

MAINE STATE LEGISLATURE

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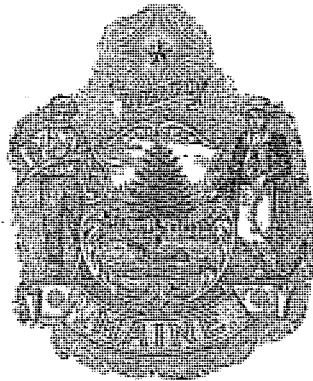
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CHAPTER 80.

Title by Descent.

Descent of Real Estate.

Sec. I. Rules of descent. R. S. c. 77, § 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:

58 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.

See c. 66, §§ 11, 12; 92 Me. 397; 95 Me. 261; 99 Me. 350; 100 Me. 512; 105 Me. 482; 107 Me. 36.

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.

14 Me. 310; 81 Me. 158; 95 Me. 277.

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

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 case, the remainder, or, if no such issue, father or mother, the whole, descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

14 Me. 310; 57 Me. 352; 84 Me. 376.

V. If no such issue, father, brother or sister, it descends to his mother. If no such issue, mother, brother or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters.

57 Me. 351; 76 Me. 448, 451.

VI. If no such issue, father, mother, brother or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor, in preference to those claiming through an ancestor more remote.

53 Me. 495; 67 Me. 583; 76 Me. 448, 453; 104 Me. 337.

VII. When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent,

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and the issue of those deceased; in equal shares if all are of the same degree of kindred; otherwise, according to the right of representation.

See c. 72, § 38; 60 Me. 162.

VIII. If the intestate leaves no widower, widow or kindred, it escheats to the state.

Sec. 2. Degrees of kindred. R. S. c. 77, § 2. The degrees of kindred are computed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree.

32 Me. 311, 312, note; 76 Me. 456; 88 Me. 353.

Sec. 3. Heirship of an illegitimate child; descent of estate. R. S. c. 77, § 3. An illegitimate child born after the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and sixty-four, is the heir of his parents who intermarry. And any such child, born at any time, is the heir of his mother. And if the father of an illegitimate child adopts him or her into his family, or in writing acknowledges before some justice of the peace or notary public, that he is the father, such child is also the heir of his or her father. And in each case such child and its issue shall inherit from its parents respectively, and from their lineal and collateral kindred, and these from such child and its issue the same as if legitimate.

37 Me. 336; 38 Me. 160; 55 Me. 472; 76 Me. 313; 83 Me. 23, 251; 88 Me. 349, 398; 92 Me. 170.

Sec. 4. Advancements, how established. R. S. c. 77, § 4. Gifts and grants of real or personal estate to a child or grandchild, are deemed an advancement, when so expressed therein, or charged as such by the intestate, or acknowledged in writing to be such. For purposes of descent and distribution, they shall be regarded as part of the estate of the intestate, and as taken towards a share of it.

51 Me. 379; 59 Me. 216; 103 Me. 97.

Sec. 5. Value of an advancement on a distribution; not to be refunded. R. S. c. 77, § 5. When the value of an advancement is determined by the intestate in his gift or charge, or is acknowledged in writing, it shall be allowed in the distribution; if not, the value shall be estimated at the time when it is given. When it exceeds his share, he is excluded from any further portion; when less, he shall receive sufficient to make it an equal share. He shall not refund any part of an advancement.

103 Me. 97.

Sec. 6. Proceedings, when one having received an advancement, dies. R. S. c. 77, § 6. When an advancement is made in real estate, it shall be regarded as part of the real estate, and when in personal, as part of the personal estate. If it exceeds his share of the real or personal estate, he receives so much less of the other, as will make his whole share equal. If such child or grandchild dies before the intestate, leaving issue, the advancement made to him shall be regarded as made to such issue, and distribution shall be made accordingly.

103 Me. 97.

Sec. 7. When heir is indebted to the estate, a lien on his share is created; how enforced. R. S. c. 77, § 7. When an estate is solvent, and a person, to whom a share of it descends, is indebted to the intestate at the time of his death, such debt creates a lien on his share, having priority to any

attachment of it; and such lien may be enforced by suit and attachment of the share within two years after administration is granted, and by levy within thirty days after judgment. In such action, or in one brought by the heir, all claims between the intestate and heir may be set off and adjusted, and the balance due may be established.

See c. 70, § 20; 68 Me. 60; 75 Me. 419; 107 Me. 105.

Rights of Surviving Husbands and Wives.

Sec. 8. Right of dower and tenancy by the curtesy, abolished; shall not affect vested rights; nor antenuptial settlement. R. S. c. 77, § 8. Except as hereinafter provided, the right of widows to dower in the real estate of their deceased husbands, and the right of widowers as tenant by curtesy in the real estate of their deceased wives are abolished. But this section and the eleven following sections shall not be held to affect, modify, enlarge or limit the rights and interests which any widower or widow married before the first day of May, eighteen hundred and ninety-five has in the estate of a wife or husband deceased prior to the first day of January, eighteen hundred and ninety-seven, nor any of the remedies by which the same may be enforced, nor affect any jointure or antenuptial settlement or pecuniary provision made for such widow by any such husband. Nor shall a widower married before the first day of May, eighteen hundred and ninety-five, have any interest in the real estate of his wife conveyed by her during coverture, prior to the first day of January, eighteen hundred and ninety-seven.

Sec. 9. Husband or wife may bar the right, by deed, etc. R. S. c. 77, § 9. A husband or wife of any age, may bar his or her right and interest by descent, in an estate conveyed by the other, by joining in the same, or a subsequent deed, or with the guardian of the other; or by sole deed; but shall not be deprived of such right and interest by levy or sale of the real estate on execution; but may, after the right of redemption has expired, release such right and interest by sole deed.

See c. 66, §§ 8, 11, 12; c. 76, § 10; 95 Me. 77; 100 Me. 512.

Sec. 10. Right barred by accepting jointure before marriage. R. S. c. 77, § 10. A woman may be barred of her right and interest by descent in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian.

See c. 66, §§ 8, 11, 12; 21 Me. 369; 69 Me. 534; 95 Me. 77; 96 Me. 533.

Sec. 11. Or by pecuniary provision. R. S. c. 77, § 11. A pecuniary provision made for the benefit of an intended wife instead of her right and interest by descent, consented to by her as provided in the preceding section, bars her right and interest by descent in her husband's lands.

61 Me. 398; 69 Me. 534; 95 Me. 77; 96 Me. 533.

Sec. 12. When widow may waive jointure. R. S. c. 77, § 12. If such jointure or provision is made before marriage, without the consent of the intended wife, or if it is made after marriage, it bars her right and interest by descent, unless, within six months after the husband's death, she makes

her election to waive such provision, and files the same in writing in the registry of probate. In case she so makes such election she shall be entitled to her right and interest by descent in her husband's lands.

49 Me. 463; 61 Me. 398; 69 Me. 534; 82 Me. 237; 95 Me. 76, 77; 96 Me. 533.

Sec. 13. Widow or widower may elect whether to accept provision in will or claim interest by descent. R. S. c. 77, § 13. When a specific provision is made in a will, for the widow or widower of a testator or testatrix, who was married before the first day of May, eighteen hundred and ninety-five, and died since the first day of January, eighteen hundred and ninety-seven, or who was married on or after said first day of May, such legatee or devisee may within six months after probate of said will and not afterwards, except as hereinafter provided, make election, and file notice thereof in the registry of probate, whether to accept said provision or claim the right and interest by descent, herein provided; but is not entitled to both, unless it appear by the will that the testator or testatrix plainly so intended. If such election is not made within six months after probate of a will, and the estate is thereafter rendered insolvent, and commissioners are appointed by the judge of probate, such election may be made at any time within six months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may recover from such executor or administrator, if not paid within thirty days after demand therefor in writing, one-third of any sums received from real estate sold before such waiver was filed. Whenever the widow or widower is advised that the legal construction of the provisions of the will for her or him is doubtful or uncertain, the time for making such election shall be extended to thirty days after certificate is returned to the probate court in the county where the probate proceedings are had, of the final decision by the supreme judicial court upon a bill in equity, commenced by said legatee or devisee within thirty days after the probate of the will, to obtain the decision of the court as to his or her rights under it, but in no case shall the time for election be less than six months after probate. The clerk of courts for the county in which the proceedings in equity are commenced, within three days after receipt of the decision therein, shall send notice of the same to the widow or widower, or her or his solicitor of record, and transmit a certified copy of the decree to the proper probate court, where it shall be recorded, with the time of its reception.

1 Me. 150; 32 Me. 133; 36 Me. 215; 69 Me. 534; 82 Me. 237; 83 Me. 554.

Sec. 14. Share of estate to which widow or widower waiving provisions of will, or when no provision is made in will, is entitled. R. S. c. 77, § 13. 1909, c. 260. When a provision is made in a will for the widow of a testator who died after the twenty-sixth day of April, eighteen hundred and ninety-seven, or for the widower of a testatrix, who died after the first day of June, nineteen hundred and three, and such provision is waived as aforesaid, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates.

When no provision is made for his widow in the will of a testator who died after the twenty-sixth day of April, eighteen hundred and ninety-seven, or for her widower in the will of a testatrix who died after the first day of June, nineteen hundred and three, such widow or widower shall likewise have and receive the same share of the real estate and the same distributive share of the personal estate of such testator or testatrix as is provided by law in intestate estates, provided such widow or widower shall within six months after the probate of such will, file in the registry of probate written notice that she or he claims such share of the real and personal estate of such testator or testatrix. Any notice filed under the provisions of this or the preceding section shall be recorded by the register of probate in the record books of the probate court where such notice is filed, but a failure to record such notice shall not in any way affect the rights of any widow or widower.

99 Me. 67; 100 Me. 513; 105 Me. 482; 110 Me. 63.

Sec. 15. Copy of notice shall be filed in registry of deeds. 1915, c. 281. Within thirty days after any notice provided for in the three preceding sections is filed in the registry of probate, 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 notice, 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.

Sec. 16. Release of dower or curtesy, how construed. R. S. c. 77, § 14. All releases of rights to dower or curtesy in any manner heretofore or hereafter made, in estates conveyed or mortgaged by husbands or wives, shall be deemed to include and shall be construed to include all rights and interests by descent.

Sec. 17. Wife entitled to right in property mortgaged before marriage. R. S. c. 77, § 15. If the wife has heretofore released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person, or by himself before their marriage, she shall be entitled to her right and interest by descent, as herein provided, in the mortgaged premises, as against every person except the mortgagee and those claiming under him. And if the heirs of the husband, or other person claiming under him, redeem the mortgage, she shall repay such proportion of the money paid by him as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to her right and interest by descent only according to the value of the estate, after deducting the money paid for its redemption.

Sec. 18. Wife who has not released her right of dower in land conveyed or mortgaged, shall be entitled to same as against grantee or mortgagee. R. S. c. 77, § 16. If the wife of the grantor or mortgagor of lands conveyed or mortgaged prior to the first day of May, eighteen hundred and ninety-five, or in case of persons then married, prior to the first day of January, eighteen hundred and ninety-seven, has not released or barred her right of dower in the same, she shall be entitled, as against the grantee or mortgagee and those claiming under him, to her right of dower only, as then

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existing. The wife of an insolvent debtor, married prior to the first day of May, eighteen hundred and ninety-five, decreed to be insolvent under the provisions of chapter seventy-five, prior to the first day of January, eighteen hundred and ninety-seven, shall be entitled, as against the assignee, and those claiming under him, to her right of dower only, as aforesaid.

Sec. 19. Proceedings if husband or wife refuses to release interest in real estate which owner has contracted to sell. R. S. c. 77, § 17. 1915, § 81. If the owner of real estate contracts to sell the same, and the husband or wife of the owner refuses to release his or her interest and right by descent, or if the owner is a non-resident and the husband or wife is incapacitated and has no guardian in this state, the owner may apply to a justice of the supreme judicial court or superior court, who, after such notice to the other party as he may order, and hearing, may, in his discretion, approve the sale and price, and order the owner to pay to the clerk of court, for such husband or wife of the owner, such sum as would amount to one-third of the price approved, if the owner has issue, and one-half if he has no issue, at the expiration of the owner's expectancy of life, computed at three per cent, compound interest. The clerk shall give a certificate of such approval by the court, and of the fact that said money has been paid as aforesaid, to be filed with the register of deeds in the county or registry district where the land lies, with the owner's deed thereof, and such register shall record the same; and thereafter such interest or right by descent in such real estate, shall be barred. An assignee for the benefit of creditors, or in insolvency, or a trustee in bankruptcy, or any person holding title by levy or sale on execution may make application for proceedings under this section in relation to any real estate held by him in such capacity, to bar the interest and right by descent therein, of the husband or wife of the assignor, insolvent or bankrupt, or the interest and right by descent therein of the husband or wife of the judgment debtor.

98 Me. 510.

Descent of Personal Property.

Sec. 20. Personal estate, how distributed. R. S. c. 77, § 18. 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.

See R. S. 1841, c. 93, § 15; 50 Me. 237; 61 Me. 472; 63 Me. 376, 381; 67 Me. 583; 78 Me. 463; 95 Me. 277; 99 Me. 67; 105 Me. 482; 107 Me. 248; 110 Me. 67.

Sec. 21. Life insurance, disposal of. R. S. c. 77, § 19. 1905, c. 74. Money received for insurance on the life of any person dying intestate, deducting the premium paid therefor within three years with interest, does not constitute a part of the estate of such person for the payment of debts, or for purposes specified in section one of chapter seventy-one, when the intestate leaves a widow, or widower, or issue, but descends, one-third to the widow or widower, and the remainder to the issue; if no issue, the whole to the widow or widower, and if no widow or widower, the whole to the issue. It may be disposed of by will; but in case the estate is in-

solvent, such disposition by will shall be limited to the distribution of such money among the widow or widower, and issue in such proportions as the testator or testatrix may designate.

See c. 52, § 114; c. 53, §§ 143, 169; c. 54, § 17; c. 68, § 50, ¶ iv; 58 Me. 434; 61 Me. 471; 66 Me. 518; 73 Me. 548; 79 Me. 234; 81 Me. 180; 82 Me. 208; 83 Me. 295; 84 Me. 523; 87 Me. 68; 97 Me. 441, 584.

Note. Title by descent to settler's lot of wild land purchased of state, c. 8, § 12. Descent of shares, or money received for shares, in loan and building association, c. 52, § 114.

CHAPTER 81.

Title to Real Estate by Levy of Execution.

- Sections 1-24 Levy by Appraisement.
- Sections 25-29 Redemption of Levies by Appraisement.
- Sections 30-31 Levies on Equities of Redemption.
- Sections 32-40 Levy by Sale.
- Sections 41-43 Redemption from Sale.
- Section 44 Sale of Railroad Franchises.
- Sections 45-51 Miscellaneous Provisions.
- Sections 52-53 Redemption of Lands of Defaulted Non-Resident Defendants.

Levy by Appraisement.

Sec. 1. What real estate may be levied on; levy by appraisal; appointment of appraisers. R. S. c. 78, § 1. Real estate attachable, including the right to cut timber and grass as described in chapter eighty-six, may be taken to satisfy an execution, by causing it to be appraised by three disinterested men, one chosen by the creditor, one by the debtor, and the other by the officer having the execution for service, who shall give notice to the debtor or his attorney, residing in the county where the land lies, to choose an appraiser, and shall allow him a reasonable time therefor, and if he neglects, appoint one for him.

See c. 86, § 57; 4 Me. 373; 6 Me. 164; 7 Me. 147; 8 Me. 210; 19 Me. 279; 20 Me. 227; 23 Me. 336; 26 Me. 291; 31 Me. 548; 33 Me. 190; 34 Me. 573; 37 Me. 24; 53 Me. 542; 56 Me. 224; 63 Me. 251; 64 Me. 454, 540; 67 Me. 593; 68 Me. 294; 111 Me. 93.

Sec. 2. Appraisers, how sworn; certificate; view of land. R. S. c. 78, § 2. The appraisers may be sworn by the officer without fee, or by a justice of the peace, faithfully and impartially to appraise the real estate to be taken, and a certificate of the oath shall be made, stating the date of its administration, on the back of the execution, by the person who administered it; they shall then proceed with the officer to view and examine the land so far as is necessary for a just estimate of its value.

23 Me. 337; 26 Me. 421; 34 Me. 467; 51 Me. 19; 52 Me. 139; 74 Me. 179.

Sec. 3. Value and description of estate, to be made in return. R. S. c. 78, § 3. They shall in a return made and signed by them on the back of the execution, or annexed thereto, state the value of the estate appraised,