

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 693

H. P. 522

House of Representatives, February 6, 1969

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Moreshead of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Revising Certain Probate Laws.

Be it enacted by the People of the State of Maine, as follows :

Sec. 1. R. S., T. 18, § 105, repealed and replaced. Section 105 of Title 18 of the Revised Statutes is repealed and the following enacted in place thereof :

§ 105. Witness or deposition where no objection to will

When it clearly appears to the judge by the written consent of the heirs at law or otherwise that there is no objection thereto, he may decree the probate of any will upon the testimony of one or more of the 3 subscribing witnesses required by law, who can substantiate all the requisite facts. The affidavit of such witness or witnesses, whether taken before the register of probate, or made at the time the will was executed, before any officer authorized to administer oaths within or out of this State and written on the will itself or on a paper annexed thereto, may be received in evidence; or, in the case described in section 104, upon the depositions of one or more of the subscribing witnesses, substantiating the facts.

Sec. 2. R. S., T. 18, § 2701, repealed and replaced. Section 2701 of Title 18 of the Revised Statutes is repealed and the following enacted in place thereof :

§ 2701. Estates of persons disappeared for 7 years; exception

Any person who has been absent from his home and unheard of for a period of 7 or more years shall be presumed to be dead. If such person left a will, it shall be presented for probate, and, if he left no will, administration on his estate shall be granted by the court of probate having jurisdiction, and the settlement and distribution of his estate may be proceeded with in the same manner as if he were known to be dead, but the court, before granting an

order for distribution or for payment of legacies named in such will, shall require from the legatees or distributees a bond or bonds with sufficient surety to the judge, conditioned to return the estate distributed or paid, with lawful interest thereon, to the person presumed to be dead, if he reappears and demands the same. If any such legatee or distributee is unable to give the security, the estate available for distribution shall be placed at interest on security approved by the court by the administrator or executor, as the case may be, which interest shall be paid annually by him to such legatee or distributee, and such estate shall remain at interest until the court of probate, by which such letters of administration or letters testamentary were granted, orders it to be paid to the legatee or distributee, but no order shall be made permitting such payment or distribution without the security provided for until at least 5 years have elapsed since the granting of such letters of administration or letters testamentary. After such administration and distribution, the executor or administrator shall not be liable to the person so presumed to be dead in any action for the recovery of such estate.

Sec. 3. R. S., T. 18, § 3601, amended. The last paragraph of section 3601 of Title 18 of the Revised Statutes is repealed and the following enacted in place thereof:

The judge may, on said application, appoint a person to be his or her guardian or appoint a conservator on petition filed by the person committed.

Sec. 4. R. S., T. 19, § 532, amended. The 2nd sentence of the 2nd paragraph of section 532 of Title 19 of the Revised Statutes, as amended by section 2 of chapter 432 of the public laws of 1967, is repealed and the following enacted in place thereof:

The consent of the parents and the child when required must be acknowledged before a justice of the peace or notary public, but in no event shall an attorney acting for the adopting parents serve as such justice of the peace or notary public.

Sec. 5. R. S., T. 19, § 532, amended. The 3rd sentence of the 2nd paragraph of section 532 of Title 19 of the Revised Statutes is amended to read as follows:

If there are no such parents or if the parents have abandoned the child and ceased to provide for its support or if the parents are considered by the judge unfit to have the custody of the child ~~and the welfare of the child is in jeopardy~~, consent may be given by the legal guardian; if no such guardian, then by some person appointed by the judge to act in the proceedings as the next friend of such child.

Sec. 6. R. S., T. 36, § 3523, amended. The last sentence of the first paragraph of section 3523 of Title 36 of the Revised Statutes is amended to read as follows:

At any time within 90 days after such certification any party interested in the succession, or the executor, administrator or trustee may appeal from the decision of the State Tax Assessor to the probate court in the county where the estate is being administered, or where the decedent was domiciled at his

death, as provided in section 3801. Application may be made to the probate court in the county where the estate is being administered or, if the estate is not being administered, to the probate court in the county where decedent was domiciled at his death.

Sec. 7. R. S., T. 36, § 3685, amended. Section 3685 of Title 36 of the Revised Statutes is amended by adding a new paragraph to read as follows:

When provision is made by any will or other instrument for payment of the legacy or succession tax upon any gift thereby made, out of any property other than that so given, no tax shall be chargeable upon the sum to be applied in payment of such tax.

Sec. 8. R. S., T. 36, § 3801, amended. The first sentence of section 3801 of Title 36 of the Revised Statutes is amended to read as follows:

An executor, administrator, trustee, grantee, donee, survivor or beneficiary aggrieved by the determination of the State Tax Assessor may within 90 days after the certification of any tax apply to the probate court in the county where the estate is being administered, or where the decedent was domiciled at his death, for the abatement of the tax determined of any part thereof and if the court adjudges that the tax or any part thereof was wrongly determined, it shall order an abatement of such part thereof as was determined without authority of law.