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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. 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)

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.

Applied, as to rule 1, in Wood v. LeGoff, 152 Me. 19, 121 A. (2d) 468.

Cited in New England Trust Co. v. Sanger, 151 Me. 295, 118 A. (2d) 760.

Descent of Personal Property.

Sec. 20. Personal estate distributed.—The personal estate of an intestate, except that portion assigned to his widow by law and by the judge of probate, shall be applied first to the payment of his debts, funeral charges and charges of settlement; and the residue shall be distributed or shall escheat by the rules provided for the distribution of real estate, except that in intestate estates and it having been determined by the probate court that the deceased and the surviving widow were living together at the time of his decease and that he left no issue, there shall be distributed to the widow

A. If the residue found by the probate court as provided in section 20-A, was $10,000 or less, all of the remaining personal property, or

B. If the residue found by the probate court was more than $10,000, the sum of $10,000, and of the remaining personal property, ½ to the widow and ½ to the next of kin of equal degree, not beyond kin in the 2nd degree. If no such kindred, the whole of the remaining personal property to the widow. If the personal property is insufficient to pay said $10,000, the deficiency shall, upon the petition of any party in interest, be paid from the sale or mortgage, in the manner provided for the payments of debts or legacies, of any interest of the deceased in real property not descending to the widow as provided in section 1 which he could have conveyed at the time of his death; and the surviving husband or wife shall be permitted, subject to the approval of the court, to purchase at any such sale, notwithstanding the fact that he or she is the administrator of the estate of the deceased person. And to the widower shall be distributed the same share in his wife's personal property. (R. S. c. 156, § 20. 1957, c. 290, § 2.)

Effect of amendment. — The 1957 amendment, which became effective on its approval, May 17, 1957, added the exception appearing as the last clause of the first paragraph and paragraphs A and B.

Sec. 20-A. Determination of value of estates when deceased is survived by widow and no issue.—If a deceased died intestate leaving a widow and no issue, the probate court, upon petition of any party in interest, or on its own motion, and after such notice as the court shall order, and after hearing thereon taking into consideration the inventory in the estate and such other evidence as the court shall deem necessary, the court shall determine

A. That the deceased was or was not survived by a widow with whom he was living at the time of his decease.

B. That the deceased left issue or no issue.

C. The value of residue of the estate real and personal, at the date of death over and above the value of ⅓ the real estate, the amount necessary to pay the debts of the deceased, funeral charges and charges of administration and widow's allowance. Such decree of determination shall include a finding as to what part of decedent's estate passes to the widow and shall be binding upon all parties.

Within 30 days after such determination by the probate court, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated, an attested copy of such decree, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills.

If additional property is later discovered, the right or title to the estate covered by such decree shall not be affected thereby, but the court may make such further orders and decrees as are necessary to effect the distribution provided for in section 20. (1957, c. 290, § 3.)

Effective date.—The act inserting this section became effective on its approval, May 17, 1957.

Chapter 172.

Real Actions. Proceedings to Quiet Title.

Real Actions.

Sec. 1. Recovery of estates by writ of entry; mode of service.

Cited in Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

Sec. 2. Declaration.

Stated in Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

Sec. 3. Demandant to set forth estate he claims in premises.

Stated in Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

Sec. 4. Proof of seizin.

Stated in Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

Sec. 5. Demandant must have right of entry.

Stated in Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

Sec. 16. No abatement by death or intermarriage.

When only the administrator of a deceased defendant appears in a real action, there is no defendant in court against whom a judgment can be given for the land. A judgment against an administrator in this type of case cannot affect the heirs. Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

And his representatives and heirs must have notice.

In accord with 1st paragraph in original. See Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364

In accord with 2nd paragraph in original. See Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.

Where demandant died after institution and entry of an action and his wife, in a capacity as administratrix, came in to prosecute the action, it was held that the action must fail for lack of a proper plaintiff in absence of evidence showing that wife had any interest in the real estate or that the heirs or any other persons interested had been given notice. Butts v. Fitzgerald, 151 Me. 505, 121 A. (2d) 364.