

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. 105.

1929, ch. 543.

341. In all wills executed after July 1, 1929, unless a contrary intention is expressly stated in the will, the provisions of Section 340 in regard to lapse shall apply to all devises and bequests to two or more persons as a class in the same manner as though such devises or bequests had been made to such persons by their individual names.

Cited in construing Sec. 138. *Weaver v. McGonigall*, 170 Md. 217.

An. Code, 1924, sec. 336. 1912, sec. 327. 1904, sec. 321. 1888, sec. 314. 1825, ch. 119.

342. 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.

This section held not to apply because it did appear that testator intended to devise a less estate, etc. *Fairfax v. Brown*, 60 Md. 55; *Stonebreaker v. Zolliekofer*, 52 Md. 170; *Hammond v. Hammond*, 8 G. & J. 442; *Boyle v. Parker*, 3 Md. Ch. 46.

This section does not apply where devise is not of lands or real estate but of their rents and profits, and where it appears that testator intended a less estate. *Boyle v. Parker*, 3 Md. Ch. 44.

Prior to adoption of this section law was to contrary, and this section has no retroactive effect. *Preston v. Evans*, 56 Md. 487; *Moody v. Elliott*, 1 Md. Ch. 293; *Pue v. Pue*, 1 Md. Ch. 387.

This section applied. *Whitley v. Jump*, 94 Md. 189; *Henderson v. Henderson*, 64 Md. 192.

This section held to have no application to a will because it appeared from the clear language of will that testator intended to devise a life estate only. *Pattison v. Farley*, 130 Md. 411.

Generally.

Gift to testator's wife of absolute estate held not to have been restricted to life estate by a subsequent clause indicating his wish as to how she should dispose of the residue by her will. *Gosnell v. Liebman*, 162 Md. 542.

Under this section and sec. 12 of art. 21, deeds and assignments, as well as wills, though without words of limitation or perpetuity, are presumed to carry such estate as the grantor, etc., has power to convey, etc., and not an estate limited to the life of the grantor, etc., unless a contrary intention is clearly shown. *Case v. Marshall*, 159 Md. 594.

This section apparently grew out of the opinion in *Beall v. Holmes*, 6 H. & J. 208. This section reverses rule that a life estate passed by a general devise without words of limitation. Burden of proof. *Backus v. Presbyterian Assn.*, 77 Md. 59. And see *Shreve v. Shreve*, 43 Md. 402; *Hammond v. Hammond*, 8 G. & J. 441.

Subsequent qualifying language in a will held to modify previous language so as to cut down a son's fee simple estate to a life interest. The gift which is posterior in local position usually prevails, the subsequent words denoting a subsequent intention. When word "desire" in a will is mandatory. *Grieves v. Grieves*, 132 Md. 305.

This section referred to in deciding that use of words "their heirs, executors and assigns" in a will was not controlling. *Bradford v. Mackenzie*, 131 Md. 334.

An absolute estate held to pass by a will under this section; cases distinguished. Effect of this section. *Johns Hopkins University v. Garrett*, 128 Md. 347.

A devise held to create a life estate only in view of limitations over, and the direction that devisee was "to have the management and control of the same." *Nowland v. Welch*, 88 Md. 52.

Under a devise to A. during her life, and upon her death to her children, if she have any, the mother takes a life estate and any child or children she has, a remainder in fee. *Stump v. Jordan*, 54 Md. 629; *Williams v. Armiger*, 129 Md. 230.