

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

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.....
1821.

employed in making such new partition, or the major part of them. And the Justices of the same Court who ordered partition, are also empowered to issue execution for such satisfaction, and for costs in such new partition, the same being first taxed and allowed in the said Court.

SEC. 9. *Be it further enacted*, That when partition shall be made as aforesaid, if any one or more of the interested parties applying, shall neglect or refuse to pay their just proportion of the charges which may attend such division, it shall and may be lawful for the said Court who ordered the partition, to issue an execution against the delinquent or delinquents interested, and applying as aforesaid: *Provided*, an account of such charge be first laid before the said Court who ordered the partition, and the just proportions of the persons interested, settled and allowed, they having been duly notified to be present at such settlement and allowance. And when any messuage, tract of land, or other real estate shall be of greater value than either party's purpart or share in the estate to be divided, and cannot at the same time be subdivided, and part thereof assigned to one, and part to another, without great inconvenience, the same may be settled or assigned to one of the parties, such party to whom the same shall be so assigned, paying such sum or sums of money to such party or parties, as by means thereof have less than their share of the real estate as the committee appointed to make partition, shall award.

Courts may compel petitioners to pay their share of costs.

Special assignment may be to one, in certain cases.

[Approved February 8, 1821.]

CHAPTER XXXVIII.

An Act respecting Wills and Testaments, and regulating the Descent of Intestate Estates.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That every person of the age of twenty one years, and of sane mind, lawfully seized of any lands, tenements, or hereditaments, within this State, in his or her own right in fee simple, or for the life or lives of any other person or persons, and every person as aforesaid, being the owner of any personal estate, may give, dis-

Persons who may dispose of real and personal estate by will.

pose of, and devise said real and personal estate by his or her last will and testament in writing, to and among his or her children or others, as he or she may see fit.

Wills to be in writing and signed and attested, &c. by three witnesses.

SEC. 2. *Be it further enacted,* That all wills of any lands, tenements or personal estate shall be in writing and signed by the party so devising or bequeathing the same, or by some person in his presence, and by his express direction, and shall be attested and subscribed in the presence of the testator, by three credible witnesses, or the same shall be utterly void. And no will in writing, of lands, tenements, hereditaments or personal estate, nor any clause thereof, shall be revoked, except by a subsequent will or codicil in writing, or other writing, declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator, or in his presence and by his consent and direction; but all wills of lands, tenements, or personal estate, shall remain and continue in full force until the same be burnt, cancelled, torn, or obliterated by the testator, or by his direction, in manner aforesaid, or unless the same be altered by some subsequent will or codicil, or other writing of the testator, signed in the presence of three witnesses, declaring such alteration.

Wills, &c. how revoked.

Devises for life and afterwards in fee tail, how construed.

SEC. 3. *Be it further enacted,* That whenever any person shall hereafter, in and by his last will and testament, devise any lands, tenements or hereditaments, to any person for and during the term of such person's natural life, and after his death to his children or heirs, or right heirs in fee, such devise shall be taken and construed to vest an estate for life only in such devisee, and a remainder in fee simple in such children, heirs or right heirs, any law, usage or custom to the contrary notwithstanding.

Soldiers, Mariners, &c. may dispose of personal estate, without formal will.

SEC. 4. *Be it further enacted,* That notwithstanding this Act, any soldier being in actual military service, or any mariner, or seaman being at sea, may dispose of his moveables, wages and other personal estate, as he might have done before the making of this Act.

Nuncupative wills how proved in certain cases.

SEC. 5. *Be it further enacted,* That no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of one hundred dollars, that is not proved by the oath of three witnesses, who were present at the making thereof, nor unless it be proved that the testator, at the

time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect, nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more, next before the making of such will; except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

SEC. 6. *Be it further enacted*, That no letters testamentary or probate of any nuncupative will shall pass the seal of any Court of Probate, till fourteen days after the decease of the testator be fully expired, nor shall any nuncupative will be at any time approved and allowed, unless due notice shall have been given to all persons interested.

—not till after fourteen days from death of testator, &c.

SEC. 7. *Be it further enacted*, That after six months shall have passed, after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken.

—nor after six months from making, unless, &c.

SEC. 8. *Be it further enacted*, That if any person hath attested, or shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting any real or personal estate (other than and except charges on lands, tenements or hereditaments, for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly void, and such person shall be admitted as a witness to the execution of such will or codicil, such devise, legacy, estate, interest, gift or appointment, notwithstanding.

Legacies to witnesses of wills to be void, and legatees to be competent witnesses.

SEC. 9. *Be it further enacted*, That in case by any will or codicil already made or hereafter to be made, any lands, tenements or hereditaments, are or shall be charged with any debt or debts, and any creditor whose debt is so charged, hath attested or shall attest the execution of such will or

Creditors, in certain cases, competent witnesses to execution of wills.

codicil, every such creditor notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Legatees in certain other cases may be competent witnesses to wills, &c.

SEC. 10. *Be it further enacted,* That if any person hath attested or shall attest the execution of any will or codicil, to whom any legacy or bequest is or shall be thereby given, and such person before he or she shall give his or her testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest, upon tender thereof, such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such legacy or bequest: *Provided always,* That the credit of such witnesses as aforesaid, shall be subject to the consideration of the Court or Jury before whom such witness or witnesses may be examined, or his or her testimony or attestation made use of in like manner, to all intents and purposes as the credit of other witnesses in all other causes ought to be considered of and determined.

Legatees, dying before testator, to be considered legal witnesses.

SEC. 11. *Be it further enacted,* That in case any legatee as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil which shall hereafter be made, shall have died in the life time of the testator or before he or she shall have received or released the legacy or bequest so given him or her as aforesaid, and before he or she shall have refused to receive such legacy or bequest, on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil notwithstanding such legacy or bequest.

No legatee, made hereby a competent witness, shall afterwards receive any benefit from such will by legacy or otherwise.

SEC. 12. *Be it further enacted,* That no person to whom any beneficial estate, interest, gift or appointment shall be given or made, which is hereby enacted to be null and void as aforesaid; or who shall have refused to receive any such legacy or bequest, on tender made as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he or she shall have been so examined, demand or receive any profit or benefit of or from any such estate, interest, gift or appointment, so given or made to him or her in and by any such will

or codicil, or, demand, receive or accept from any person or persons whatsoever any such legacy or bequest or any satisfaction or compensation for the same in any manner whatever.

SEC. 13. *Be it further enacted*, That when any testator in and by his last will and testament, hath given or shall give any chattels or real estate to any person or persons, and the same shall be taken in execution for the payment of the testator's debts, or shall be sold therefor as the law provides, in such case, all the other legatees, devisees and heirs, shall refund their average or proportional part of such loss to such person or persons from whom the bequest shall be so taken away, and he or they shall and may maintain a suit or action at law to compel such contribution.

Legatee having his part taken on execution for testator's debts to be refunded by other devisees, &c.

SEC. 14. *Be it further enacted*, That when any child shall happen to be born after the death of the father, without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father, in like manner as if the father had died intestate, and the same shall be assigned to him or her accordingly; and in every such case the Judge of Probate shall issue his warrant, as in case of intestate estates, to assign to such posthumous child, a share in his or her father's estate equal to what he would have inherited, if his or her father had died intestate; and the same shall be taken in proportion from the devisees and legatees, who own the estate by virtue of such will.

Posthumous children provided for.

SEC. 15. *Be it further enacted*, That any child or children, or their legal representatives, in case of their death, not having a legacy given him, her or them, in the will of their father or mother, shall have a proportion of the estate of their parents assigned unto him, her or them, as though such parent had died intestate: *Provided*, such child, children or grand children have not had an equal proportion of the deceased's estate bestowed on him, her or them, in the deceased's life time. And when any child, grand child or other relation, having a devise of real or personal estate, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate real or personal in the same way and manner, such devisee would

Children, &c. not named in the will of their parents to inherit as in cases of intestacy—provided, &c.

Widow may wave provision in husband's will & claim her dower.

have done, in case he had survived the testator, any law, usage or custom to the contrary notwithstanding. Also the widow in all cases may wave the provision made for her in the will of her deceased husband, and claim her dower and have the same assigned her in the same manner as though her husband had died intestate.

Estate not devised to be distributed as intestate.

SEC. 16. *Be it further enacted,* That all such estate, real or personal, that is not devised or bequeathed in the last will and testament of any person, hereafter to be proved, shall be distributed in the same manner as if it were an intestate estate.

Intestate estates how to descend and be distributed.

SEC. 17. *Be it further enacted,* That when any person shall die seized of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, the same shall descend in equal shares to his children, and to the lawful issue of any deceased child by right of representation; and when the intestate shall leave no issue, the same shall descend to his father; and when there shall be no issue nor father, the same shall descend in equal shares to the intestate's mother, if any, and to his brothers and sisters, and the children of any deceased brother or sister by right of representation; and if the intestate leave no issue, father, brother or sister, then the same shall descend to his mother, if any, but if there be no mother, then to his next of kin, in equal degree; the collateral kindred claiming through the nearest ancestor, to be preferred to the collateral kindred claiming through a common ancestor more remote; and the degrees of kindred, in all cases to be computed according to the rules of the civil law; and when there shall be no kindred the same shall escheat to the State, saving always to the intestate's husband his tenancy by the courtesy; and to his widow, her dower at the common law, unless she be lawfully barred of the same: *Provided however,* That when any child shall die under age, not having been married, his share of the inheritance that came from his father or mother, shall descend in equal shares to his father's or mother's other children then living respectively, and to the issue of such other children as are then dead, if any, by right of representation: And

Rules in regard to kindred, and mode of computing degrees.

Proviso as to children dying under age, &c.

provided further, That when the issue or next of kin to the intestate, who may be entitled to his estate by virtue of this Act, are all in the same degree of kindred to him, they shall share the same estate equally, otherwise they shall take according to the right of representation.

SEC. 18. *Be it further enacted*, That when a man and his wife shall be seized of lands, tenements or hereditaments, in her right in fee, and issue shall be born alive of the body of such wife, that may inherit the same, and such wife shall die, the husband shall have and hold such estate during his natural life, as tenant by the courtesy. And the widow of the deceased shall in all cases, be entitled to her dower in the real estate (where she shall not have been otherwise endowed before marriage) and to a recovery of the same in manner as the law directs.

Tenancy by the courtesy.

Dower of widows.

SEC. 19. *Be it further enacted*, That when any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by last will, the same, after allowing, to the widow, if any, her wearing apparel, according to the degree and estate of her husband, and such further necessaries as the Judge of Probate shall order, regard being had to the state of the family under her care, shall first be applied to the payment of the intestate's debts with the charges of his funeral, and of settling his estate; and the residue, if any, shall be distributed among the same persons in the same proportion to whom the real estate shall by law descend: *Provided however*, That the husband of the intestate shall be entitled in all cases, to the whole of the said residue; and further that if the intestate shall leave a widow and issue, the widow shall be entitled to one third part of the said residue; or if there be no issue, to one half part thereof; or if there be no kindred to the said intestate, then she shall be entitled to the whole of said residue: *And provided further*, That when there shall be no husband, widow nor kindred to the intestate, the whole of the said residue shall escheat and enure to the State.

Personal estate how distributed, after payment of debts, &c.

Proviso as to husband of intestate.

When no kindred to escheat to State.

[Approved March 20, 1821.]