

Rockingham, }  
 April 6, 1909. }

HEALEY, *Adm'r, Ap't*, v. WHEELER & a.

Section 1, chapter 113, Laws 1901, was intended to enlarge the rights of a widow in the personal estate of her deceased husband only when he leaves no issue surviving him.

PROBATE APPEAL. The question whether the appeal should be sustained or dismissed was transferred from the October term, 1908, of the superior court by *Pike, J.*, without a ruling, on an agreed statement of facts.

The defendants' father died in 1904, intestate, leaving personal estate, a widow, and four children. After payment of debts and expenses of administration, the personal estate remaining in the hands of the administrator was less than \$150, which the probate court ordered to be divided as follows: one third part thereof to the widow or to her administrator, and the remaining two thirds in equal shares to the four children. From this decree the widow's administrator appealed.

*John T. Bartlett*, for the plaintiff.

*L. Ashton Thorp* and *Harry W. Spaulding*, for the defendants.

YOUNG, J. The only question for this court is whether section 1, chapter 113, Laws 1901, applies to clauses I and II of section 10, chapter 195, Public Statutes, or to the latter clause only. Section 1, chapter 113, Laws 1901, reads as follows: "Section 10 of chapter 195 of the Public Statutes is hereby amended by adding after the word 'him' in clause numbered 'II' of said section the following words: Provided, however, that if such remaining portion does not exceed in value the sum of fifteen hundred dollars, and if he dies intestate, then she shall be entitled to the whole thereof; and in case the value thereof exceeds the sum of fifteen hundred dollars, but does not exceed the sum of three thousand dollars, she shall be entitled to the sum of fifteen hundred dollars. So that said section when amended shall read as follows: Sect. 10. The widow of a person deceased, testate or intestate, by waiving the provisions of his will in her favor, if any, shall be entitled, in addition to her dower and homestead rights, as her distributive share, to the following portion of his personal estate remaining after the payment of debts and expenses of administration.

I. One third part thereof, if he leaves issue surviving him.

II. One half thereof, if he leaves no issue surviving him. Provided, however, that if such remaining portion does not exceed in value the sum of fifteen hundred dollars, and if he dies intestate, then she shall be entitled to the whole thereof; and in case the value thereof exceeds the sum of fifteen hundred dollars, but does not exceed the sum of three thousand dollars, she shall be entitled to the sum of fifteen hundred dollars."

As section 1, chapter 113, Laws 1901, purports to amend clause II, there is a presumption that that is the only clause to which the legislature intended it should apply. There is nothing in the act itself or the subject-matter to which it relates that in any way tends to rebut this presumption; and it seems clear from the amendment itself that it was not intended to apply to clause I. If the amendatory act does apply to the latter clause, and its words are given their ordinary meaning, a widow whose husband leaves just \$3,000 gets \$500 more than she would if he left \$3,000.01; for if he leaves just \$3,000 she gets \$1,500, but if he leaves more she gets one third of his estate. The absurdity of this result is evidence that such a construction was not intended. *Kendall v. Green*, 67 N. H. 557, 563. It is held, therefore, that section 1, chapter 113, Laws 1901, applies to clause II only. Consequently the order in this case should be: Appeal dismissed; decree of the probate court affirmed.

*Case discharged.*

All concurred.

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HUTCHINS v. PAGE.

The truth of the statement does not constitute a defence to a civil action for libel, if the publication was not made in good faith and for a justifiable purpose.

The statutory provision that a tax collector shall not be liable "for any cause whatever except his own official misconduct" does not exonerate him from liability for a malicious and unwarranted advertisement of a taxpayer's delinquency.

CASE, for libel. The plaintiff's counsel stated in opening his case that he expected to prove that the defendant, being tax collector for the city of Portsmouth and having an overdue real estate