

# MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

PASSED AUGUST 5, 1930, AND TAKING  
EFFECT NOVEMBER 10, 1930



By the Authority of the Legislature

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AUGUSTA  
KENNEBEC JOURNAL PRINT

cases in which an executor, administrator, guardian, or conservator or trustee, master, or receiver or similar officer has been authorized or ordered by a court of probate or other competent court to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing such sale or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such executor, administrator, guardian, conservator, trustee, master, or receiver or other similar officer, appointed as aforesaid, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts heretofore done are validated. If any portion of this section is held to be unconstitutional such decision shall not invalidate the portions unaffected thereby.

126 Me. 427; 127 Me. 351.

## CHAPTER 88.

### Wills.

**Sec. 1. Will, by whom and how to be made.** R. S. c. 79, § 1. 1917, c. 17. A person of sound mind, and of the age of twenty-one years, and a married woman or widow of any age, 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.

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; \*114 Me. 105, 338; \*119 Me. 374; \*126 Me. 256, 267.

**Sec. 2. Competency of witnesses; property not willed, how distributed.** R. S. c. 79, § 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. 79, § 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; 116 Me. 473; \*120 Me. 434.

**Sec. 4. What lands of testator pass by will.** R. S. c. 79, § 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 to pass, when.** R. S. c. 79, § 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; \*115 Me. 56.

**Sec. 6. Property taken from a devisee for payment of debts, loss borne equally.** R. S. c. 79, § 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. 79, § 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 to take share of estate, as if no will, in certain cases.** R. S. c. 79, § 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. Such share shall 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, to take as an heir, in certain cases.** R. S. c. 79, § 9. 1929, c. 232. 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.

Upon the hearing on the petition for allowance of such will, or thereafter prior to allowance of the final account, upon special petition alleging the facts and after such reasonable notice as the judge of probate may order, evidence may be offered in the probate court and the judge of probate may determine as a fact 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, from which decree an appeal will be to the supreme court of probate. Upon final judgment being entered such child or issue shall be thereupon barred from claiming his said share in the testator's estate, a copy of such decree shall be filed in the registry of deeds in each county or district where real estate affected by it is located.

32 Me. 269; 70 Me. 550; 80 Me. 299; 86 Me. 134; \*118 Me. 67; 125 Me. 220.

**Sec. 10. When certain devisees die before testator, lineal heirs take devise.** R. S. c. 79, § 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; \*114 Me. 421; \*116 Me. 389; 117 Me. 361; 119 Me. 423; 120 Me. 203; 125 Me. 172.

**Sec. 11. Contribution to loss of devisee.** R. S. c. 79, § 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. 79, § 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 to be applied to pay debts before that devised.** R. S. c. 79, § 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. 79, § 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 by a bill in equity.

75 Me. 40.

**Sec. 15. Will to be effective, must be proved, and allowed.** R. S. c. 79, § 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. 79, § 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; \*118 Me. 51, 319, 473; 120 Me. 268, 277; \*124 Me. 189.

**Sec. 17. Legacy payable on condition, and no time stated, payment.** R. S. c. 79, § 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. 79, § 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. 76, § 17; 2 Me. 299; 8 Me. 168; \*53 Me. 569.

**Sec. 19. Proved within six months; exception.** R. S. c. 79, § 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. 76, § 17.

**Sec. 20. Limitation as to property affected.** R. S. c. 79, § 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. 76, § 17; 2 Me. 299.

## CHAPTER 89.

### Title by Descent.

Sections 1-7 Rules of Descent; Advancements.  
Sections 8-19 Rights of Surviving Husbands and Wives.  
Sections 20-21 Descent of Personal Property.

### Rules of Descent; Advancements.

**Sec. 1. Rules of descent.** R. S. c. 80, § 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. 239; 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. 74, §§ 11, 12; 92 Me. 397; \*95 Me. 261; 99 Me. 350; 100 Me. 512; \*105 Me. 482; \*107 Me. 36; 114 Me. 382; 123 Me. 160; \*124 Me. 387.

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; \*117 Me. 100; 119 Me. 185.

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.