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THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
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Effect of amendments. — 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.

The 1963 amendment substituted "prior to January 1, 1957" for "between April 15, 1927 and January 1, 1957" in the first, second, fourth and fifth sentences, substituted "made" for "heretofore executed" near the beginning of the second sentence, and deleted "heretofore" following "instruments" near the beginning of the fifth sentence.

Chapter 169.

Wills.

Sections 1 to 17-A. 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; Canal Nat. Bank v. Chapman, 157 Me. 309, 171 A. (2d) 919.

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.

Presumption created by divorce and property settlement.—Divorce accompanied by a property settlement creates an absolute and irrebuttable presumption that a will executed before the divorce has been revoked. Caswell v. Kent, 158 Me. 493, 186 A. (2d) 581.

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 contri-

bution, 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.

Sec. 17-A. Testamentary additions to trusts.—A devise or bequest, the validity of which is determinable by the law of this State, may be made by a will to the trustee or trustees of a trust established by the testator or by the testator and some other person or persons or by some other person or persons, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size or character of the corpus of the trust. The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given and shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse. (1963, c. 34.)

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.