

# MAINE STATE LEGISLATURE

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THE  
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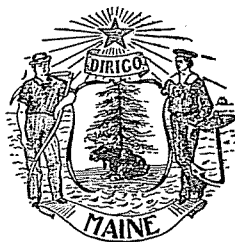
OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

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BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :  
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1904.

with the legal fees of the register for recording such deed or other evidence of title.

SEC. 31. Pews and rights in houses of public worship are real estate. Deeds of them, and levies by execution upon them may be recorded by the clerk of the town where the houses are situated, with the same effect as if recorded in the registry of deeds.

Pews, real estate.—deeds and levies, where recorded. R. S., c. 73, § 29.

SEC. 32. No agreement that a building erected with the consent of the landowner, by one not the owner of the land upon which it is erected, shall be and remain personal property, shall be effectual against any person, except the owner of such land, his heirs, devisees and persons having actual notice thereof, unless such agreement is in writing and signed by such land owner, or by some one duly authorized for that purpose, and acknowledged and recorded as deeds are required to be acknowledged and recorded under this chapter; *provided*, that this section shall not apply to agreements entered into prior to April twenty-eight, nineteen hundred and three, and then outstanding.

Agreement that building on land of another shall be personal property not effectual, unless recorded. 1903, c. 150.

## CHAPTER 76.

### WILLS THEIR EXECUTION, AND DEVICES.

#### WILLS AND DEVICES.

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 credible attesting witnesses, not beneficially interested under said will. (a)

Will, by whom and how to be made. R. S., c. 74, § 1.

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 shall be distributed as the estate of an intestate.

Competency of witnesses.—property not willed, distributed. R. S., c. 74, § 2. 22 Me., 441. 91 Me., 422.

SEC. 3. A will so executed is valid, until it is 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. (b)

Will, how rendered invalid, or revoked. R. S., c. 74, § 3.

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

What lands of testator pass by will. R. S., c. 74, § 4.

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.

After-acquired lands pass. R. S., c. 74, § 5. 69 Me., 309. 84 Me., 71.

(a) 21 Me., 463; 22 Me., 440; 27 Me., 24; 34 Me., 162; 42 Me., 74; 45 Me., 585; 46 Me., 244; 47 Me., 476; 48 Me., 194; 57 Me., 573; 66 Me., 294; 70 Me., 548; 79 Me., 45; 80 Me., 53; 82 Me., 208.

(b) 4 Me., 341; 22 Me., 426; 57 Me., 453; 73 Me., 597; 79 Me., 342; 81 Me., 277; 86 Me., 288.

## CHAP. 76.

Property taken from a devisee for payment of debts, loss to be borne equally.  
R. S., c. 74, § 6.

Assets for payment of debts, how marshaled.  
R. S., c. 74, § 7.  
61 Me., 472.  
67 Me., 503.  
82 Me., 208.

Posthumous child takes share of estate, as if no will, how to be taken.  
R. S., c. 74, § 8.  
63 Me., 159.

A child or his issue, having no devise, takes as an heir.  
R. S., c. 74, § 9.

—exceptions.

When devisee dies before testator, lineal heirs take devise.  
R. S., c. 74, § 10.

Who contributes to loss of devisee.  
R. S., c. 74, § 11.

When one cannot contribute, loss to be borne equally by the others.  
R. S., c. 74, § 12.

Real estate not devised, shall be applied to pay debts, before what is devised; exception.  
R. S., c. 74, § 13.  
82 Me., 231.

Cases of contribution, how to be determined.  
R. S., c. 74, § 14.  
75 Me., 40.

Will must be proved, and allowed.  
R. S., c. 74, § 15.  
90 Me., 416.

Construction of devise.  
R. S., c. 74, § 16.

SEC. 6. When property is taken by execution from a devisee or legatee thereof, or is sold by order of court for payment of debts, all the other devisees, legatees and heirs shall pay 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.

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 shall be appropriated according to the will. No part of the estate can be exempted from liability for payment of debts, if required therefor.

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 thereof, 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.

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 have taken if no will had been made, unless it appears that such omission was intentional, or was not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator. (a)

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. (b)

SEC. 11. When a share of the testator's estate descends as provided in sections eight and nine, 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 section six, 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 a 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 shall 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 shall 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 conveys all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate. (c)

(a) 32 Me., 269; 70 Me., 550; 80 Me., 299; 86 Me., 134.

(b) 49 Me., 164; 64 Me., 498; 80 Me., 294; 81 Me., 271; 82 Me., 230; 83 Me., 205; 84 Me., 188, 369, 487; 86 Me., 577.

(c) 36 Me., 216; 59 Me., 482; 69 Me., 491; 75 Me., 511; 77 Me., 425; 78 Me., 146; 79 Me., 179, 248; 80 Me., 594; 84 Me., 479; 89 Me., 355.

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 probate of a will; and if not so performed, it shall be administered as undivided estate, unless otherwise disposed of by the will.

Legacy payable on condition, and no time stated, how to be administered. R. S., c. 74, § 17. 72 Me., 167.

## NUNCUPATIVE WILLS.

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 this chapter.

Nuncupative wills, where and when to be made. R. S., c. 74, § 18. See c. 66, § 17. 2 Me., 299. 8 Me., 168. 53 Me., 569.

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 when they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken.

Must be proved within six months; exception. R. S., c. 74, § 19. See c. 66, § 17.

SEC. 20. No nuncupative will is 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.

Cannot dispose of property over \$100, unless three witnesses were present. R. S., c. 74, § 20. 2 Me., 299. See c. 66, § 17.

## CHAPTER 77.

## TITLE BY DESCENT.

## DESCENT OF REAL ESTATE.

SEC. 1. The real estate of a person deceased intestate, being subject to the payment of debts, including a wood lot 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:

Rules of descent. R. S., c. 75, § 1. 1895, c. 157, § 1. 1903, c. 159. 53 Me., 259. 61 Me., 472.

I. If he leaves a widow and issue, one-third to the widow. If no issue, one-half to the widow. And 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, one-third shall descend to the widow or widower free from payment of debts.

To widow. —widower. 1897, c. 196. 92 Me., 397. 95 Me., 261.

—one-third to widow or widower, free from payment of debts.

II. The remainder of which he dies seized, and if no widow or widower, the whole, shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is 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.

To children, and lineal descendants. 14 Me., 310. 81 Me., 158. 95 Me., 277.

III. If no such issue, it descends to his father and mother in equal shares.

Father and mother.

IV. If no such issue or father, it descends one-half to his mother. If no such issue or mother, it descends one-half to his father. In either

Mother. 1897, c. 193.