waning, Appellant, 151 Me. 239, 117 A. (2d) 347.

Sanity of testator is not presumed.

In accord with 1st paragraph in original. See Waning, Appellant, 151 Me. 239, 117 A. (2d) 347.