

# HOUSE . . . . . No. 347

By Mr. Serlin of Boston, petition of I. Edward Serlin for increasing a spouse's share of property not disposed of by will. The Judiciary.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Nine.

### AN ACT INCREASING A SPOUSE'S SHARE OF PROPERTY NOT DISPOSED OF BY WILL.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 190 of the General Laws is hereby amended by  
2 striking out section 1, as recently amended by section 1 of  
3 chapter 316 of the acts of 1956, and inserting in place thereof  
4 the following:—

5 *Section 1.* Spouse's share of property not disposed of by  
6 will. A surviving husband or wife shall, after the payment of  
7 the debts of the deceased and the charges of his last sickness  
8 and funeral and of the settlement of his estate, and subject to  
9 chapter one hundred and ninety-six be entitled to the follow-  
10 ing share in his real and personal property not disposed of by  
11 will:

12 (1) If the deceased leaves kindred and no issue, and it  
13 appears on determination by the probate court, as hereinafter  
14 provided, that the whole estate does not exceed fifty thousand  
15 dollars in value, the surviving husband or wife shall take the  
16 whole thereof; otherwise such survivor shall take fifty thou-  
17 sand dollars and two thirds of the remaining personal and  
18 two thirds of the remaining real property. If the personal  
19 property is insufficient to pay said fifty thousand dollars, the  
20 deficiency shall, upon the petition of any party in interest, be  
21 paid from the sale or mortgage, in the manner provided for  
22 the payment of debts or legacies, of any interest of the  
23 deceased in real property which he could have conveyed at

24 the time of his death; and the surviving husband or wife shall  
25 be permitted, subject to the approval of the court, to pur-  
26 chase at such sale, notwithstanding the fact that he or she is  
27 the administrator of the estate of the deceased person. A  
28 further sale or mortgage of any real estate of the deceased  
29 may later be made to provide for any deficiency still remain-  
30 ing. Whenever it shall appear, upon petition to the probate  
31 court of any party in interest, and after such notice as the  
32 court shall order, and after a hearing thereon, that the whole  
33 amount of the estate of the deceased, as found by the  
34 inventory and upon such other evidence as the court shall  
35 deem necessary, does not exceed the sum of fifty thousand  
36 dollars over and above the amount necessary to pay the debts  
37 and charge of administration, the court shall itself by decree  
38 determine the value of said estate, which decree shall be  
39 binding upon all parties. If additional property is later  
40 discovered, the right or title to the estate covered by such  
41 decree shall not be affected thereby, but the court may make  
42 such further orders and decrees as are necessary to effect the  
43 distribution herein provided for.

44 (2) If the deceased leaves issue, the survivor shall take  
45 fifty thousand dollars and two thirds of the remaining per-  
46 sonal and two thirds of the remaining real property.

47 (3) If the deceased leaves no issue and no kindred, the  
48 survivor shall take the whole.