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Chapter 170.

Title by Descent.

Cross Reference.—See c. 10, § 22, sub-§ IX, re construction of word "issue".

Statutes do not exclude heir who murders his ancestor.—The statutes of Maine governing the descent of real and personal property do not specifically exclude an heir who murders his ancestor. Dutill v. Dana, 148 Me. Appendix.

But such an heir is not entitled to inherit.—An heir or next of kin who murders his ancestor while in his right mind is not entitled to inherit from the ancestor. Dutill v. Dana, 148 Me. Appendix.

And he holds the property on constructive trust.—Where a person is murdered by his heir or next of kin and dies intestate, the heir or next of kin holds the property thus acquired by him upon a constructive trust for the person or persons who would have been heirs or next of kin if he had predeceased the intestate. Dutill v. Dana, 148 Me. Appendix.

Legal title passes to the murderer by inheritance but equity will treat him or those claiming under him or for him as a constructive trustee, because of the unconscionable mode of its acquisition, and compel him or those to convey it to the heirs or next of kin of the deceased exclusive of the murderer. Dutill v. Dana, 148 Me. Appendix.

And this does not violate constitutional provision against forfeiture.—See notes to Me. Const., art. 1, § 11.

Rules of Descent. Advancements.

Sec. 1. Rules of descent.—The real estate of a person deceased intestate, being subject to the payment of debts, including a woodlot or other land used with the farm or dwelling house although not cleared and also including wild lands of which he dies seized, but excepting wild lands conveyed by him, though afterwards cleared, descends according to the following rules:

I. If he leaves a widow and issue, 1/3 to the widow. If the deceased leaves no issue, ½ to the widow.

Provided, however, that if the deceased leaves no issue and if it appears on determination by the probate court that the intestate and the surviving widow or widower were living together at the time of his or her decease, the surviving widow or widower shall take:

A. The whole real and personal estate remaining after payment of the debts of the deceased, funeral charges and charges of administration, if it appears on determination of the probate court that such whole estate so remaining does not exceed $5,000 in value; or

B. $5,000 plus ½ of the remaining personal estate and ½ of the remaining real estate, if it appears on such determination that the value of the whole estate after payment of such debts and charges exceeds $5,000.

If the personal property is insufficient to pay said $5,000, the deficiency shall, upon the petition of any party in interest, be paid from the sale or mortgage, in the manner provided for the payment of debts or legacies, of any interest of the deceased in real property which he could have conveyed at the time of his death; and the surviving husband or wife shall be permitted, subject to the approval of the court, to purchase at any such sale, notwithstanding the fact that he or she is the administrator of the estate of the deceased person. A further sale or mortgage of any real estate of the deceased may later be made to provide for any deficiency still remaining. Whenever it shall ap-

pear, upon petition to the probate court of any party in interest, and after such notice as the court shall order, and after a hearing thereon, that the whole amount of the estate of the deceased, as found by the inventory and upon such other evidence as the court shall deem necessary, does not exceed the sum of $5,000 over and above the amount necessary to pay the debts of the deceased, funeral charges and charges of administration, the court shall itself by decree determine the value of said estate, which decree shall be binding upon all parties. If additional property is later discovered, the right or title to the estate covered by such decree shall not be affected thereby, but the court may make such further orders and decrees as are necessary to effect the distribution herein provided for.

If no kindred, the whole to the widow; and to the widower shall descend the same shares in his wife's real estate. There shall likewise descend to the widow or widower the same share in all such real estate of which the deceased was seized during coverture, and which has not been barred or released as herein provided. In any event, 1/3 shall descend to the widow or widower free from payment of debts, except as provided in section 22 of chapter 163. (1949, c. 439, § 1)

Cross references.—See note to c. 114, § 55, sub-§ IV, re widow's distributive share subject to trustee process; c. 166, §§ 45, 46, re proceedings by deserted wife or husband.

Widow has interest in husband's estate prior to his death.—Upon the husband's death, the fee in the real estate descends to the widow, in the proportion prescribed by the statute. During his lifetime her right is, in a sense, inchoate, and is contingent upon her surviving her husband. But it is an interest. The statute terms it such. It is a valuable interest. It is an interest that she cannot be deprived of without her consent, without compensation. It is an interest which can be valued. If she refuses to release her interest by joinder in a deed with her husband, her interest may be determined, and the value thereof ordered paid to her (§ 19). Whiting v. Whiting, 114 Me. 382, 96 A. 500.

And by his death she becomes seized in fee of at least one-third.—The widow, by the death of her husband intestate, becomes seized in fee of one-third, at least, of his lands as tenant in common with others. Longley v. Longley, 92 Me. 395, 42 A. 798.

But widow is not heir of husband.—The widow is not the heir of her deceased husband. The statute does not change the status of the widow with reference to her deceased husband's estate. It enlarges her interest, but she still takes not as heir, but as widow. McCarthy v. Walsh, 123 Me. 157, 122 A. 406.

The statute does not change the status of the widow with reference to her deceased husband's estate. It enlarges her interest by giving her an estate in fee instead of an estate for life. She still takes not as heir, but as widow. Golder v. Golder, 95 Me. 259, 49 A. 1050; Cheney v. Cheney, 110 Me. 61, 85 A. 387.

And there must have been seisin during coverture.—As it was with dower, so it is with the superseding estate by descent, there must have been seizin by the husband during coverture. The estate by descent which a widow takes arises only on the title her husband had, based on his seisin during the marital relation, and cannot rise higher or be more extensive. Gatchell v. Gatchell, 127 Me. 328, 143 A. 169. See note to c. 168, § 14, re unrecorded deed prior to marriage defeats widow's estate by descent.

In the absence of proof of a concurrence of seisin in the husband and coverture, a ruling that the widow has not taken an estate by descent is correct. Gatchell v. Gatchell, 127 Me. 328, 143 A. 169.

Applied in Davis v. Poland, 99 Me. 345, 59 A. 520; Fogg, Appellant, 105 Me. 480, 74 A. 1133; Leavitt v. Tasker, 107 Me. 33, 76 A. 953; Bunker v. Bunker, 130 Me. 103, 154 A. 73; Given v. Curtis, 133 Me. 385, 178 A. 616; In re Roukos' Estate, 140 Me. 183, 35 A. (2d) 861; In re Roukos' Estate, 141 Me. 83, 39 A. (2d) 663; Shannon v. Shannon, 142 Me. 307, 51 A. (2d) 181.

Quoted in part in Poulson v. Poulson, 145 Me. 15, 70 A. (2d) 868.

II. The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his

death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation.

Applied in Gilpatrick v. Glidden, 81 Me. 137, 16 A. 464; Healey v. Cole, 95 Me. 272, 49 A. 1065.

Stated in Quinby v. Higgins, 14 Me. 309.

III. If no such issue, it descends to his father and mother in equal shares.

IV. If no such issue or father, it descends ½ to his mother. If no such issue or mother, it descends ½ to his father. In either case, the remainder, or, if no such issue, father or mother, the whole descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

Children and grandchildren of brother or sister take by representation.—The brothers and sisters of the decedent, if living at the time of his decease, will inherit his estate in equal portions, if the decedent's mother and father predecease him, but if they are dead and leave issue at the time of the intestate's decease, their children and the children of their deceased children, take the inheritance by representation. Doane v. Freeman, 45 Me. 113.

Where an intestate dies without issue, or father or mother, but leaving a sister, a child of a deceased sister, and children of a deceased child of a deceased sister, such children will, by virtue of this subsection, be entitled to a distributive share of the estate by right of representation. Reynolds, Appellant, 57 Me. 350.

But the statute limits the right of inheritance by representation to the grandchildren of a deceased brother or sister, another brother being alive. Stetson v. Eastman, 84 Me. 366, 24 A. 868.

The term "children," as used in this subsection, does not comprehend grandchildren, nor does the latter term comprehend the children of grandchildren. The subsection means just what it says. It would have said more if more had been intended. Stetson v. Eastman, 84 Me. 366, 24 A. 868.

Applied in Quinby v. Higgins, 14 Me. 309; Davis v. Stinson, 53 Me. 493; Hall, Appellant, 117 Me. 100, 102 A. 977.

Cited in Carver v. Wright, 119 Me. 185, 109 A. 896.

V. If no such issue, father, brother or sister, it descends to his mother. If no such issue, mother, brother or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters.

VI. If no such issue, father, mother, brother or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor in preference to those claiming through an ancestor more remote.

Estate distributed per capita.—The language of this subsection is so clear and unequivocal that its meaning will admit of no interpretation. It expressly declares that the estate shall descend to the next of kin and accordingly must be distributed per capita, and not per stirpes. Hall, Appellant, 117 Me. 100, 102 A. 977.

Grandparents take from unmarried minor leaving no parents, etc.—When a minor dies never having been married, leaving no parents, brother or sister or the issue of any brother or sister, his property, though inherited from his father, descends to his surviving grandparents in equal shares. Albee v. Vose, 76 Me. 448.

And they take in preference to uncles or aunts.—If the deceased had no issue, father, mother, brother or sister, the grandmother would take the estate as next of kin in preference to uncles or aunts, or their children, under this subsection. Cables v. Prescott, 67 Me. 582.

Grandnieces not entitled to share with nieces.—Grandnieces and grandnephews, not being related to the intestate in equal degree with his nieces and nephews, are not entitled to share under this subsection. Davis v. Stinson, 53 Me. 493; Fairbanks, Appellant, 104 Me. 333, 71 A. 933.

Applied in Reynolds, Appellant, 57 Me. 350.

Cited in McCarthey v. Walsh, 123 Me. 157, 122 A. 406.

VII. When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent and the issue of

those deceased; in equal shares if all are of the same degree of kindred; otherwise, according to the right of representation.

History of subsection.—See Benson v. Swan, 60 Me. 160; DeCoster v. Wing, 76 Me. 450.

Subsection is only provision making it necessary to inquire into source of estate. —This subsection is the only provision in the statute of descent which makes it necessary to inquire from what source an estate is derived in order to settle its descent or distribution. DeCoster v. Wing, 76 Me. 450.

Subsection secures inherited property of unmarried minor to estate of the parent. —The object of this subsection is to secure the inherited property of an unmarried minor to the estate of the deceased parent. When it is restored to that estate, it is to go to his children, living or dead —to the living equally, to the dead by representation. Benson v. Swan, 60 Me. 160.

And such property goes back to parent's estate as if minor predeceased him.— When a minor dies, never having been married, the law intends that the specific inherited property shall, in effect, go back to the parent's estate and become a part of it, as if the child had died before the parent. DeCoster v. Wing, 76 Me. 450.

A distinction has always been made in the descent of the general estate of an intestate, between what he has himself acquired, and which he leaves at his death, whether he is then of age or not, and the specific and distinct estate which he inherits from a parent. In the latter case, when he dies a minor, never having been married, the law intends that the specific, inherited estate shall, in effect, go back to the parent's estate and become a part of it, as if the child had died before the parent. Benson v. Swan, 60 Me. 160.

The child having died a minor, never having been married, and having received a portion of the estate of his parent, which he leaves, the law deems it just, that this share of the parent's estate should go to the other children or grandchildren. Benson v. Swan, 60 Me. 160.

Subsection applies only to property inherited from parents. — This subsection does not apply if the minor did not have any estate "inherited from either of his parents." Cables v. Prescott, 67 Me. 582.

By operation of law.—The word "inherited" is used in this subsection in its strictly accurate sense, referring to property received by a minor child from his or her parent by operation of law. McCarthy v. Walsh, 123 Me. 157, 122 A. 406.

This subsection relates solely to property inherited, i. e., coming to the decedent by operation of law, as contradistinguished from that acquired by any lawful act, including title by deed and by devise. DeCoster v. Wing, 76 Me. 450.

And not to property derived by purchase or inheritance from other source.—To bring property within this subsection, it must be inherited from one of the decedent's parents and not be derived by purchase or inheritance from any other source. DeCoster v. Wing, 76 Me. 450.

Subsection makes no allusion to ascending line of descent.—This subsection relates to the descent and distribution of the inherited property of a child who died under age, never having been married, among other children only, or among the issue of other deceased children, and makes no allusion to any ascending line of descent. DeCoster v. Wing, 76 Me. 450.

And a case does not come within this clause if the persons contemplated by it did not exist at the time of the minor's decease. Albee v. Vose, 76 Me. 448.

If the minor whose estate is to be distributed left at his decease no brother or sister, nor the issue of any, then his estate does not fall within the terms of this subsection, but, although inherited, it must go by the general rule. DeCoster v. Wing, 76 Me. 450.

When there is only one child and he dies leaving property inherited from his parent, and such child leaves no issue of any brother or sister, its descent or distribution does not fall within this subsection, but it does come within the provisions of subsection VI. DeCoster v. Wing, 76 Me. 450. See note to sub-§ VI.

VIII. If the intestate leaves no widower, widow or kindred, it escheats to the state. (R. S. c. 156, § 1. 1949, c. 439, § 1.)

Cross references.—See § 20, re descent of personal property; c. 169, § 9, re child or issue of deceased child not having devise in will.

The term "kindred," as used in this section, means lawful kindred. Hughes v. Decker, 38 Me. 153.

The rights of descent flow from the legal status of the parties and, where the status is fixed, the law supplies the rules of descent, with reference to the situation as it existed at the death of the decedent. Gatchell v. Curtis, 134 Me. 302, 186 A. 669.

Section makes estate subject to payment of debts.—In laying down rules for the descent of the real estate of persons deceased intestate, it is first expressly made subject to the payment of debts. Hathaway v. Sherman, 61 Me. 466.

The several rules in this section are distinct and are each to be construed separately and with reference to the conditions of each rule as therein set forth. Davis v. Stinson, 53 Me. 493, holding that the clause in rule IV, "to his or her children or grandchildren by right of representation," applies only to that rule.

Applied in Flagg v. Badger, 58 Me. 258.

Cited in Pinkham v. Pinkham, 95 Me. 71, 49 A. 48; Methodist Church v. Fairbanks, 124, Me. 187, 126 A. 823; Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

Sec. 2. Degrees of kindred.—The degrees of kindred are computed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree. (R. S. c. 156, § 2.)

How degrees of kindred computed.—In the mode of computing the degrees of consanguinity, the civil law, which is generally followed in this country upon that point, begins with the intestate, and ascends from him to a common ancestor, and descends from that ancestor to the next heir, reckoning a degree for each person as well in the ascending as descending lines. Cables v. Prescott, 67 Me. 582.

"Kindred" means lawful kindred.—Notwithstanding this section provides that "kindred of the half blood inherit equally with those of the whole blood in the same degree," the term "kindred" means lawful kindred. Messer v. Jones, 88 Me. 349, 34 A. 177.

Applied in DeCoster v. Wing, 76 Me. 450.

Sec. 3. Heirship of illegitimate child; descent of estate.—A child born out of wedlock is the heir and legitimate child of his parents who intermarry. Any such child, born at any time, is the heir of his mother. If the father of a child born out of wedlock adopts him or her into his family or in writing acknowledges before some justice of the peace or notary public that he is the father, such child is also the heir and legitimate child of his or her father. In each case such child and its issue shall inherit from its parents respectively, and from their lineal and collateral kindred, and these from such child and its issue the same as if legitimate. (R. S. c. 156, § 3. 1951, c. 254.)

Cross reference.—See note to c. 155, § 3, re illegitimate child is "lineal descendant" within meaning of inheritance tax law.

Illegitimate has no rights of inheritance at common law.—It is by force of legislative enactment alone that an illegitimate child is heir of his father. At common law it was otherwise, and under that law he would have no rights of inheritance. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

At common law, an illegitimate child has no inheritable blood, and no rights to property can be traced through him. Brewer v. Hamor, 83 Me. 251, 22 A. 161.

And this section was enacted to mitigate common law's severity.—Humaneness prompted permitting an illegitimate to inherit, that the severity of the common law, by which he had no parents, kin, name, or heirs, except his own lineal descendants, and could not himself inherit, might in some degree be mitigated and the blot of parental sin partially removed from one innocent of responsibility for the unlawful state of his own birth. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

The common law was very harsh in its attitude toward the offspring of unlawful unions. Nearly, if not all, the states, however, have relaxed the rigor of the common-law rule, especially with reference to the rights of the illegitimate child in the property of his or her parents at their death, and following the more liberal spirit of the civil and canon law have enacted statutes permitting illegitimate children, when the parents intermarry, or when they are publicly acknowledged by the father, to inherit equally from the father and mother and their collateral kindred. Scott's Case, 117 Me. 436, 104 A. 794.

But section cannot be extended by construction.—This section being in derogation of the common law, while it is to be construed with reference to the legislative intent, and with a view to the object aimed to be accomplished, it cannot properly be extended by construction so as to embrace cases not fairly within the scope of the language used. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

Or its interpretation aided by preexisting statutes.—This section has provided

for cases of inheritance, for the descent of intestate estates of and for illegitimates, and its language is plain and unambiguous. Its interpretation cannot be aided by reviewing or construing the various preexisting statutes upon this subject, all of which have been repealed and merged in this final declaration of the legislative will. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

And the section has no extraterritorial force. It does not purport to have. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

This section contains only one objective point—heirship or the right of inheritance. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

The statute is of descent pure and simple. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

And it has nothing to do with testate property. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

The words "heir" and "inherit," the subject matter of the statute in question, have acquired in law a peculiar and invariable meaning, and that meaning must be applied to this statute. It is confined to those who take intestate as distinguished from testate estates, and whoever claims under a will, claims not as heir or by descent, but by purchase as a devisee or legatee. An "heir" is "one who inherits; one who takes an estate by descent, as distinguished from a devisee who takes by will." Lyon v. Lyon, 88 Me. 395, 34 A. 180, holding that an illegitimate son whose parents intermarried subsequently to his birth, cannot take, by the will of his father's sister, a legacy bequeathed to her nephews. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

Nor does the section make the illegitimate child legitimate for all purposes. It says "such child and its issue shall inherit * * * the same as if legitimate." Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

This section does not attempt to transmute from bastardy to artificial legitimation. Bestowing the status of legitimacy on an illegitimate child is one thing and endowing him with heritable blood is another and distinctly different thing. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

Legitimation is not a prerequisite to inheriting and inheriting does not legitimize. An illegitimate child, albeit the right to inherit is his, remains an illegitimate. Only one objective is in the statute—heirship of intestate estates to and from illegitimates. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

In any case under this section, it must first appear that the child is illegitimate. The statute does not act upon any other. Grant v. Mitchell, 83 Me. 23, 21 A. 178.

And the fact of illegitimacy is for the jury upon the testimony in the case. Grant v. Mitchell, 83 Me. 23, 21 A. 178.

And such fact not proved by marriage, adoption or acknowledgment.—The subsequent marriage, adoption, or acknowledgment cannot be taken as proof of the illegitimacy, as between the decedent's legitimate heirs and those claiming to be his illegitimate heirs. Grant v. Mitchell, 83 Me. 23, 21 A. 178.

Positive act of father required to make illegitimate his heir.—There has always existed a requirement of some positive act on the part of the putative father in order to make an illegitimate child heir of the father. As the statute now exists those requisites are either marriage, adoption, or acknowledgment. One or the other of these requirements is indispensable to the right of inheritance or heirship through the father. Messer v. Jones, 88 Me. 349, 34 A. 177.

The provisions of this section specify three distinct conditions of fact, upon the existence of any one of which an illegitimate child becomes the heir of his father: (1) When his parents intermarry; (2) When his father adopts him into his family; or, (3) acknowledges in writing before the officer named, that he is his father. Lyon v. Lyon, 88 Me. 395, 34 A. 180.

But illegitimate is heir of mother without act by any one.—No act on the part of any one is required to make the child heir of the mother who bore it. The maternity can never be in doubt, while the paternity may be. Messer v. Jones, 88 Me. 349, 34 A. 177.

Before the passage of this section, the illegitimate child was the child of nobody. It was "nullius filius," "the son of no one." It had no mother recognized by law. It had no father. It could not inherit, and no property could pass to it from an ancestor. It had no ancestor, under the law. At common law an illegitimate child is not a child. The purpose of the legislature in passing the section was to give to the illegitimate child, in all instances, a mother. It created something that did not previously exist. It was recognition of the mother of the illegitimate child. It was recognition of the child. It made the child the heir of the mother, and by making the child the heir, it made a child who had not been previously recognized as a child. The child was made the child and the heir, to whom the mother's property might descend under the general law.

Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

And, because of this section, an illegitimate child can inherit from the mother's collateral kindred. Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

And from maternal grandfather without legitimation.—An illegitimate child, though never legitimized, can inherit from his maternal grandfather deceased since the enactment of this section. Lawton v. Lane, 92 Me. 170, 42 A. 352; Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

Adoption by father makes illegitimate his heir.—If the father of an illegitimate child "adopts him into his family," the child thereby becomes the heir of his father, so it or its issue shall inherit from the father and his lineal kindred "the same as if legitimate." In re Crowell's Estate, 124 Me. 71, 126 A. 178.

An illegitimate child can inherit through the father's kindred, when the father has adopted the child. Whorff v. Johnson, 143 Me. 198, 58 A. (2d) 553.

Regardless of time and place of adoption.—This section does not go beyond descent and embraces only rights of inheritance of intestate estates of and for illegitimates. It does not attempt to change the status of an illegitimate to a legitimate. The time and place, whether in this state or in another state or country, when and where the father "adopts him into his family" takes place are immaterial. The law of the domicil of the decedent in force at the time of his death governs in the succession to and distribution of personal property. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

Thus, that the adoption antedated the enactment of the law is inconsequential. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

And that the adoption was performed abroad is unimportant. In re Crowell's Estate, 124 Me. 71, 126 A. 178.

Right to inherit from kindred is co-extensive with right to inherit from parents.—The right given to the child to inherit from the kindred of his respective parents is co-extensive with his right to inherit from his respective parents. Messer v. Jones, 88 Me. 349, 34 A. 177.

The section provides four cases in which the illegitimate child may become an heir of one or both parents. Then follows the provision that in each case the child, so declared to be an heir, and its issue, shall inherit from its parents respectively, that is, from the parent or parents of whom he is by the section declared to be the heir, "and from their lineal and collateral kindred." Messer v. Jones, 88 Me. 349, 34 A. 177.

The use of the word "respectively" conveys the idea that the illegitimate child shall inherit, in each case, from the parent or parents, of whom the section has declared him to be an heir, and from the kindred of such parent or parents. Messer v. Jones, 88 Me. 349, 34 A. 177.

The words "either of the foregoing cases" (now "in each case"), in the last clause, do not refer to merely the last two cases previously mentioned—adoption, or acknowledgement. "Either of the foregoing cases" should be held to include each and every case previously named. A construction limiting the words "either of the foregoing cases" to the last two cases would make the right to inherit from the kindred of the mother depend upon the will and act of the putative father, and would oftentimes work injustice and inequality; whereas, the rule is intended to be general and equal in its application. Messer v. Jones, 88 Me. 349, 34 A. 177. See Lyon v. Lyon, 88 Me. 395, 34 A. 180.

And the section expressly includes lineal as well as collateral kindred. Lawton v. Lane, 92 Me. 170, 42 A. 352.

Former provisions of section.—For a case holding that, under this section as it formerly read, the facts essential to be proved to allow an illegitimate child to inherit his father's estate, were entirely distinct from such as would authorize him to inherit by representation of his father or mother from his lineal and collateral kindred, see Hunt v. Hunt, 37 Me. 333.

For a consideration of a former provision of this section that "if his parents intermarry and have other children before his death, or his father so acknowledges him, or adopts him into his family, he shall inherit from his lineal and collateral kindred, and they from him, as if legitimate," see Brewer v. Hamor, 83 Me. 251, 22 A. 161.

Applied in Livermore v. Peru, 55 Me. 469, overruled in Biddeford v. Benoit, 128 Me. 240, 147 A. 151; Northrop v. Hale, 76 Me. 306.

Cited in Bunker v. Mains, 139 Me. 231, 28 A. (2d) 734.

Sec. 4. Advancements established.—Gifts and grants of real or personal estate to a child or grandchild are deemed an advancement, when so expressed therein, or charged as such by the intestate, or acknowledged in writing to be

such. For purposes of descent and distribution, they shall be regarded as part of the estate of the intestate and as taken towards a share of it. (R. S. c. 156, § 4.)

Advancements may be made of real or personal estate. Smith v. Smith, 59 Me. 214.

But this section contemplates that evidence of advancements shall be in writing, and therefore not open to explanation by oral testimony. Porter v. Porter, 51 Me. 376.

Applied in Hilton v. Hilton, 103 Me. 92, 68 A. 595.

Sec. 5. Value of advancement on distribution; not refunded.—When the value of an advancement is determined by the intestate in his gift or charge or is acknowledged in writing, it shall be allowed in the distribution; if not, the value shall be estimated at the time when it is given. When it exceeds his share, he is excluded from any further portion; when less, he shall receive sufficient to make it an equal share. He shall not refund any part of an advancement. (R. S. c. 156, § 5.)

Child may debar himself from right to share in parent's estate.—This section and § 6 authorize a parent and child to fix for themselves the value of the advancement, and whenever they do so, that value so fixed, large or small, is to be allowed in the distribution even if it is fixed as the equivalent of the child's whole share in both the real and personal estate. It is thus competent for a child, by accepting an advancement, however small, to debar himself from all right to share in his parent's estate, however large. Hilton v. Hilton, 103 Me. 92, 68 A. 595.

Sec. 6. Advancements of real and personal estate marshaled; when one having advancement dies, leaving issue.—When an advancement is made in real estate, it shall be regarded as part of the real estate, and when in personal, as part of the personal estate. If it exceeds his share of the real or personal estate, he receives so much less of the other as will make his whole share equal. If such child or grandchild dies before the intestate, leaving issue, the advancement made to him shall be regarded as made to such issue, and distribution shall be made accordingly. (R. S. c. 156, § 6.)

Applied in Hilton v. Hilton, 103 Me. 92, 65 A. 595.

Sec. 7. When heir indebted to estate, lien on his share created.—When an estate is solvent and a person to whom a share of it descends is indebted to the intestate at the time of his death, such debt creates a lien on his share, having priority to any attachment of it; and such lien may be enforced by suit and attachment of the share within 2 years after administration is granted, and by levy within 30 days after judgment. In such action, or in one brought by the heir, all claims between the intestate and heir may be set off and adjusted, and the balance due may be established. (R. S. c. 156, § 7.)

Cross reference.—See c. 156, § 20, re lien for debt due estate created.

Lien imposed on heir's entire share.—The lien prescribed by this section is not limited to any particular article, or parcel of land, but is imposed upon the entire share of each heir of the decedent. C. A. Weston Co. v. Colby, 107 Me. 104, 77 A. 637.

And creditor is charged with notice of lien.—A creditor of a person to whom a share in a solvent estate has descended is chargeable with notice of such lien, and any attachment made by him of such share is subject to the lien, though made before any attachment by the administrator. C. A. Weston Co. v. Colby, 107 Me. 104, 77 A. 637.

But lien must be seasonably enforced.—The lien given by this section, in order to defeat the attachments of the heirs' creditors, must be enforced by legal proceedings within 2 years after administration is granted upon the ancestor's estate. Leonard v. Motley, 75 Me. 418.

The lien created by this section can be enforced only "by suit and attachment of the share within 2 years after administration is granted" on the estate from which the share descends. Fenderson v. Belcher, 68 Me. 59.

And levy on judgment rendered by court

without jurisdiction is not sufficient.—The statute giving a lien never contemplated the levy of an execution issued upon a judgment which the court had no jurisdiction to render, as sufficient to enforce the lien. Leonard v. Motley, 75 Me. 418.

No particular part of share need be designated in writ to enforce lien.—It is not necessary and the statute does not require that any particular part of the share be designated either in the writ or declaration to enforce the lien. C. A. Weston Co. v. Colby, 107 Me. 104, 77 A. 637.

Nor is it necessary to set out terms of lien.—An administrator has a full right of action to recover the indebtedness of an heir independent of the statute. The indebtedness, the personal liability of the heirs, is the cause of action. The statute merely annexes to that right of action an incident, viz., a lien upon the debtor's share in the estate of the decedent. It does not require that its terms be set out in either writ or declaration. C. A. Weston Co. v. Colby, 107 Me. 104, 77 A. 637.

Rights of Surviving Husbands and Wives.

Sec. 8. Rights of dower and tenancy by curtesy, abolished; not to affect vested rights nor antenuptial settlement.—Except as hereinafter provided, the right of widows to dower in the real estate of their deceased husbands and the right of widowers as tenant by curtesy in the real estate of their deceased wives are abolished. This section and the 11 following sections shall not be held to affect, modify, enlarge or limit the rights and interests which any widower or widow married before the 1st day of May, 1895 has in the estate of a wife or husband deceased prior to the 1st day of January, 1897, nor any of the remedies by which the same may be enforced, nor affect any jointure or antenuptial settlement or pecuniary provision made for such widow by any such husband; nor shall a widower married before the 1st day of May, 1895 have any interest in the real estate of his wife conveyed by her during coverture prior to the 1st day of January, 1897. (R. S. c. 156, § 8.)

The common-law right of dower has been abolished. In lieu thereof, a larger and more valuable interest is given to the wife. Whiting v. Whiting, 114 Me. 382, 96 A. 500. See note to § 1, sub-§ I.

Applied in Cheney v. Cheney, 110 Me. 61, 85 A. 387; Kelsea v. Cleaves, 117 Me. 236, 103 A. 527; Coombs v. Coombs, 120 Me. 103, 113 A. 20; Burnham v. Wing, 123 Me. 237, 122 A. 577; Bunker v. Bunker, 130 Me. 103, 154 A. 73.

Sec. 9. Husband or wife may bar right by deed, etc.—A husband or wife of any age may bar his or her right and interest by descent in an estate conveyed by the other, by joining in the same, or a subsequent deed, or in a deed with the guardian of the other; or by sole deed; but shall not be deprived of such right and interest by levy or sale of the real estate on execution; but may, after the right of redemption has expired, release such right and interest by sole deed. (R. S. c. 156, § 9.)

Cross reference.—See c. 163, § 11, re disposal of property by antenuptial settlement and decree that husband is deserted bars wife's rights in his property.

Section has no reference to personal estate.—The phrase "right and interest by descent" was adopted in this section to express the right which a surviving husband or wife should have in the real estate of a deceased wife or husband, in the place of dower or curtesy. It had no reference to the interest in the personal estate which comes through distribution. Wright v. Holmes, 100 Me. 508, 62 A. 507.

Wife may bar her right by descent.—A wife may bar her right by descent by joining with her husband in a conveyance of real estate, or in a subsequent deed, or in a deed with the guardian of the husband; or by her sole deed. First Auburn Trust Co. v. Austin, 132 Me. 45, 165 A. 375.

But release or quitclaim deed during life of husband is not sufficient.—The wife may release her right, such as it then is, during the lifetime of her husband by a deed with covenants of warranty, but a mere release or quitclaim deed is not sufficient to pass her rights or convey title. First Auburn Trust Co. v. Austin, 132 Me. 45, 165 A. 375.

And she cannot release her right until after time for redemption.—Under the provisions of this section, a wife cannot by

sole deed, release her "right and interest by descent" until after the expiration of the time provided by law for redemption by the husband from a sale or levy on execution, and a sole deed of such "right and interest" given by a wife before such redemption period expires, conveys nothing. And if a sole deed so given is a quitclaim deed, without covenants of any kind, a grantee purchaser cannot recover back the purchase money paid for it, nor is the vendor estopped from setting up a subsequentiy acquired title, unless by so doing he is obliged to deny or contradict some fact alleged in his former conveyance. Crockett v. Borgerson, 129 Me. 395, 152 A. 407.

Under this section, a wife cannot release her "right and interest by descent" which is subject to a mortgage, until after the right of redemption has expired. Crockett v. Borgerson, 129 Me. 395, 152 A. 407.

Applied in Pinkham v. Pinkham, 95 Me. 71, 49 A. 48; Burnham v. Wing, 123 Me. 237, 122 A. 577.

Stated in Littlefield v. Paul, 69 Me. 527.

Sec. 10. Right barred by accepting jointure before marriage. — A woman may be barred of her right and interest by descent in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian. (R. S. c. 156, § 10.)

Cross references.—See c. 166, §§ 42, 45, 46, re disposal of property by antenuptial settlement and decree that husband is deserted bars wife's rights in his property.

"Jointure" used in its established sense. —The word "jointure" must have been used in its well known and established legal sense. It must be a freehold estate in lands or tenements secured to the wife, and to take effect on the decease of the husband, and to continue during her life at the least, unless she be herself the cause of its determination. Vance v. Vance, 21 Me. 364. See Bubier v. Roberts, 49 Me. 460.

And it cannot be composed partly of a freehold estate and partly of an annuity not secured on any estate. Vance v. Vance, 21 Me. 364.

Jointure must be made before marriage and with intended wife's consent. — No jointure can prevent the widow from having her right and interest by descent unless made before marriage, and with the consent of the intended wife. Vance v. Vance, 21 Me. 364. But see § 12 and note, re widow must waive jointure made without her consent or after marriage.

A deed cannot be regarded as a jointure, within this section, if it was made after marriage. Bubier v. Roberts, 49 Me. 460.

And intention to make conveyance a jointure must appear. — A conveyance to a married woman is not deemed a jointure, unless such intention is expressed in the deed or appears by necessary implication from its contents. Chase v. Alley, 82 Me. 234, 19 A. 397.

Applied in Pinkham v. Pinkham, 95 Me. 71, 49 A. 48.

Stated in Littlefield v. Paul, 69 Me. 527.

Cited in Peaks v. Hutchinson, 96 Me. 530, 53 A. 38.

Sec. 11. Right barred by pecuniary provision.—A pecuniary provision made for the benefit of an intended wife instead of her right and interest by descent, consented to by her as provided in the preceding section, bars her right and interest by descent in her husband's lands. (R. S. c. 156, § 11.)

Intention must appear from the agreement.—If nothing is found in an agreement from which can be inferred that it was intended as a jointure or pecuniary provision in lieu of her right by descent, it cannot be considered a "pecuniary provision", within the meaning of this section. Davis v. Davis, 61 Me. 395.

Equity may refuse to enforce agreement. —An agreement between husband and wife for the release of her interests in his real estate cannot be enforced in an action at law between them; and where, as a consideration for the payment of money, such a covenant is contained in an agreement between husband and wife for separation, without the intervention of a trustee, together with a covenant for the relief of the husband of all future obligations for the support of the wife and their minor children, a court of equity may refuse to enforce it either by way of estoppel, or as a part of a "pecuniary provision" under this section, barring her rights in his property. Coombs v. Coombs, 120 Me. 103, 113 A. 20.

Applied in Pinkham v. Pinkham, 95 Me. 71, 49 A. 48.

Stated in Bubier v. Roberts, 49 Me. 460; Littlefield v. Paul, 69 Me. 527.

Cited in Peaks v. Hutchinson, 96 Me. 530, 53 A. 38.

Sec. 12. When widow may waive jointure.—If such jointure or provision is made before marriage, without the consent of the intended wife, or if it is made after marriage, it bars her right and interest by descent unless, within 6 months after the husband's death, she makes her election to waive such provision and files the same in writing in the registry of probate. In case she so makes such election, she shall be entitled to her right and interest by descent in her husband's lands. (R. S. c. 156, § 12.)

It is only a jointure or pecuniary provision that will bar the claim for the right and interest by descent under this section. Bubier v. Roberts, 49 Me. 460.

Jointure after marriage must be seasonably rejected by widow. — It is evident that, under this section, a jointure or pecuniary provision may be made after marriage, which will be a bar unless rejected by the widow within six months after the death of the husband. Bubier v. Roberts, 49 Me. 460; Chase v. Alley, 82 Me. 234, 19 A. 397.

As must jointure not consented to by her.—If it is clearly shown that the husband in his lifetime made a jointure or pecuniary provision for his wife in lieu of her right by descent, and that she had full knowledge of it, although she did not accept it at the time in satisfaction of her right by descent, she will be bound thereby, unless, within six months after her husband's decease, she elects not to do so, and files a certificate of her election in writing in the probate office. Bubier v. Roberts, 49 Me. 460.

But wife must have had notice of nature of conveyance.—The statute evidently intends that the jointure or provision shall be clearly declared and defined, so that there can be no mistake that the husband intended the provision to be in lieu of the widow's right by descent, and that the wife had notice and fully understood the nature and condition of the conveyance, and that, if she did not waive it within six months after her husband's death, it would bar her dower. Bubier v. Roberts, 49 Me. 460.

The statute imposing on the widow the duty of making her election is predicated upon her knowledge of a jointure being made; else of course she could not be reasonably expected to make one between such a provision and her right and interest by descent. Chase v. Alley, 82 Me. 234, 19 A. 397.

And waiver saves her interest by descent even if jointure after marriage consented to by her. — If during coverture, jointure or pecuniary provision is made for her, even with her consent, and her dower or right and interest by descent would be thereby barred, she may waive the provision, and save her interest. Pinkham v. Pinkham, 95 Me. 71, 49 A. 48.

Stated in Littlefield v. Paul, 69 Me. 527.

Cited in Davis v. Davis, 61 Me. 395; Peaks v. Hutchinson, 96 Me. 530, 53 A. 38.

Sec. 13. Widow, widower or guardian may elect whether to accept provision in will or claim interest by descent.—When a specific provision is made in a will for the widow or widower of a testator or testatrix who was married before the 1st day of May, 1895, and died since the 1st day of January, 1897, or who was married on or after said 1st day of May, such legatee or devisee may within 6 months after probate of said will and not afterwards, except as hereinafter provided, make election, and file notice thereof in the registry of probate, whether to accept said provision or claim the right and interest by descent, herein provided; but is not entitled to both, unless it appears by the will that the testator or testatrix plainly so intended. Such election may be made by an insane widow or insane widower by his or her guardian or by a guardian ad litem appointed for the purpose. If such election is not made within 6 months after probate of a will and the estate is thereafter rendered insolvent and commissioners are appointed by the judge of probate, such election may be made at any time within 6 months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may recover from such executor or administrator, if not paid within 30 days after

demand therefor in writing, 1/3 of any sums received from real estate sold before such waiver was filed. Whenever the widow or widower is advised that the legal construction of the provisions of the will for her or him is doubtful or uncertain, the time for making such election shall be extended to 30 days after certificate is returned to the probate court in the county where the probate proceedings are had, of the final decision upon a bill in equity, commenced by said legatee or devisee within 30 days after the probate of the will, to obtain the decision of the court as to his or her rights under it, but in no case shall the time for election be less than 6 months after probate. The clerk of courts for the county in which the proceedings in equity are commenced, within 3 days after receipt of the decision therein, shall send notice of the same to the widow or widower, or her or his solicitor of record, and transmit a certified copy of the decree to the proper probate court, where it shall be recorded, with the time of its reception. (R. S. c. 156, § 13.)

History of section. — See Bunker v. Bunker, 130 Me. 103, 154 A. 73.

Provisions for waiver are same whether right by dower or inheritance is involved. — A similar provision existed before dower was abolished in this state, whereby the widow had the same privilege of election to accept the provision made in the will for her or to waive it, and when the right of dower was abolished and the widow given a right by descent in the estate of her husband, the same statutory provisions for waiving the provisions of a will and accepting the rights given to her by law were retained. In all the courts in which the subject has been discussed it has been held that the privilege of waiving the provisions of a will and accepting the provisions made by law are the same, whether it is a dower right or a right by inheritance. Clark v. Boston Safe Deposit & Trust Co., 116 Me. 450, 102 A. 289; Bunker v. Bunker, 130 Me. 103, 154 A. 73.

Failure to waive provisions of will constitutes acceptance thereof.—A widow will be considered as accepting the provisions made in the will, unless, within six months from the probate of the will, she waives such provision. Hastings v. Clifford, 32 Me. 132.

And bar to widow's right and interest by descent. — A delay of more than six months to make the election, is to be considered an acceptance of the provisions made for the widow in the will, and constitutes a bar to her right and interest by descent. Hastings v. Clifford, 32 Me. 132.

In realty undisposed of.—A widow who voluntarily accepts provisions made for her benefit by her husband in his will, is barred from any right by descent in his real estate remaining undisposed of. Bunker v. Bunker, 130 Me. 103, 154 A. 73.

The testator's widow, by accepting his will, debars herself from claiming her share in real estate not finally disposed of by the will. Any such real estate is intestate estate, to the exclusion of the widow. Davis v. McKown, 131 Me. 203, 160 A. 458.

And will need not declare that provision is in lieu of right and interest by descent. — It is not necessary that there should be a distinct declaration in a will that the provision is in lieu of the widow's right and interest by descent. The rule of the common law is that a devise or bequest to a widow is presumed to be in addition to her dower, unless it clearly appears that it was the intention of the testator that it should be in lieu of dower. Our statute has essentially changed the rule in this, that the provision in favor of the wife, in the will, will be regarded as a bar to her right and interest by descent if not refused, unless it plainly appears that the testator intended that she should have both. But the intention in both cases may be gathered from the will and its provisions, without any formal language expressing the intention. Bubier v. Roberts, 49 Me. 460.

Waiver may be filed within six months after Supreme Court's decree on appeal.— If the waiver of the provisions of the will by the widow is not filed within six months from the time the will is allowed by the probate court, but is filed within six months from the date of the decree of the supreme court of probate affirming the decree of the probate court, the filing is seasonable. The appeal to the supreme court of probate vacates the decree of the probate court (see note to c. 153, § 32) and the will is not judicially allowed until the appellate court has spoken. Shannon v. Shannon, 142 Me. 307, 51 A. (2d) 181.

The right of the widow to renounce the provisions of the will is a statutory right which may be exercised at any time within the six months after the probate of the will. Where the widow is left a legacy in lieu of her right and interest by descent,

her right to take an appeal for any legal reason still exists. The widow's right to renounce the provisions of the will remains to be exercised by her within six months after determination of its validity. The decree of the supreme court of probate is a new decree and a final judgment. The widow may then file her waiver, if done within six months after final decree of the supreme court of probate. Shannon v. Shannon, 142 Me. 307, 51 A. (2d) 181.

Section relates only to right and interest by descent in realty.—This section relates only to a widow's right and interest by descent in the real estate of her husband upon her waiver of the provisions of his will for her benefit. Bunker v. Bunker, 130 Me. 103, 154 A. 73.

And widow may take under will and still be entitled to distributive share of personalty. — Where no intention appears in the will to the contrary, a widow, who accepts the provisions of the will for her benefit, may, in addition thereto, be entitled to her distributive share of the personalty remaining undisposed of after her life estate. Bunker v. Bunker, 130 Me. 103, 154 A. 73.

No statute inhibits a widow from claiming her share in intestate personal estate, though she has accepted her husband's will. Davis v. McKown, 131 Me. 203, 160 A. 458.

And she may take realty under will and by descent if testator so intended. — A widow is entitled to the share of her husband's estate allowed her by law, as well as to the provisions made for her in the will, if, in the words of the statute, "it appears by the will that the testator plainly so intended." Addition v. Smith, 83 Me. 551, 22 A. 470.

But such intent must appear by the will. —It must appear by the will of the testator that he intended that his wife should receive the bequests in his will, in addition to her statutory right and interest by descent, to entitle her to both. Hastings v. Clifford, 32 Me. 132.

This section makes it the duty of the widow to waive any specific provision for her in the will, if she would have her right and interest by descent, and prevents her having both, unless such intention plainly appears in the will. Chase v. Alley, 82 Me. 234, 19 A. 397.

A widow may, by accepting the specific provision of her husband's will, preclude herself from any right or interest by descent in realty respecting which her husband died intestate. She may not hold under the will and also take by descent, unless the testator's intention that she should is plainly apparent. Davis v. McKown, 131 Me. 203, 160 A. 458.

Waiver vacates provisions of will in favor of widow. — The election of the widow to take against the provisions of the will, vacates the provisions made in her favor. United States Trust Co. v. Douglass, 143 Me. 150, 56 A. (2d) 633.

And sets at naught tenancy designated for her as effectually as death.—The exercise of the statutory privilege of waiver sets at naught the tenancy that was designated for the widow or widower in the will, and this as effectually as his or her death could have done. Ladd v. Baptist Church, 124 Me. 386, 130 A. 177.

And she is no longer a devisee.—In consequence of the formal rejection of what the will would have given the widow, she is no longer either devisee or donee but takes in higher title by virtue of the statute of descent and distribution. Given v. Curtis, 133 Me. 385, 178 A. 616.

Thus, waiver terminates life estate as far as remaindermen are concerned.—The waiver of the provisions of a will providing a life estate for a widow, and her acceptance of her interest in the estate as provided in this section, terminates the trust established for her benefit as effectually as would her death, so far as remaindermen are concerned. Eastern Trust & Banking Co. v. Edmunds, 133 Me. 450, 179 A. 716.

But waiver does not invalidate devises to others.—The widow's waiver does not necessarily invalidate bequests or devises to others. Her action may diminish the estate, but the testator's intention as to others will be carried out so far as may be possible. United States Trust Co. v. Douglass, 143 Me. 150, 56 A. (2d) 633.

Waiver may accelerate contingent remainders.—The supreme judicial court has permitted acceleration of contingent remainders, after statutory waiver by the widow or widower, in those instances where the will has not expressed or shown a contrary intention, where the testator's objectives have been attained, where the remaindermen were definitely ascertainable, and where the expressed or presumed intention of the testator was that the enjoyment of the remainders should not for any reason be postponed. United States Trust Co. v. Douglass, 143 Me. 150, 56 A. (2d) 633.

The fact that the remainder was contingent does not prevent acceleration provided that the time for distribution has arrived and the donees are ascertained. Eastern Trust & Banking Co. v. Edmunds, 133 Me. 450, 179 A. 716.

But only when such is intended by testator.—The widow's waiver will operate to accelerate remainders only when acceleration is the actual or presumed intention of the testator. United States Trust Co. v. Douglass, 143 Me. 150, 56 A. (2d) 633.

And there remain no undetermined contingencies.—A contingent remainder will not be accelerated by the widow's waiver, if there still remain undetermined contingencies, so that it is impossible to identify the remaindermen, or if there is evidence of an intention to postpone the taking effect of the remainder. United States Trust Co. v. Douglass, 143 Me. 150, 56 A. (2d) 633.

Former provision of section. — Prior to the enactment of the provision as to waiver by a guardian, it was held that the widow's right to waive the provisions of her husband's will was personal to the widow and that the guardian or court could not elect or waive for the insane widow. Clark v. Boston Safe Deposit & Trust Co., 116 Me. 450, 102 A. 289.

Applied in Perkins v. Little, 1 Me. 148; Dow v. Dow, 36 Me. 211; Rogers, Appellant, 123 Me. 459, 123 A. 634; Gatchell v. Curtis, 134 Me. 302, 186 A. 669; Moore v. Emery, 137 Me. 259, 18 A. (2d) 781; In re Roukos' Estate, 140 Me. 183, 35 A. (2d) 861; In re Roukos' Estate, 141 Me. 83, 39 A. (2d) 663.

Stated in part in Littlefield v. Paul, 69 Me. 527.

Sec. 14. Share of estate to which widow or widower waiving provisions of will, or when no provision made in will, entitled.—When a provision is made in a will for the widow of a testator who died after the 26th day of April, 1897, or for the widower of a testatrix who died after the 1st day of June, 1903, and such provision is waived as aforesaid, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates, except that if such testator or testatrix died leaving no kindred, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates of persons deceased who die leaving kindred. When no provision is made for his widow in the will of a testator who died after the 26th day of April, 1897, or for her widower in the will of a testatrix who died after the 1st day of June, 1903, such widow or widower shall likewise have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates, except that if such testator or testatrix died leaving no kindred, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates of persons deceased who die leaving kindred, provided such widow or widower shall within 6 months after the probate of such will file in the registry of probate written notice that she or he claims such share of the real and personal estate of such testator or testatrix. Such notice may be filed by an insane widow or widower by his or her guardian, or by a guardian ad litem appointed for the purpose. Any notice filed under the provisions of this or the preceding section shall be recorded by the register of probate in the record books of the probate court where such notice is filed, but a failure to record such notice shall not in any way affect the rights of any widow or widower. (R. S. c. 156, § 14. 1945, c. 76. 1949, c. 349, § 139.)

Cited in Rogers, Appellant, 126 Me. 267, 138 A. 59.

History of section. — See Cheney v. Cheney, 110 Me. 61, 85 A. 387; Bunker v. Bunker, 130 Me. 103, 154 A. 73.

"Distributive share" refers to distribution under § 20.—The phrase "distributive share" in this section refers to that share which the widow would receive in the distribution of the residue of an intestate estate under § 20. Fogg, Appellant, 105 Me. 480, 74 A. 1133.

Legacies not deducted before distribution to widow.—The widow who comes within the provisions of this section is entitled to the same distributive share as if the estate had been intestate. In an intestate estate there are and can be no legacies. It is plain that the legislature did not intend legacies to be deducted be-

fore distribution. There is no language which indicates it. To hold that they should be so deducted would be destructive of the purpose of this very beneficent statute. The statutory intention is that a widow shall have a way to obtain a certain, definite share of her husband's personal estate, though it may have been his purpose, as expressed in his will, to cut her off with less. Fogg, Appellant, 105 Me. 480, 74 A. 1133.

Section applies only to property left at death.—This section applies only to property left by a husband or wife at death. The statute refers only to the "estate of such testator, or testatrix." It does not relate to personal property which the decedent has parted with during life, either by gift or sale. Lambert v. Lambert, 117 Me. 471, 104 A. 820.

Money from insurance policy is not personal estate.—Money received from an insurance policy on the life of the testatrix is not "personal estate of such testatrix" within the meaning of this section. Berman v. Beaudry, 118 Me. 248, 107 A. 708.

Applied in Stewart v. Skolfield, 99 Me. 65, 58 A. 56; Dixon v. Dixon, 123 Me. 470, 124 A. 198; In re Roukos' Estate, 140 Me. 183, 35 A. (2d) 861; In re Roukos' Estate, 141 Me. 83, 39 A. (2d) 663; De Mendoza, Appellant, 141 Me. 299, 43 A. (2d) 816; Shannon v. Shannon, 142 Me. 307, 51 A. (2d) 181; United States Trust Co. v. Douglass, 143 Me. 150, 56 A. (2d) 633.

Sec. 15. Copy of notice filed in registry of deeds.—Within 30 days after any notice provided for in the 3 preceding sections is filed in the registry of probate, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated, an attested copy of such notice, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills. (R. S. c. 156, § 15.)

Sec. 16. Release of dower or curtesy construed.—All releases of rights to dower or curtesy in any manner heretofore or hereafter made, in estates conveyed or mortgaged by husbands or wives, shall be deemed to include and shall be construed to include all rights and interests by descent. (R. S. c. 156, § 16.)

Sec. 17. Rights of wife in mortgaged property.—If the wife has heretofore released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person or by himself before their marriage, she shall be entitled to her right and interest by descent, as herein provided, in the mortgaged premises, as against every person except the mortgagee and those claiming under him. If the heirs of the husband or other person claiming under him redeem the mortgage, she shall repay such proportion of the money paid by him as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to her right and interest by descent only according to the value of the estate, after deducting the money paid for its redemption. (R. S. c. 156, § 17.)

Wife entitled to right in premises mortgaged before marriage.—Her husband having died seized of premises mortgaged before their marriage, the plaintiff was entitled to her right and interest by descent in the mortgaged premises, as against every person except the mortgagee and those claiming under him. Batchelder v. Bickford, 117 Me. 468, 104 A. 819.

Applied in Barbour v. Barbour, 46 Me. 9; Wing v. Ayer, 53 Me. 138.

Sec. 18. Right of wife who has not released right of dower in land conveyed or mortgaged. — If the wife of the grantor or mortgagor of lands conveyed or mortgaged prior to the 1st day of May, 1895, or in case of persons then married, prior to the 1st day of January, 1897, has not released or barred her right of dower in the same, she shall be entitled, as against the grantee or mortgagee and those claiming under him, to her right of dower only as then existing. The wife of an insolvent debtor, married prior to the 1st day of May, 1895, decreed to be insolvent under the provisions of chapter 162, prior to the 1st day of January, 1897, shall be entitled, as against the assignee and

those claiming under him, to her right of dower only as aforesaid. (R. S. c. 156, § 18.)

Applied in Kelsea v. Cleaves, 117 Me. 236, 103 A. 527.

Sec. 19. Owner contracted to sell real estate and husband or wife refuses to release interest, or incapacitated; rights of assignees, trustees in bankruptcy, etc. — If the owner of real estate contracts to sell the same and the husband or wife of the owner refuses to release his or her interest and right by descent, or if the owner is a nonresident and the husband or wife is incapacitated and has no guardian in this state or if the owner is a resident of this state and the husband or wife is under guardianship the owner may apply to a justice of the superior court, who, after such notice to the other party as he may order, and hearing, may, in his discretion, approve the sale and price, and order the owner to pay to the clerk of court for such husband or wife of the owner, such sum as would amount to 1/3 of the price approved if the owner has issue, and ½ if he has no issue, at the expiration of the owner's expectancy of life, computed at 3%, compound interest. The clerk shall give a certificate of such approval by the court, and of the fact that said money has been paid as aforesaid, to be filed with the register of deeds in the county or registry district where the land lies, with the owner's deed thereof, and such register shall record the same; and thereafter such interest or right by descent in such real estate shall be barred. An assignee for the benefit of creditors, or in insolvency, or a trustee in bankruptcy, or any person holding title by levy or sale on execution may make application for proceedings under the provisions of this section in relation to any real estate held by him in such capacity, to bar the interest and right by descent therein, of the husband or wife of the assignor, insolvent or bankrupt, or the interest and right by descent therein of the husband or wife of the judgment debtor. (R. S. c. 156, § 19.)

Contempt proceedings may be stayed while obligor in bond proceeds under this section.—Where the obligor in a bond for a deed has agreed that the deed shall include a release of dower, it is no injustice or hardship for the decree for specific performance to require the obligor to make every reasonable exertion to comply with his contract. If the obligor has a wife who refuses to release her dower or right by descent, proof of such refusal would be a sufficient cause for staying contempt proceedings against the obligor, until he could have an opportunity to apply to the court to have the wife's appropriate share of the approved price deposited with the clerk under the provisions of this section. Handy v. Rice, 98 Me. 504, 57 A. 847.

And compliance with section purges contempt for failure to deliver bond with wife's release.—Proof of full compliance with the provisions of the statute whereby the wife's interest or right by descent has been barred will be accepted to purge all contempt of court by the obligor in a bond for not delivering a deed containing a release of dower or title by descent by his wife in accordance with the decree. Handy v. Rice, 98 Me. 504, 57 A. 847.

Applied in Tuttle v. Howland, 143 Me. 394, 54 A. (2d) 534.

Stated in part in Whiting v. Whiting, 114 Me. 382, 96 A. 500; Coombs v. Coombs, 120 Me. 103, 113 A. 20.

Cited in In re Clark, 114 Me. 105, 95 A. 517; Cox, Appellant, 126 Me. 256, 137 A. 771; First Auburn Trust Co. v. Austin, 132 Me. 45, 165 A. 375.

Descent of Personal Property.

Sec. 20. Personal estate distributed.—The personal estate of an intestate, except that portion assigned to his widow by law and by the judge of probate, shall be applied first to the payment of his debts, funeral charges and charges of settlement; and the residue shall be distributed or shall escheat by the rules provided for the distribution of real estate. (R. S. c. 156, § 20.)

Section applies only to intestate estates.—This section does not apply to the descent of an estate testate, at all. It applies only to intestate estates. Stewart v. Skolfield, 99 Me. 65, 58 A. 56.

In the administration of intestate per-

sonal estate, the widow in the first instance is preferred. Out of the personal estate she is entitled, before the payment of debts and charges, to whatever the law assigns to her, not including what comes by distribution. She is, in the same way, entitled to the allowance made to her by the judge of probate. Then, the debts and expenses are to be paid out of what remains. Then, the residue of personal estate yet remaining is to be distributed, and of this, the widow is entitled to her "distributive share," one-third, if there are issue, and one-half, if no issue, and the whole, if no kindred. Fogg, Appellant, 105 Me. 480, 74 A. 1133. See § 1.

And her allowance precedes any distribution of the personal estate. Gilman v. Gilman, 54 Me. 531.

Decree of distribution should name heirs.—Personal estate of an intestate for distribution among his heirs, descends to those living at the time of his death; and the decree of distribution should name each one of such heirs and his share, and if any have died in the meantime, the share of each one so deceased should be decreed to be paid to the executor or administrator of such deceased heir. Grant v. Bodwell, 78 Me. 460, 7 A. 12.

Applied in Lord v. Bourne, 63 Me. 368; Cables v. Prescott, 67 Me. 582; Healey v. Cole, 95 Me. 272, 49 A. 1065; Smith, Appellant, 107 Me. 247, 78 A. 97; Cheney v. Cheney, 110 Me. 61, 85 A. 387; Hussey v. Titcomb, 127 Me. 423, 144 A. 218; Bunker v. Bunker, 130 Me. 103, 154 A. 73.

Quoted in Hathaway v. Sherman, 61 Me. 466.

Stated in Quinby v. Higgins, 14 Me. 309; Davis v. Stinson, 53 Me. 493.

Cited in Berman v. Beaudry, 118 Me. 248, 107 A. 708; Given v. Curtis, 133 Me. 385, 178 A. 616.

Sec. 21. Life insurance. — Money received for insurance on the life of any person dying intestate, deducting the premium paid therefor within 3 years with interest, does not constitute a part of the estate of such person for the payment of debts, or for purposes specified in section 1 of chapter 157, when the intestate leaves a widow or widower, or issue, but descends, 1/3 to the widow or widower, and the remainder to the issue; if no issue, the whole to the widow or widower, and if no widow or widower, the whole to the issue. It may be disposed of by will; but in case the estate is insolvent, such disposition by will shall be limited to the distribution of such money among the widow or widower and issue in such proportions as the testator or testatrix may designate. (R. S. c. 156, § 21.)

Cross references.—See c. 59, § 177, re descent of shares, or money received for shares, in loan and building associations; c. 60, § 159, re policies exempt from claims of creditors; c. 60, § 187, re benefit, charity or relief funds not liable to attachment; c. 60, § 232, re casualty insurance not liable to attachment; c. 154, § 68, sub-§ IV, re money becoming due upon death from insurance on life to be omitted from inventory.

Object of section.—The object of the legislature seems to have been to designate this very peculiar species of property as a disposition of his funds in advance, which any man may make so firmly, that, with the exception of certain premiums paid to secure it, the whole shall go after his death for the benefit and enjoyment of those who are in general dependent upon him for support while he lives, without regard to the claims of creditors, and to give him power simply to regulate the proportions in which it should be divided among those interested, according to his view of their necessities or their deserts. Hathaway v. Sherman, 61 Me. 466.

Section not qualified by § 14.—This section relating to life insurance, is not qualified by § 14, because proceeds of life insurance is not "personal estate of such testatrix" within the purview of the statute. Berman v. Beaudry, 118 Me. 248, 107 A. 708. See note to § 14.

Only representative of intestate can recover money due on policy.—The legal representative of an intestate estate is the only party who can recover money due on a policy of insurance upon the life of the intestate. Lee v. Chase, 58 Me. 432.

And widow cannot maintain action for its recovery.—The widow of the intestate cannot maintain assumpsit against a third person, to whom the insurance company had paid the money due on the policy, to recover the proportion which descends to her by virtue of this section. Lee v. Chase, 58 Me. 432.

Nor can heirs.—This section applies only when the policy is payable to and becomes assets of the estate; in which case neither the widow nor heirs can maintain an action for their respective share of the proceeds, but must seek their remedy in

the probate court. Cragin v. Cragin, 66 Me. 517.

Section refers only to insurance fund belonging to estate.—This section refers only to the distribution of money received on a life policy belonging to the estate. Cragin v. Cragin, 66 Me. 517.

And provision as to 3 years' premiums not applicable to one named as beneficiary in policy.—The provisions of this section, relating to the premiums for the last 3 years, do not apply to one who takes, not by descent, but as a beneficiary designated in the policy. Virgin v. Marwick, 97 Me. 578, 55 A. 520.

But it does apply to distribution to a legatee.—Before paying insurance funds to the legatee, the executor should first deduct from the fund an amount equal to 3 years' premiums with interest and administer the same as a part of the estate. Berman v. Beaudry, 118 Me. 248, 107 A. 708.

The clause requiring the deduction of 3 years' premiums qualifies not the sentence merely but the section in which it is contained. The antecedent of the pronoun "it" beginning the second sentence of the section is "money received for insurance (after) deducting, etc." Berman v. Beaudry, 118 Me. 248, 107 A. 708.

Insolvent testator can dispose of insurance fund only to widow or issue.—A person having insurance upon his life, dying insolvent, leaving a widow and children, may bequeath the insurance money among them as he pleases; but he cannot bestow it by will upon any other person. The power to dispose of such fund by will, conferred by this section, is limited, in case of insolvency, to a disposition among the widow and children of the deceased. Hathaway v. Sherman, 61 Me. 466.

And if he leaves neither, he can make no disposition of the fund.—One who dies insolvent can make no testamentary disposition of the fund accruing from an insurance policy upon his life, if he leaves neither widow nor child. In such event, the insurance money becomes assets for the payment of debts. Hathaway v. Sherman, 61 Me. 466.

It is only when the insured leaves a widow or issue that he can exercise any testamentary power whatever over an insurance fund, if his estate proves insolvent. If he leaves neither widow nor issue, these special provisions have no application to his case at all. The fund is to be inventoried by his executor or administrator as part of his assets, subject to the payment of debts, and it is only upon the residue, after answering all prior legal calls, that any testamentary provisions he may make will take effect. Hathaway v. Sherman, 61 Me. 466.

But the right of a solvent testator to dispose of insurance by will is unqualified.—Except for the provision that three years' premiums and interest shall be deducted, the right of a solvent testator to dispose by will of life insurance payable to himself is unqualified. Berman v. Beaudry, 118 Me. 248, 107 A. 708.

Notwithstanding he leaves a widow.—It is competent for the testator to make such disposition of insurance funds as he chooses, if his estate is solvent, notwithstanding he leaves a widow. Hamilton v. McQuillan, 82 Me. 204, 19 A. 167.

A solvent testator, leaving a widow, may dispose of life insurance, by will, to persons other than his widow. Fox v. Senter, 83 Me. 295, 22 A. 173.

Or issue, or both.—The limitation of the testamentary disposition to the widow or issue, as provided in this section, in respect to funds accruing from insurance on the life of the testator, applies only in cases where the estate is insolvent. When the estate is solvent, and the testator leaves a widow or issue, or both, he has the same power of disposition by will over such funds as he has over any other personal property belonging to his estate. Hamilton v. McQuillan, 82 Me. 204, 19 A. 167.

But intention to dispose of insurance must be explicitly declared in the will.—The intention of the testator to bequeath the funds of life insurance policies to others, including his widow or issue, must be explicitly declared by the terms of the will, otherwise it will not pass by the will, but will descend in accordance with this section. Hamilton v. McQuillan, 82 Me. 204, 19 A. 167.

To dispose of money accruing from life insurance policies in a manner different from that which the law contemplates, the testator must use language directly significant of his intention in this respect. Blouin v. Phaneuf, 81 Me. 176, 16 A. 540.

And such intention cannot be inferred from general provisions.—The testator's intention to change the direction which the law gives to this very peculiar species of property is not to be inferred from general provisions in his will the fulfillment of which might require the use of such money, but must be explicitly declared. Hathaway v. Sherman, 61 Me. 466; Blouin v. Phaneuf, 81 Me. 176, 16 A. 540; Hamilton v. McQuillan, 82 Me. 204, 19 A. 167.

And fund cannot be used for payment of debts or legacies couched in general terms.—Classed by the legislature as this fund is, it is not to be appropriated to the payment of debts or of any pecuniary legacies couched in general terms merely, even to the widows or children, unless it is expressly referred to as the fund from which such payment is to be made. Hathaway v. Sherman, 61 Me. 466; Blouin v. Phaneuf, 81 Me. 176, 16 A. 540; Hamilton v. McQuillan, 82 Me. 204, 19 A. 167.

Nor do insurance funds pass by any general residuary clause. Hathaway v. Sherman, 61 Me. 466; Hamilton v. McQuillan, 82 Me. 204, 19 A. 167.

An intention on the part of a testator, by his will, to dispose of the fund arising from an insurance policy upon his life, will not be inferred from the fact that his bequests were ultimately found to exceed the whole amount of his estate exclusive of this fund; nor from the fact that he designated a person as the legatee of the residue of his property of every description whatsoever. Hathaway v. Sherman, 61 Me. 466.

Policy payable to executors or administrators is not disposed of by will.—A policy, payable to testator's "executors, administrators or assigns" is within the provisions of the statute. It is not disposed of by testator's will. An amount equal to the premiums paid thereon within three years prior to the death of the testator, with interest thereon, and expense of collection, is to be retained by the executors and be treated as part of the testator's personal estate, to meet the calls in his will. Golder v. Chandler, 87 Me. 63, 32 A. 784.

A policy payable to testator's legal representatives for his heirs and assigns, does not fall within the provisions of this section which authorize a disposition by will, under certain limitations, of money received from insurance on life. Golder v. Chandler, 87 Me. 63, 32 A. 784.

And proceeds of such policy go into general estate.—If the insurance is payable, in case of the death of the insured, to his legal representatives, and he dies leaving no widow or issue, the insurance is not for the benefit of heirs or other persons, but goes into his general estate to be administered as other personal assets. If anything is left after payment of debts, the heirs take by descent and not by purchase. Portland v. Union Mut. Life Ins. Co., 79 Me. 231, 9 A. 613.

Applied in Pulsifer v. Hussey, 97 Me. 434, 54 A. 1076; Robbins, Petitioner, 126 Me. 555, 140 A. 366.

Cited in Scribner v. Adams, 73 Me. 541; Douglass v. Parker, 84 Me. 522, 24 A. 956.

Uniform Simultaneous Death Act.

Sec. 22. No sufficient evidence of survivorship.—Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person shall be disposed of as if he were the survivor, except as provided otherwise in sections 22 to 29, inclusive. (R. S. c. 156, § 22.)

Sec. 23. Two or more decedents, beneficiaries under another person's will. — Where a testamentary disposition of property depends upon the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor. (R. S. c. 156, § 23.)

Sec. 24. Decedents joint tenants.—Where there is no sufficient evidence that 2 joint tenants died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. (R. S. c. 156, § 24.)

Sec. 25. Insured presumed to survive.—Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously,

the proceeds of each policy shall be distributed as if the person whose life was insured therein survived. (R. S. c. 156, § 25.)

Sec. 26. Not retroactive.—The provisions of sections 22 to 29, inclusive, shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date. (R. S. c. 156, § 26.)

Sec. 27. Not to apply if decedent provides otherwise.—The provisions of sections 22 to 29, inclusive, shall not apply in the case of wills, deeds or contracts of insurance wherein provision has been made for distribution different from the provisions of said sections. (R. S. c. 156, § 27.)

Sec. 28. Uniformity of interpretation. — Sections 22 to 29, inclusive, shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact them. (R. S. c. 156, § 28.)

Sec. 29. Short title.—Sections 22 to 29, inclusive, may be cited as the "Uniform Simultaneous Death Act." (R. S. c. 156, § 29.)