

the necessary part of the personal estate, to be appropriated for the purpose, shall be prevented from lying dead, or being unproductive, and how it shall be applied, agreeably to the intent of the will, or the construction of law, in case the contingency shall not take place.

CHAP. 101

WHEN all the debts of an intestate, exhibited and proved, or notified and not barred, shall have been discharged, or settled and allowed to be retained, as herein directed, the administrator shall proceed to make distribution of the surplus as follows.

CHAP. 11. //

Distribution of an intestate's personal estate.

1. If the intestate leave a widow, and no child, parent, grand-child, brother or sister, or the child of a brother or sister of the said intestate, the said widow shall be entitled to the whole.

2. If there be a widow, and a child or children, or a descendant or descendants from a child, the widow shall have one third only.

3. If there be a widow, and no child, or descendants of the intestate, but the said intestate shall leave a father, or mother, or brother or sister, or child of a brother or sister, the widow shall have one half.

4. The surplus, exclusive of the widow's share, or the whole surplus, (if there be no widow,) shall go as follows.

5. If there be children, and no other descendant, the surplus shall be divided equally amongst them.

6. If there be a child or children, and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her or their deceased parent, would (if alive) be entitled to; and every other descendant, or other descendants, in existence at the death of the intestate, shall stand in the place of his, her or their deceased ancestor; provided, that if any child, or descendant, shall have been advanced by the intestate, by settlement or portion, the same shall be reckoned in the surplus; and if it be equal, or superior to a share, such child or descendant shall be excluded, but the widow shall have no advantage by bringing such advancement into reckoning; and maintenance, or education, or money given without a view to a portion or settlement in life, shall not be deemed advancement; and in all cases those in equal degree, claiming in the place of an ancestor, shall take equal shares.

7. If there be a father, and no child or descendant, the father shall have the whole.

8. If there be a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father of the intestate, the said brother, sister or child, or descendant of a brother or sister, shall have the whole.

9. Every brother and sister of the intestate shall be entitled to an equal share, and the child or children of a brother or sister of the intestate shall stand in the place of such brother or sister.

10. If the intestate leave a mother, and no child, descendant, father, brother, sister or child, or descendant of a brother or sister, the mother shall be entitled to the whole, and in case there be no father, a mother shall have an equal share with the brothers and sisters of the deceased, and their children and descendants.

11. After children, descendants, father, mother, brothers and sisters, of the deceased, and their descendants, all collateral relations, in equal degree, shall take, and no representation amongst such collaterals shall be allowed; and there shall be no distinction between the whole and half blood.

12. If there be no collaterals, a grand-father may take, and if there be two grand-fathers, they shall take alike, and a grand-mother, in case of the death of her husband the grand-father, shall take as he might have done.

13. If any person entitled to distribution shall die before the same be made, his or her share shall go to his or her representatives.

14. Posthumous children of intestates shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right.

15. If there be no relations of the intestate within the fifth degree, which degree shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the state, to be applied as the legislature shall hereafter direct, saving to the different schools in this state the rights which by existing laws they now respectively possess.

16. In case the surplus remaining in the administrators hands after payment of all just debts exhibited and proved, or notified and not barred, or after retaining for the same, shall consist of specific property, or articles mentioned in the inventory or inventories, the administrator, if he cannot satisfy the parties, may apply to the court to make the distribution, and the court may appoint a day for making distribution, and by summons call upon the said parties to appear, and the said court may, at the appointed time, proceed to distribute, but if a majority in point of value shall neglect to appear, or appearing shall object to the distribution of the articles, or if the court shall deem a sale of the said articles, or of any part of them, more advantageous, a sale shall be directed accordingly, and the rules herein before laid down, relative to a sale by order of the said court, shall be observed.

1. WHENEVER land shall descend, or be devised, to a male under the age of twenty-one years, or to a female under sixteen, or any such male or female shall be entitled to a distributive share of the personal estate of an intestate, or to a legacy or bequest under a last will or codicil, and the said male or female shall not have a natural guardian, or guardian appointed by last will, agreeably to the statute in that case provided, the orphans court of the county where the land lies, or in which administration of the personal estate is granted, shall have power to appoint a guardian to such infant, until the age of twenty-one years (if a male,) and until the age of sixteen (if a female,) or marriage, and such appointment may be made at any time after the probat of the will, or administration granted on the estate of the deceased, under whom the infant appears to be so entitled to land; and it may be made, if the court shall think proper, in the case of personal estate, either before or after the executor or administrator shall have passed his account.

CHAP. 12.  
Guardians and orphans.

2. The said court shall have power to call or have brought before them any orphan as aforesaid, for the purpose of appointing a guardian.

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