

Where a devise of real estate fails by reason of incapacity of devisee, such real estate does not pass by virtue of this section to the residuary devisee in the will. *Rizer v. Perry*, 58 Md. 134.

This section applied. *Ruckle v. Grafflin*, 86 Md. 631; *Brady v. Brady*, 78 Md. 474.

This section referred to in deciding that a devisee is a competent witness to a will, and that devise is not void because of his being such witness. *Leitch v. Leitch*, 114 Md. 336.

This section does not embrace a will executed prior to June 1, 1850—change made in act of 1849, ch. 229, by adoption of Code of 1860. *John v. Hodges*, 33 Md. 522. And see *Carroll v. Carroll*, 16 How. 275.

This section referred to in discussing the retroactive operation *vel non* of other statutes. *Estep v. Mackey*, 52 Md. 596; *Williar v. Baltimore, etc., Loan Assn.*, 45 Md. 557.

For cases dealing with retroactive operation *vel non* of act of 1849, ch. 229, secs. 1 and 2, prior to the Code of 1860, see *Wilson v. Wilson*, 6 Md. 488; *Alexander v. Worthington*, 5 Md. 471 (see reporter's note at end of case); *Magruder v. Carroll*, 4 Md. 346; *Carroll v. Carroll*, 16 How. 275.

As to the law prior to the adoption of the act of 1849, ch. 229, see *Alexander v. Worthington*, 5 Md. 471; *Kemp v. McPherson*, 7 H. & J. 320.

An. Code, 1924, sec. 347. 1912, sec. 337. 1904, sec. 330. 1888, sec. 322. 1798, ch. 101, sub-ch. 2.

352. Probate of wills may be made in the following manner, that is to say:

See notes to secs. 353 and 360.

An. Code, 1924, sec. 348. 1912, sec. 338. 1904, sec. 331. 1888, sec. 323. 1798, ch. 101, sub-ch. 15, sec. 1. 1831, ch. 315, sec. 1.

353. The orphans' courts, and in their recess, the registers of wills in this State, are authorized to take the probate of any will, testament or codicil, whether the same has relation to real or personal estate, or to both real and personal estate.

In the light of this section and of secs. 335, 336, 358 to 361 and 363 and 364, the jurisdiction of orphans' court to probate wills held exclusive, and a court of equity held to have no power to determine whether a will should be probated or to revoke an order of orphans' court admitting it to probate. When a will has been probated and letters testamentary granted before a caveat is filed, such action of orphans' court cannot be reviewed or revoked by a court of equity. Injunction denied. *Bradley v. Bradley*, 117 Md. 519; *Bradley v. Bradley*, 119 Md. 649.

While the jurisdiction conferred upon orphans' court by this section is exclusive, that court is in the exercise of such jurisdiction limited to the probate of *wills, testaments and codicils*; it is not authorized to take probate of any paper writing not of such testamentary character. A proceeding to probate a will is one *in rem* and calls for exercise of judicial rather than ministerial powers of the court. Meaning of term "probate." The probate of a will by orphans' court, like any other judgment of a court of competent jurisdiction, is conclusive until reversed or set aside according to law. *Bradley v. Bradley*, 119 Md. 62.

What is meant by the probate of a will, and what is necessary thereto? *Tilghman v. France*, 99 Md. 615.

The probate of a will decides merely on *factum* of instrument, and not upon right of disposition or proper exercise of a power; latter questions belong to courts of law and equity. *Michael v. Baker*, 12 Md. 168.

This section referred to in deciding that when a will has been granted or denied probate after contest, the decision is final and same question cannot again be raised by suit in ejectment. Operation and effect of the act of 1831, ch. 315. *Johns v. Hodges*, 62 Md. 534.

For other cases involving the act of 1831, ch. 315, see *Colvin v. Warford*, 20 Md. 386; *Warford v. Colvin*, 14 Md. 532; *Randall v. Hodges*, 3 Bl. 481; *Townshend v. Duncan*, 2 Bl. 86.

Act of orphans' court in admitting to record as a will a paper which is not a testamentary paper is null and void. *Robey v. Hannon*, 6 Gill, 463.

For a case drawing a distinction between effect of probate of a will of real estate and one of personalty, under acts of 1715, ch. 39, and 1798, ch. 101, see *Warford v. Colvin*, 14 Md. 553. And see *Randall v. Hodges*, 3 Bl. 481.

See notes to secs. 336 and 360; see also secs. 283 and 358.