

MAINE STATE LEGISLATURE

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NEW DRAFT OF S. P. 300—L. D. 797

N I N E T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 1540

S. P. 551

In Senate, April 30, 1957.

Reported by Senator Silsby of Hancock from Committee on Judiciary and printed under Joint Rules No. 10.

CHESTER T. WINSLOW, Secretary

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:

Sec. 1. R. S., c. 170, 1st Par. and sub-§ I of § 1, repealed and replaced. The 1st paragraph of subsection I of section 1 of chapter 170 of the Revised Statutes are hereby repealed and the following enacted in place thereof:

‘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, $\frac{1}{3}$ 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 as provided in section 20-A that he and the surviving widow were living together at the time of his decease

A. And the residue of the estate determined as provided in section 20-A is \$10,000 or less, all of the real estate to the widow; or

B. If the residue of the estate determined as provided in section 20-A is more than \$10,000, $\frac{2}{3}$ of the real estate to the widow.

If no kindered, 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.'

Sec. 2. R. S., c. 170, § 20, amended. Section 20 of chapter 170 of the Revised Statutes is hereby amended to read as follows:

'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, except that in intestate estates and in estates in which the deceased made no provision in his will for a surviving widow, or the widow waived the provisions of the will and it having been determined by the probate court that the deceased and the surviving widow were living together at the time of his decease and that he left no issue, there shall be distributed to the widow

A. If the residue found by the Probate Court as provided in section 20-A, was \$10,000 or less, all of the remaining personal property, or

B. If the residue found by the Probate Court was more than \$10,000, the sum of \$10,000 plus $\frac{1}{2}$ of the remaining personal property. 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 not descending to the widow as provided in section 1 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. And to the widower shall be distributed the same share in his wife's personal property.'

Sec. 3. R. S., c. 170, § 20-A, additional. Chapter 170 of the Revised Statutes is hereby amended by adding thereto a new section to be numbered 20-A, to read as follows:

'Sec. 20-A. Determination of value of estates when deceased is survived by widow and no issue. If a deceased died intestate leaving a widow and no issue, or in estates in which the deceased made no provisions in his will for a surviving widow or the widow waived the provisions of the will, and deceased left no issue, the Probate Court, upon petition of any party in interest, or on its own motion, and after such notice at the court shall order, and after hearing thereon taking into consideration the inventory in the estate and such other evidences as the court shall deem necessary, the court shall determine

- A. That the deceased was or was not survived by a widow with whom he was living at the time of his decease.
- B. That the deceased left issue or no issue.
- C. The value of residue of the estate real and personal, at the date of death over and above the value of $\frac{1}{3}$ the real estate, the amount necessary to pay the debts of the deceased, funeral charges and charges of administration and widow's allowance. Such decree of determination shall include a finding as to what part of decedant's estate passes to the widow and shall be binding upon all parties.

Within 30 days after such determination by the Probate Court, 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 decree, 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.

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 provided for in section 20.'

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