REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

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.

And court is not at liberty, etc.

In accord with original. See First Portland Nat. Bank v. Kaler-Vaill Memorial Home, 155 Me. 50, 151 A. (2d) 708.

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.

Applied in Jordan v. Jordan, 155 Me. 5, 150 A. (2d) 763.

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.

IV. COMPETENCY OF SUBSCRIBING WITNESSES.

A. In General.

Fact of benefit, not measure of value, controls.

In accord with original. See Appeal of First Portland Nat. Bank, 155 Me. 325, 154 A. (2d) 165.

B. Illustrative Cases.

2. Witnesses Held Incompetent.

Will requesting executor to pay witnesses. — Where will requested executor "to pay to each of the signers, as witnesses," five dollars as a "token of appreciation," the witnesses were beneficially interested and therefore incompetent. Appeal of First Portland Nat. Bank, 155 Me. 325, 154 A. (2d) 165.

Sec. 2. Competency of witnesses; property not willed.

The lapsed portion of a residuary devise or bequest does not inure to the benefit of the other residuary beneficiaries under a residuary devise or bequest to several beneficiaries not as a class, but becomes intestate property, unless the contrary intention of the testator clearly appears from the language of the will. First Portland Nat. Bank v. Kaler-Vaill Memorial Home, 155 Me. 50, 151 A. (2d) 708.

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. 9. A child or his issue, having no devise, to take as heir.

This statute raises, etc.

In accord with original. See Jordan v. Jordan, 155 Me. 5, 150 A. (2d) 763.

Including that which is, etc.

In accord with original. See Jordan v. Jordan, 155 Me. 5, 150 A. (2d) 763.

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. 14. Cases of contribution, determination.—All cases of contribution, arising under this chapter, may be determined in a civil action, or in the probate court subject to appeal. (R. S. c. 155, § 14. 1961, c. 317, § 560.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action at law if the case will allow it" and deleted "or by a bill in equity" at the end of the section.

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.

Applied in Jordan v. Jordan, 155 Me. 5, 150 A (2d) 763.