

MAINE STATE LEGISLATURE

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Legislative Document

No. 797

S. P. 300

In Senate, February 19, 1957

Referred to the Committee on Judiciary, sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Silsby of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT Amending the Rules of Descent.

Emergency preamble. Whereas, there is uncertainty as to the legal interpretation of the present rules of descent; and

Whereas, in the judgment of the Legislature these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

R. S., c. 170, § 1, repealed and replaced. Section 1 of chapter 170 of the Revised Statutes is hereby repealed and the following enacted in place thereof:

‘Sec. 1. Rules of descent. The real estate of a person deceased intestate, or as to the share of a widower or widow who has waived the provisions of a will of a person who dies testate, 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, $\frac{1}{3}$ to the widow. If the deceased leaves no issue, $\frac{1}{2}$ to the widow. If the deceased leaves no issue and if it appears on determination by the probate court that the intestate left no issue and that the surviving widow or widower were living together at the time of his or her decease, the surviving widow or widower shall take:

A. In any event $\frac{1}{3}$ of the real estate free from payment of debts, except as provided in section 22 of chapter 163, and in addition thereto, the whole

real and personal estate remaining after the payment of the debts of the deceased, funeral charges, charges of administration, widow's or widower's allowance, if it appears on determination of the probate court that such whole estate remaining does not exceed \$10,000, in value; or

B. In any event $\frac{1}{3}$ of the real estate free from payment of debts, except as provided in section 22 of chapter 163 and in addition thereto \$10,000 plus $\frac{1}{2}$ of the remaining personal estate and $\frac{1}{2}$ of the remaining real estate, if it appears on such determination that the value of the whole estate after payment of such debts, funeral charges, charges of administration, widow's or widower's allowance exceeds \$10,000.

In either event the Judge of the probate court's decree shall show what part of the decedent's estate passes to the widow or widower under paragraph A or paragraph B above. If the personal property is insufficient to pay said \$10,000, the deficiency shall, upon the petition of any party in interest, be paid from the sale or mortgage, in the manner provided for the payments 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 appear, 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 \$10,000 over and above the amount necessary to pay the debts of the deceased, funeral charges and charges of administration, widow's or widower's allowance, 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 of 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, $\frac{1}{3}$ shall descend to the widow or widower free from payment of debts, except as provided in section 22 of chapter 163.'

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.