This section in connection with art. 45, sec. 7, entitles a surviving husband to dower in real estate devised to his wife, where wife dies before testator. Vogel *v.* Turnt, 110 Md. 201.

The terms "lapse" and "fail of taking effect," defined. Billingsley *v.* Tongue, 9 Md. 581.

This section referred to in deciding that the lapsing of a bequest of corporate stock is governed by the *lex domicilii*. Lowndes *v.* Cooch, 87 Md. 485.

A testator is presumed to have known that by death of his daughter (before testator), what he had intended as her share had gone to his three surviving children under his will, or that it would lapse or be saved from lapsing by this section; in either event children of another deceased daughter of testator would take what would have been their mother's share in estate of daughter first mentioned if she had survived testator. Duering *v.* Brill, 127 Md. 112.

It is presumed that a testator made his will in view of this section, and that he intended in the event his wife was not living at the time of his death that his estate should go to those who were her heirs or next of kin at his death, unless a contrary intention appears; no such intent held to appear. This section applied. See notes to secs. 310 and 346. Redwood *v.* Howison, 129 Md. 593.

Although where a question of title to real estate is involved, the matter is beyond jurisdiction of orphans' court, that court has the power to determine who are next of kin, and if the ultimate distribution of property is controlled by this section, orphans' court has jurisdiction. Necessary and proper parties to proceedings in orphans' court. McComas *v.* Wiley, 132 Md. 410.

A bequest saved by this section from lapsing goes direct to the deceased legatee's representatives without vesting in his executor or administrator, and is not liable for his debts. Vogel *v.* Turnt, 110 Md. 199; Wallace *v.* DuBois, 65 Md. 161; Glenn *v.* Belt, 7 G. & J. 367; Hemsley *v.* Hollingsworth, 119 Md. 440; McLaughlin *v.* McGee, 131 Md. 165 (decided prior to the act of 1920, ch. 202); Courtenay *v.* Courtenay, 138 Md. 205 (testatrix died in 1918); McComas *v.* Wiley, 134 Md. 574 (decided in 1919). And see McComas *v.* Wiley, 135 Md. 587.

A legacy saved from lapsing under this section cannot be bequeathed by legatee's will. Object of this section. The effect of a residuary bequest by A. to B. where subsequently B. dies leaving all her property to A. Glenn *v.* Belt, 7 G. & J. 365.

The power of devising was not enlarged by this section; a legatee who dies before the testator cannot bequeath what he would have received if he had survived, inasmuch as at time of his death he has nothing to will. McLaughlin *v.* McGee, 131 Md. 165 (decided prior to act of 1920, ch. 202).

Questions of survivorship in case of death in a common disaster dealt with. McComas *v.* Wiley, 134 Md. 574; McComas *v.* Wiley, 135 Md. 587. See art. 35, sec. 71.

Estates tail general upon being converted into fee simple estates are saved from lapse by this section; *contra*, as to estates tail special. Pennington *v.* Pennington, 70 Md. 435.

Under act of 1810, ch. 34, sec. 4, if legacy is charged upon real estate and legatee dies after testator but before time of payment, legacy is lost. Helms *v.* Franciscus, 2 Bl. 560.

Cited but not construed in Taylor *v.* Watson, 35 Md. 529; Darrington *v.* Rogers, 1 Gill, 410.

As to the jurisdiction of equity over suits for legacies, see art. 16, sec. 100.

An. Code, sec. 327. 1904, sec. 321. 1888, sec. 314. 1825, ch. 119.

336. In every will whereby any lands or real property shall be devised to any person, and no words of perpetuity or limitation are used in such devise, the devisee shall take under and by virtue of such devise the entire and absolute estate and interest of the testator in such lands or real property, unless it shall appear, by devise over or by words of limitation or otherwise, that the testator intended to devise a less estate and interest.

Application of this section.

A contingent limitation over is not inconsistent with a devise of a fee simple estate, and, therefore, does not interfere with application of this section. Devecmon *v.* Shaw, 70 Md. 225; Gambrill *v.* Forest, etc., Lodge, 66 Md. 25; Estep *v.* Mackey, 52 Md. 599; Bradford *v.* Mackenzie, 131 Md. 334.