

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1957 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES  
VOLUME 4

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**Place in Pocket of Corresponding  
Volume of Main Set**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1957

powering such agent or attorney to make such conveyance or execute and deliver such deed, appears of record, but such real estate has in the meantime been occupied, claimed or treated by the grantees and those claiming by, through or under them as other property of like kind and similarly situated would be held or claimed by the owners thereof, shall be held to all intents and purposes as if executed and delivered under and by virtue of proper power of attorney duly recorded and given for the purpose, and the records thereof are validated. All instruments written or recorded in the books of record in the registry of deeds in the county in which the real estate affected thereby lies, more than 40 years prior to January 1, 1957, signed or executed by any person or persons purporting to act as the agent or attorney of the holder of any mortgage of real estate and purporting to operate as a discharge of such mortgage, shall be held as if executed and delivered under and by virtue of a proper power of attorney given for the purpose, although no power of attorney authorizing such agent or attorney thereto shall appear of record, and the records thereof are validated. In all 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. (R. S. c. 154, § 41, 1957, c. 332, § 3.)

**Effect of amendment.** — The 1957 amendment inserted "between April 15, 1957" for "April 15, 1927" where it formerly appeared in three places.

## Chapter 169.

### Wills.

#### Wills.

**Sec. 1. Will, by whom and how made.**—A person of sound mind and of the age of 21 years and a married person, widow or widower 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 3 credible attesting witnesses. All beneficial devises, bequests and legacies to a subscribing witness are void except that if such interested witness would be entitled to any share of the estate in case the person making the will had died intestate, he shall take only that part of the devise or bequest made to him in the will that equals but does not exceed in value the share of the estate of the person making the will which he would have taken if such person had died intestate. (R. S. c. 155, § 1, 1951, c. 375, § 1, 1957, c. 302.)

#### I. GENERAL CONSIDERATION.

**Effect of amendment.** — The 1957 amendment deleted the words "not beneficially interested under said will" which

formerly appeared at the end of the first sentence, and added the second sentence.

#### Undue influence.

See *In re Royal's Appeal*, 152 Me. 242,

127 A. (2d) 484; *Thibault v. Fortin*, 152 Me. 59, 122 A. (2d) 545.

Cited in *Boston Safe Deposit & Trust Co. v. Johnson*, 151 Me. 152, 116 A. (2d) 656.

## II. TESTAMENTARY CAPACITY.

### "Disposing mind."

In accord with 1st paragraph in original. See *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347; *In re Royal's Appeal*, 152 Me. 242, 127 A. (2d) 484.

In accord with 2nd paragraph in original. See *In re Royal's Appeal*, 152 Me. 242, 127 A. (2d) 484.

### "Disposing memory."

In accord with original. See *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347.

### The word sanity is used, etc.

In accord with original. See *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347.

### Mere intellectual feebleness, etc.

In accord with 1st paragraph in original. See *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347.

**Want of capacity must relate to time of testamentary act.**

In accord with 1st paragraph in original. See *In re Royal's Appeal*, 152 Me. 242, 127 A. (2d) 484.

**Effect of proof that testator was of unsound mind before making will.**

There may be no direct evidence that

on the day and at the hour the will was signed, testator was not sane, but it does not follow that proof of incapacity that the very moment must be made by eye witnesses on that occasion. Proof of insanity prior thereto, permanent in kind and progressive, raises a presumption of continuity. *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347.

### Sanity of testator is not presumed.

In accord with 1st paragraph in original. See *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347.

### And burden is on proponents, etc.

In accord with original. See *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347; *In re Royal's Appeal*, 152 Me. 242, 127 A. (2d) 484.

### Capacity is a question of fact, etc.

The question as to whether or not the testator was possessed of testamentary capacity is one of fact. *In re Royal's Appeal*, 152 Me. 242, 127 A. (2d) 484.

**An attending or family physician's opinion** as to the mental health of his patient is competent; such patient's condition some time before and some time after making the will is relevant as tending to show the conditions of mind when it was executed. *Waning, Appellant*, 151 Me. 239, 117 A. (2d) 347.

## Sec. 15. Will to be effective, proved and allowed.

**Title of devisee dates from testator's death only after will proved and allowed.**—The title of a devisee dates from the date of a testator's death only after a will has been proved and allowed, and an assess-

ment against decedent's heirs is valid when made prior to the proof and allowance of a will. *Gray v. Hutchins*, 150 Me. 96, 104 A. (2d) 423.

## Chapter 170.

### Title by Descent.

#### Rules of Descent. Advancements.

**Sec. 1. Rules of descent.**—The real estate of a person deceased intestate, being subject to the payment of debts, including a woodlot 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:

**I.** If he leaves a widow and issue,  $\frac{1}{3}$  to the widow. If the deceased leaves no issue,  $\frac{1}{2}$  to the widow. If the deceased leaves no issue, and if it appears on determination as provided in section 20-A that he and the surviving widow were living together at the time of his decease

**A.** And the residue of the estate determined as provided in section 20-A is \$10,000 or less, all of the real estate to the widow; or