

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAP. 73.

R. S., c. 91,
§ 21.

Justice, if satisfied, to certify, &c.

R. S., c. 91,
§ 22.

Certificate of acknowledgment, &c.
17 Maine, 418.
19 Maine, 274.
37 Maine, 423.

R. S., c. 91,
§ 24.

Certificate made after commission expired, valid.
37 Maine, 423.
1854, c. 68.

Register to certify time when received, &c.

12 Maine, 499.
17 Maine, 391.

R. S., c. 91,
§ 25.

Pews deemed real estate. Record, &c., by town clerk.
R. S., c. 91,
§ 28, 29.

the subscribing witnesses. The date of the deed, the names of the parties, and of the subscribing witnesses to it, must be stated in the summons, which must be served seven days before the time for proving the deed.

SEC. 22. When the justice at such hearing is satisfied by the testimony of witnesses, that they saw the deed duly executed by the grantor, he shall certify the same thereon, and state, in his certificate, the presence or absence of the grantor.

SEC. 23. A certificate of acknowledgment, or proof of execution as aforesaid, must be endorsed on or annexed to the deed, and then the deed and certificate may be recorded in the registry of deeds. No deed can be recorded without such certificate.

SEC. 24. When a person, authorized to take acknowledgments, takes and certifies one in good faith after the expiration of his commission, not being aware of it, such acknowledgment shall be as valid as if done before such expiration.

SEC. 25. The register shall certify, on each deed by him recorded, the time when it was received, and it shall be considered as recorded at that time. Within one hour after its delivery to him, he shall enter such time, the names of the grantor and grantee, and their places of residence, in a book for that purpose, and open to inspection in business hours.

SEC. 26. Pews and rights in houses of public worship are deemed to be real estate. Deeds of them, and levies by execution upon them, may be recorded by the town clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds.

CHAPTER 74.

WILLS, THEIR EXECUTION AND DEVISES.

- SEC. 1. Will, by whom and how made.
2. Witnesses competent at time, sufficient. Property not disposed of, distributed.
3. Will, how rendered invalid, or revoked.
4. What lands pass by will, not seized and disseized.
5. Lands subsequently acquired, pass.
6. Property taken from a devisee, loss to be borne equally.
7. Assets, how marshaled for payment of debts.
8. Posthumous child takes a share of estate.
9. A child or issue of a deceased child, having no devise, takes; exception.
10. Lineal descendants of a relative take the share devised to him.
11. Who contribute to loss of a devisee.
12. When one cannot pay, loss equally borne.
13. Real estate not devised, first applied to pay debts.
14. Cases of contribution, how determined.
15. Will not effectual unless proved and allowed in probate court.
16. Devise of land construed to convey all the estate of devisor.
17. When executors are directed to pay legacy on conditions, and no time stated in will, reasonable time to be allowed, not exceeding five years from probate of will; if condition is not performed, how to be administered.

NUNCUPATIVE WILLS.

CHAP. 74.

SEC. 18. Nuncupative wills, where and when made, exception.

19. Testimony to prove, not receivable after six months, exception.
20. Not effectual to dispose of property exceeding one hundred dollars, unless three witnesses.

SEC. 1. A person of sound mind, and of the age of twenty-one years, may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three disinterested and credible attesting witnesses.

Will, by whom and how made.
22 Maine, 438.
21 Maine, 461.
34 Maine, 162.
R. S., c. 92,
§ 1, 2.

SEC. 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will, is to be distributed as the estate of an intestate.

Competency of witnesses, &c.
22 Maine, 438.
R. S., c. 92,
§ 1, 2.

SEC. 3. A will so executed is valid, until destroyed, altered, or revoked by being intentionally burnt, canceled, torn, or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil, or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

Will, how rendered invalid.
4 Greenl. 341.
22 Maine, 413.
R. S., c. 92,
§ 3, 4.

SEC. 4. Lands, into which the testator, at the time, has a right of entry though not seized of them, and lands, of which he is subsequently disseized, pass by his will, as they would, if not devised, have descended to his heirs; and his devisee will have the same remedy for their recovery, as his heirs would have had.

What lands of testator pass by will.
R. S., c. 92,
§ 12.

SEC. 5. Real estate owned by the testator, the title to which was acquired after the will was executed, will pass by it, when such appears to have been his intention.

Lands subsequently acquired.
R. S., c. 92,
§ 13.

SEC. 6. When property is taken by execution from a devisee or legatee of it, or sold by order of court for payment of debts, all the other devisees, legatees, and heirs are to pay to him their proportion thereof, so as to make the loss fall equally on all, according to the value of the property received by each from the testator, except as provided in the following section.

Property taken from a devisee for payment of debts, &c.
R. S., c. 92,
§ 14.

SEC. 7. If the testator has made a specific bequest, so that, by operation of law, it is exempted from liability to contribute for payment of debts, or if he has required an application of his estate for that purpose different from the provisions of the preceding section, the estate is to be appropriated according to the provisions of the will. No part of the estate can be exempt from liability for payment of debts, if required.

Assets for payment of debts, how marshaled.
R. S., c. 92,
§ 15, 16.

SEC. 8. A child of the testator, born after his death and not provided for in his will, takes the same share of his estate, as he would if his father had died intestate, to be assigned by the judge of probate and taken from all the devisees in proportion to the value of what they respectively receive under the will, unless, by a specific devise or some other provision of the will, a different apportionment is necessary to give effect to the intention of the testator respecting that portion of his estate which passes by the will.

Posthumous child takes share of estate as if no will; how taken.
R. S., c. 92,
§ 17.

CHAP. 74.

A child or his issue, having no devise, takes as an heir; exceptions.

32 Maine, 268.
R. S., c. 92,
§ 18.

A relative dying before testator, &c.

R. S., c. 92,
§ 19.

When share descends as if no will, &c.

R. S., c. 92,
§ 20.

When one cannot contribute, loss borne equally.

R. S., c. 92,
§ 21.

Real estate not devised applied to pay debts, before what is devised; exception.

R. S., c. 92,
§ 22.

Cases of contribution, how determined.

R. S., c. 92,
§ 24.

Will not effectual unless, &c.

27 Maine, 17.
R. S., c. 92,
§ 25.

Devise of land, construction.

36 Maine, 211.
R. S., c. 92,
§ 26.

When legacy is to be paid on condition, and no time stated, how to be administered.

1857, c. 10.

SEC. 9. A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate, which he would if no will had been made, unless it appears that such omission was intentional, or not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator.

SEC. 10. When a relative of the testator, having a devise of real or personal estate, dies before the testator, leaving lineal descendants, they take such estate as would have been taken by such deceased relative if he had survived.

SEC. 11. When a share of the testator's estate descends as provided in the eighth and ninth sections, the person taking it is liable to contribute, and may claim contribution, as provided in section six.

SEC. 12. When a person, liable to contribute as provided in the sixth section, cannot pay his proportion, the others bear the loss, each in proportion to the value of the property received by him. If any one liable to contribute dies without having paid his proportion, his executor or administrator is liable therefor as for the debt of the deceased.

SEC. 13. When a part of the real estate of a testator is not disposed of by his will, and the personal estate is not sufficient to pay his debts, such undeviseed real estate is to be applied for that purpose in exoneration of the real estate devised, unless it appears that a different arrangement was made in the will for that purpose, and then the assets are to be applied according to its provisions.

SEC. 14. All cases of contribution, arising under this chapter, may be determined in an action at law, if the case will allow it, or in the probate court subject to appeal, or in the supreme judicial court by a bill in equity.

SEC. 15. No will is effectual to pass real or personal estate unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution.

SEC. 16. A devise of land must be construed to convey all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate.

SEC. 17. When executors or trustees are directed to pay a legacy to a person or a corporation, on conditions precedent, and no time is stated in the will, or in the charter or by-laws of the corporation for their performance, a reasonable time is allowed therefor, not exceeding five years from the twentieth day of March, eighteen hundred and fifty-seven, or from the probate of a will proved after that time; and if not so performed, it shall be administered as undivided estate, unless otherwise disposed of by the will.

NUNCUPATIVE WILLS.

Nuncupative wills, where and when made.
2 Greenl. 298.
3 Greenl. 167.

SEC. 18. A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier

in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to the provisions of this chapter.

SEC. 19. No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken.

SEC. 20. No nuncupative will can be effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will.

CHAPTER 74.

R. S., c. 92,
§ 9, 10.Testimony to
prove not re-
ceived after
six months;
exception.R. S., c. 92,
§ 11.Not effectual
to dispose of
property ex-
ceeding \$100,
unless, &c.
2 Greenl. 298.
R. S., c. 92, § 9.

CHAPTER 75.

TITLE BY DESCENT.

DESCENT OF REAL ESTATE.

- SEC. 1. Rules of descent established.
2. Degrees of kindred computed according to civil law. Half blood inherits.
 3. Heirship of an illegitimate child.
 4. Descent of estate of an illegitimate.
 5. Advancements, how established; considered part of the estate.
 6. Advancements, how to operate on distribution; not to be refunded.
 7. Advancements when one receiving dies, proceedings.

DESCENT OF PERSONAL ESTATE.

8. Personal estate, distributed as real estate is; exceptions.
9. Widow's share of it.
10. Disposition of money received for insurance on life.
11. When an heir is indebted to the estate, a lien is created; how enforced.

DESCENT OF REAL ESTATE.

SEC. 1. The real estate of a person deceased intestate, being subject to the payment of debts, descends according to the following rules:

First.—In equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child 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.

Second.—If no such issue, it descends to his father.

Third.—If no such issue or father, it descends in equal shares to his mother, brothers, and sisters, and when a brother or sister has deceased, to his or her children or grand children by right of representation.

Fourth.—If no such issue, father, brother, or sister, it descends to his mother to the exclusion of the issue of deceased brothers and sisters.

Fifth.—If no such issue, father, mother, brother, or sister, it descends to his next of kin in equal degree; when they claim

Rules of de-
scend.
R. S., c. 93, § 1.
1852, c. 295,
§ 1, 2.To children
and lineal de-
scendants.

Father.

Mother, broth-
ers and sisters.
14 Maine, 309.

Mother.

Next of kin.