The act of 1832, ch. 295, held to have no application where will was made and testator died before its passage. Wootten *v.* Burch, 2 Md. Ch. 197.

This section applied—see notes to sec. 136. Halsey *v.* The Convention, 75 Md. 283; Lindsay *v.* Wilson, 103 Md. 275; Vance *v.* Johnson, 171 Md. 440.

Insanity—Retroactive Construction.

The act of 1910, ch. 37 (p. 323), held to have no application to cases where a testator became insane or incompetent before its passage. Statutes will not be construed retrospectively if they can reasonably be construed prospectively only, particularly, if by a retrospective construction, injury is done. The word "shall" ordinarily refers to the future, but, in remedial statutes, it can be used in a general sense including both past and future. This section does not mean that if a testator becomes insane or incompetent between the execution of will and the death of devisee, but recovers or has lucid intervals during which he could have revoked or altered his will, the devise must lapse. *Quaere,* Does act of 1910, ch. 37, apply only to wills made after its passage? History of this section. Hemsley *v.* Hollingsworth, 119 Md. 438.

This section as it stood prior to act of 1920, ch. 202, applies to wills made before its passage when testatrix became insane after its passage but before death of legatee, and then survived latter. When statutes will be given a retroactive construction. Burden of proof of insanity. Hemsley *v.* Hollingsworth, 119 Md. 431, discussed and minor errors corrected. History of this section. Bartlett *v.* Ligon, 135 Md. 622.

Generally.

The time of transfer under this section is the death of the testator, and those to whom transfer is made are those in being entitled to the distribution of legatee's estate in case of intestacy. Hays *v.* Wright, 43 Md. 125; Glenn *v.* Belt, 7 G. & J. 367; Redwood *v.* Howison, 129 Md. 588

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. 313 and 351. 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 in construing Sec. 138. Weaver *v.* McGonigall, 170 Md. 217.