SIXTH REVISION

THE REVISED STATUTES

OF THE

STATE OF MAINE

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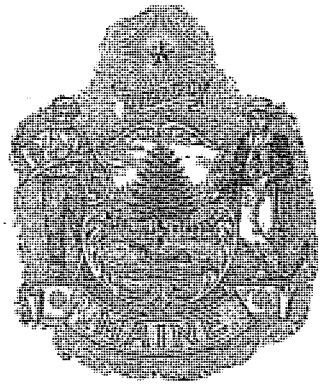

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CHAPTER 79.

Wills.

Sec. 1. Will, by whom and how to be made. R. S. c. 76, § 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.

11 Cush. 532; 12 Cush. 332; 7 Gray 42; 144 Mass. 167; 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; 102 Me. 87; 108 Me. 458.

Sec. 2. Competency of witnesses; property not willed, distributed. R. S. c. 76, § 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.

22 Me. 441; 91 Me. 422.

Sec. 3. Will, how rendered invalid, or revoked. R. S. c. 76, § 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.

4 Me. 341; 22 Me. 426; 57 Me. 453; 73 Me. 597; 79 Me. 342; 81 Me. 277; 86 Me. 288; 106 Me. 58.

Sec. 4. What lands of testator pass by will. R. S. c. 76, § 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 disseized, 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.

Sec. 5. After-acquired lands pass. R. S. c. 76, § 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.

69 Me. 309; 84 Me. 71.

Sec. 6. Property taken from a devisee for payment of debts, loss borne equally. R. S. c. 76, § 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. Marshaling of assets for payment of debts. R. S. c. 76, § 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.

61 Me. 472; 67 Me. 503; 82 Me. 208.

Sec. 8. Posthumous child takes share of estate, as if no will. R. S. c. 76, § 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.

63 Me. 159.

Sec. 9. A child or his issue, having no devise, takes as an heir. R. S. c. 76, § 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.

32 Me. 269; 70 Me. 550; 80 Me. 299; 86 Me. 134.

Sec. 10. When devisee dies before testator, lineal heirs take devise. R. S. c. 76, § 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.

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; 102 Me. 302; 103 Me. 217.

Sec. 11. Contribution to loss of devisee. R. S. c. 76, § 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 one cannot contribute, loss borne by others. R. S. c. 76, § 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. Real estate not devised, applied to pay debts, before that devised. R. S. c. 76, § 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 undevised 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.

82 Me. 231.

Sec. 14. Cases of contribution, determination. R. S. c. 76, § 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.

75 Me. 40.

Sec. 15. Will must be proved, and allowed. R. S. c. 76, § 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.

90 Me. 416.

Sec. 16. Construction of devise. R. S. c. 76, § 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.

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; 108 Me. 420.

Sec. 17. Legacy payable on condition, and no time stated, payment. R. S. c. 76, § 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.

72 Me. 167.

Nuncupative Wills.

Sec. 18. Nuncupative wills. R. S. c. 76, § 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.

See c. 68, § 17; 2 Me. 299; 8 Me. 168; 53 Me. 569.

Sec. 19. Proved within six months; exception. R. S. c. 76, § 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.

See c. 68, § 17.

Sec. 20. Limitation as to property affected. R. S. c. 76, § 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.

See c. 68, § 17; 2 Me. 299.