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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 create an enlargement of the phrase "legal heirs." Linnell v. Smith, 153 Me. 288, 137 A. (2d) 357.

Applied, as to rule 1, in Wood v. LeGoff, 152 Me. 19, 121 A. (2d) 468; Old Colony Trust v. McGowan, 156 Me. 138, 163 A. (2d) 538.

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

VI.

Quoted in In re Williams, 154 Me. 88, 144 A. (2d) 116.

Sec. 7. When heir indebted to estate, lien on his share created.—When an estate is solvent and a person to whom a share of it descends is indebted to the intestate at the time of his death, such debt creates a lien on his share, having priority to any attachment of it. Such lien may be enforced by a civil action and attachment of the share within 2 years after administration is granted, and by levy within 30 days after judgment. In such action, or in one brought by the heir, all claims between the intestate and heir may be set off and adjusted, and the balance due may be established. (R. S. c. 156, § 7. 1961, c. 317, § 561.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and substituted "a civil action" for "suit" in the present second sentence.

Rights of Surviving Husbands and Wives.

Sec. 13. Widow, widower or guardian may elect whether to accept provision in will or claim interest by descent.—When a specific provision is made in a will for the widow or widower of a testator or testatrix who was married before the 1st day of May, 1895, and died since the 1st day of January, 1897, or who was married on or after said 1st day of May, such legatee or devisee may within 6 months after probate of said will and not afterwards, except as hereinafter provided, make election, and file notice thereof in the registry of probate, whether to accept said provision or claim the right and interest by descent, herein provided; but is not entitled to both, unless it appears by the will that the testator or testatrix plainly so intended. Such election may be made by an insane widow or insane widower by his or her guardian or by a guardian ad litem appointed for the purpose. If such election is not made within 6 months after probate of a will and the estate is thereafter rendered insolvent and commissioners are appointed by the judge of probate, such election may be made at any time within 6 months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may recover from such executor or administrator, if not paid within 30 days after demand therefor in writing, ⅓ of any sums received from real estate sold before such waiver was filed. Whenever the widow or widower is advised that the legal construction of the provisions of the will for her or him is doubtful or uncertain, the time for making such election shall be extended to 30 days after certificate is returned to the probate court in the county where the probate proceedings are had, of the final decision in a civil action, commenced by said legatee or devisee within 30 days after the probate of the will, to obtain the decision of the court as to his or her rights under it, but in no case shall the time for election be less than 6 months after probate. The clerk of courts for the county in which civil action is commenced, within 3 days after receipt of the decision therein, shall send notice of the same to the widow or widower, or her or his solicitor of record, and transmit a certified copy of the decree to the proper probate court, where it shall be recorded, with the time of its reception. (R. S. c. 156, § 13. 1961, c. 317, § 562.)

Effect of amendment.—The 1961 amendment substituted "in a civil action" for "upon a bill in equity" in the fifth sentence of this section and also substituted "civil action is" for "the proceedings in equity are" in the last sentence.

Sec. 14. Share of estate to which widow or widower waiving provisions of will, or when no provision made in will, entitled.

The widow's statutory share takes precedence over any legacy, and will be determined without regard to a specific legacy. Old Colony Trust Co. v. McGowan, 156 Me. 138, 163 A. (2d) 538.

Duty of guardian to exercise sound judgment and discretion. — The language of this section imposes upon the guardian or guardian ad litem a duty to exercise a sound judgment and discretion in determining whether or not the best interests of the ward require that the statutory claim be filed. In re Thaxter, 154 Me. 288, 147 A. (2d) 126.

Probate court without authority to approve or disapprove election made by guardian.—There is no provision of statute, express or implied, which gives the probate court authority to approve or disapprove the election made by the guardian under this section. In re Thaxter, 154 Me. 288, 147 A. (2d) 126.

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.

Taxes are not debts.—It has frequently been stated that taxes are not debts. Debts are obligations created by the decedent and founded upon contract express or implied, and no different meaning was assigned to the word "debts" in this section. Taxes, however, are imposts levied to finance the lawful purposes of government and enforceable without the consent of the taxpayer. Old Colony Trust v. McGowan, 156 Me. 138, 163 A. (2d) 538.

The phrase "charges of settlement" embraces all of the ordinary costs and expenses of administration of the estate. Old Colony Trust Co. v. McGowan, 156 Me. 138, 163 A. (2d) 538.

Includes federal estate tax. — There can be no "residue" for "distribution" until after the depletion caused by the federal estate tax has occurred; therefore, the phrase "charges of settlement" in this section is broad enough to include the federal estate tax as one of those charges. Old Colony Trust Co. v. McGowan, 156 Me. 138, 163 A. (2d) 538.

But state inheritance taxes are neither "debts" nor "charges of settlement" within the intendment of this section. Old Colony Trust Co. v. McGowan, 156 Me. 138, 163 A. (2d) 538.

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.

Sec. 21. Life insurance.

Applied in Old Colony Trust Co. v. McGowan, 156 Me. 138, 163 A. (2d) 538.

Chapter 171.

Title to Real Estate by Levy of Execution.

Levy by Appraisement.

Sec. 15. When debt assigned, estate held in trust for assignee.—When the debt has been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it in trust for his assignee, who is entitled to a conveyance thereof, which may be enforced by a civil action. (R. S. c. 157, § 15. 1961, c. 317, § 563.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "bill in equity" at the end of this section.

Sec. 19. When title fails after record, alias execution; debtor may convey title by deed.—When the execution has been recorded and the estate levied on does not pass by the levy for causes named in section 18, the creditor may by motion in the court issuing the execution require the debtor to show cause why an alias execution should not be issued on the same judgment. If the debtor does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the action. The judgment shall be satisfied for the amount of the levy. (R. S. c. 157, § 19. 1959, c. 317, § 302.)

Effect of amendment.—The 1959 amendment divided this section into three sentences, substituted "section 18" for "the preceding section" and "by motion in the court issuing the execution require" for "sue out of the office of the clerk issuing the execution, a writ of scire facias, requiring" in the first sentence, deleted "after being duly summoned" following "debtor" near the beginning of the second sentence, and substituted "action" for "suit" at the end of the second sentence.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail."

Sec. 20. Assignee of judgment may bring action, if estate does not pass by levy.—When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judg-