REVISED STATUTES

OF THE

STATE OF MAINE

1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Place in Pocket of Corresponding Volume of Main Set

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1959

which said deed or other instrument or said records fail to disclose authority by such corporation for the conveyance of such real estate, or which deed or other instrument fails to bear the corporate seal, or is executed or acknowledged by the person executing such deed in his individual capacity, or which fails to disclose the official capacity of the person executing such deed, or which was not signed by the officer duly authorized to sign such deed, with its record made as aforesaid, is validated. All deeds and other instruments heretofore made between April 15, 1927 and January 1, 1957 for the conveyance of real property in this state, or any interest therein and executed by a person or persons purporting to act as the agent or attorney of the grantors, their spouses, or any of them, which such deeds have been recorded or written at length in the books of record in the registry of deeds for the county in which said real property lies more than 40 years prior to January 1, 1957, but no power of attorney authorizing and empowering 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, 1927 and January 1, 1957" in six places in this section and substituted "January 1, 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.

Cross references.—See c. 27, § 7-A, re amendment of words "insane" and "insanity" to "mentally ill" and "mental illness", except when the word "insane" is in reference to the word "criminal." See c. 158-A, §§ 1-10, re Uniform Gifts to Minors Act.

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 relevent as tending to show the conditions of mind when it was executed. Waning, Appellant, 151 Me. 239, 117 A. (2d) 347.

Sec. 3. Will rendered invalid, or revoked.

Cited in Swan v. Swan, 154 Me. 276, 147 A. (2d) 140.

Sec. 6. Property taken from devisee for payment of debts, loss borne equally.

History of section.—See Eaton v. MacDonald, 154 Me. 227, 145 A. (2d) 369.

Specific devises and bequests not at the outset subject to payment of debts.—The import of §§ 6 and 7 of this chapter is to the effect that specific devises and bequests are not at the outset subject to the payment of debts of the estate, and that resort must be had to other classes of assets first. Eaton v. MacDonald, 154 Me. 227, 145 A. (2d) 369.

Sec. 7. Marshaling of assets for payment of debts.

History of section.—See Eaton v. MacDonald, 154 Me. 227, 145 A. (2d) 369.

Specific devises and bequests not at the outset subject to payment of debts.—The import of §§ 6 and 7 of this chapter is to the effect that specific devises and bequests are not at the outset subject to the payment of debts of the estate, and that resort must be had to other classes of assets first. Eaton v. MacDonald, 154 Me. 227, 145 A. (2d) 369.

Sec. 10. Certain devisees die before testator, lineal heirs take devise.

A brother of a devisee is not a lineal descendant under this section. See Berman v. Frendel, 154 Me. 337, 148 A. (2d) 93.

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 assessment 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, ⅓ to the widow. If the deceased leaves no issue, ½ 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

B. If the residue of the estate determined as provided in section 20-A is more than $10,000, of the real estate, ⅔ to the widow and ⅓ to the next of kin of equal degree, not beyond kin in the 2nd degree.

If no kindred within the 2nd degree, 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, ⅓ shall descend to the widow or widower free from payment of debts, except as provided in section 22 of chapter 163. (1949, c. 439, § 1. 1957, c. 290, § 1)

(1957, c. 290, § 1.)

Effect of amendment. — The 1957 amendment, which became effective on its approval, May 17, 1957, rewrote subsection I of this section. As the rest of the section was not changed by the amendment, only the first paragraph and subsection I are set out.

But widow is not heir of husband.

In accord with 2nd paragraph in original. See Linnell v. Smith, 153 Me. 288, 137 A. (2d) 357.

Reference to "statutes of descent" does not enlarge phrase "legal heirs".—A reference to the "statutes of descent" does not