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Ascertainment and Settlement of Claims against Decedents' Estates under New York Law

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Thesis

Ascertainment and Settlement of Claims against Decedents' Estates under New York Law.

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Table of Cases Cited

Risley v Brown	67 N.Y. 161
Robertson v Skidell	3 Denio 161
Shea v Cornish	29 Aff. Hun Cases
Snyder v Sylvester	26 Hun 324
Suffern v Sayre	51 Hun 30
Vedder v Hudgate	95 N.Y. 295
Westfall v Courtson	1 Wend 532
Wood v Fiske	63 N.Y. 245
Woodin v Bagley	13 Wend. 453
White v Story	43 Barbr 124
Yorks v Peck	9 How. Pr 201

Table of Contents

Introduction

It is the purpose of this thesis to investigate the rights and duties of executors and administrators and of claimants in determining and settling claims against decedents' estates under the present laws of the state of New-York. The common law system which previously prevailed in this state will be but rarely referred to, being as it is so materially altered or altogether abolished by statute.

Two great principles seem to have prompted these statutes, and now underlie this branch of the law of exectors and administrators as existing in this state :—

First : that the executor or administrator is to be regarded as a trustee for all in any wise interested in the decedent's estate and —

Second: that all creditors of the decedent except certain particular classes shall have equal rights with respect to the settlement of their claims. Both of these principles are clearly brought out in the case of Buckhout v Hunt 16 How. Pr. 407. In that case Justice Brown speaking for the court said: "The claims are to be presented not for immediate but ultimate payment if the assets prove sufficient and if insufficient, for a ratable proportion of whatever there may be. In respect to the creditors the executor does not maintain the relation of debtor. His position is that of trustee to collect and hold the estate and after he has ascertained who are the ~~creditors~~ decedent's legatees and next of kin to apply it in satisfaction of their claims as prescribed by law.

Ch. II

General Duties of the Executor or Administrator preliminary to final Settlement of claims.

The great difficulty in performing these duties of the personal representative in settling claims is to ascertain what are and what are not good and valid claims. His trusteeship is for cestuis que trust who are at first unknown and he should not therefore accept a claim as entitled to payment except after the employment of all the means of investigation which the law allows him. His rights in this respect are definitely limited by statute. He is entitled to notice of all the claims within the statutory time of six months; their nature and amount

in order that he may safely disburse the assets, without making himself liable as he might otherwise be for the excess of what should be a pro rata payment in case he paid a debt in full when the assets were not sufficient for more than a pro rata payment of all debts. See (Nichols v Chapman 9 Wend 452 and Yates v Mudgett 95 Nf 295)

He is accordingly empowered to require by a notice given after the issuance of letters to him that all claims against the estate shall be presented to him within six months from the time of the first publication of the notice. He should insert this notice in one or more county papers each week of the six months after its first publication (C. civ. p. as Amd 1893 § 2718

Before the amendments of 1890 it was provided that the notice to present claims should not be published until six months after the letters testamentary were issued. It has been remarked that there was no possible reason for such delay in giving the notice. The only plausible explanation would seem to be that for the first six months the executor is expected to make out the inventories and discover all the assets before he proceeds to consider the matter of settlement of claims against the estate. The court has general control of the publication of the notice and if there is no newspaper in the county or if the court prefers the newspaper of another county he may direct the publication

in both fases.

An intusting case involving the duties of the personal representative and the analysis of that duty or right was the case of Bullock v. Rogers, 1 Ohio 226. It was sought to make the executor liable for costs in a creditors action to recover a debt due by the decedent. It was held with evident justice that since the publication of notice is merely a privilege for the benefit of the executor it is not a binding duty upon him and he is not liable for costs merely for failure to give the notice which the statute allowed him to give, but did not require him to give.

The question also whether errors in the notice would offset its obligation upon creditors has been litigated in the cases of Corns v.

Wilkin 79 Mf. 129, and Prentice v Whitney 8 Hun 300. In both of these cases it was held that immaterial errors would not destroy the force and effect of the notice.

Under the present statute, it may be said that the court in general has wide jurisdiction over the executor in settling claims and may even go so far as to allow a judgment creditor to proceed with his execution against the executor provided the executor was appointed by him, altho' the statute provides that with this exception the judgment debtor cannot get his execution at once. It would seem that where the assets are not abundantly adequate to pay all liabilities either execution would not be issued at all or would be

issued only for an apparently pro rata share.

Redfield in his "Law and Practice of Surrogates' Courts" sums up as follows the changes by statute in New York state in the manner of ascertaining and liquidating debts: "The Revised Statutes altered the whole system of the common law in this regard. A judgment against an executor or administrator now proves nothing more than the amount of the indebtedness of the estate of the plaintiff. The jurisdiction as to the accounts is given in the Surrogates courts as courts of equity and a judgment creditor cannot have a distribution of the estate except through the medium of those tribunals, nor can he lawfully issue execution on his judgment except on the order

of the Surrogate. The judgment is in fact only a liquidation of the debt and does not conclude the executor or administrator on the question of assets at all (Griscom v Porcella 3 Bradford 277)

The old system of prefferential administration having been almost entirely abolished, all the pleadings and and other parts of the ancient superstructure in so far as it was raised for the protection of the system have gone with it (Parker v Gainer 17 Wend 559)

Ch. III

Joint Obligations of Decedent.

All claims may be presented for payment which have not been rendered void by the decedent's death provided they existed as valid claims during the life of the deceased. There was a conflict of authority in regard to the liability of the decedent's estate where the decedent was liable jointly with others on a contract. The older cases held under such conditions that the estate was discharged by the decedent's death. Accordingly in the case of Risley v Brown 67 N.Y. 161 it was held that where one of two joint makers of a promissory note, who undertook who undertook to go on the note as surety died, his estate was discharged absolutely from payment. So also in the case

of Hauch v Craighead 67 Mf. 171 where it seemed probable that one Pike wrote his name as surety on a contract he had executed jointly with Hauch. Judge Allen said in the opinion of the court that: "If Pike was a mere surety for his joint maker of the contract "then by the surety his estate was absolutely discharged from all liability upon the joint obligation both in law and in equity and no action could be maintained against his representatives either severally, or jointly with the joint contractor" (See also cases of Brisell v. Gatty 49 Mf. 385 and Wood v Fiske 63 Mf. 285) But in the case of Hunt v Church et al. 73 Mf. 615 the court appeared to endeavor to break away from the former holding and the case of Risley v. Brown is distinguished although under quite similar facts

In the case of Randall v Sackett 77 Ky 480 the matter was again brought up and it was held in this case that where the contract was made before the passage of § 768 of the code of civil procedure providing that the estate of one liable jointly on a contract shall not be discharged by his death the old rule of Risley v. Brown prevailed. With regard to joint contracts made after § 768 of the code the code provision has prevailed unchanged up to the present time

Other difficulties regarding the decedent's joint obligations have arisen where claims have been presented which have not been fixed upon the decedent particularly as in case of a partnership where the other partner survives. In the case of Hoyt. v. Bennett 80 Ky 538

claims were presented to the executor against two firms of which the decedent had been a partner. The other partner survived and no steps had been taken to collect or fix liability upon him. It was held that such action on the part of the claimants was proper and could not be disregarded by the executor. Similar holdings to the effect that the statutes (2 R.S. 88 §3 and following) apply to contingent claims are found in the cases of Francisco v. Fitch 24 Barb 130 White v Story 43 Barb 124 and Conner v. Wilkins 79 N.Y. 129

From the numerous authorities it is safe to assert as a rule of New York law that contingent liabilities not fixed upon the estate may always be presented under the notice. So also it does not matter that the claim is merely

equitable and not a legal claim.
Judge Balcom said in the case of
Brockett v. Bush 18 Abb. Pr. 343
"I think no good reason can be
assigned for withholding the right
to refer claims without action under
the statute for the conversion of
property by a testator or intestate
or claims for other torts for which
executors or administrators are
liable and as the statute is
comprehensive enough to authorize
a reference of such claims without
action with the surrogates approval
I am of opinion it should be construed
to embrace them". The opinion
is supported by many cases.
The case of Brockett v Bush holds
also that whether or not the claim
is liquidated makes no difference
with the right to refer it under
the statutory notice. In two cases

only is it suggested that the statute does not cover equitable as well as legal claims. In the case of Yorks v Peck 9 Howards Pr 201 this conclusion is suggested and in Hauch v Craft 10 Abb. Pr 216, Judge Brown says "It will be seen that the provision to which I have referred" (II R.S. 6th ed. §§ 45-48) "cannot be applied to the trust moneys or property in the hands of the executor at the time of his death. They contemplate an ordinary debt for which the deceased was liable in his lifetime upon an express promise or implied promise. A debt which may be supported by the oath of the creditor which is justly due and which may be the subject of an offset. The claim must be of such a nature as was cognizable in the Supreme court or court of Common Pleas at the time

the act took effect and for which the common law courts as distinguished from the equity courts afforded an adequate and complete remedy to both parties

On the other hand the case of Robertson v. Shidell 3 Denio 161, holds that because the executor has an equitable defense he has not thereby grounds for refusing to refer. Moreover in the case of Francisco v Fitch 25 Barbr 132, Judge Johnson speaking for the court with regard to the scope and effect of the sections of the statute mentioned above, said: "It has been held that the surrogate has power upon the settlement and distribution of the estate to liquidate equitable as well as legal demands (Payne v Matthews 6 Paige 19) It is clear that an

action of assumpsit in a court of law could not be maintained by the plaintiff to recover money thus paid upon partnership debts without at least a settlement and balance struck (Wisterbo v Courtson 1 Wendall 372) But I think the object of the statute was to allow a reference of all claims against the estate whether of a legal or equitable nature. I am not aware that this question has ever been determined"

These seem to be all the chief authorities upon the question and leave the matter in a somewhat unsettled and unsatisfactory situation: but from the general tenor of the dicta it would seem that the courts are strongly inclined to hold that the statute allows reference of all possible claims in order to avoid thereby all unnecessary litigation

Ch IV

Effect of Non-presentment of Claims

§ 2718 of the Code of Civil Procedure as amended in 1893 provides that "x x If a suit be brought on a claim which is not presented to the executor or administrator within six months from the first publication of such notice the executor or administrator shall not be chargable for any assets or moneys that may have been paid in satisfaction of any lawful claims or of any legacies or in making distribution to the next of kin before the suit commenced" When the creditor has filed no notice of his claim within the statutory time merely this possibility of financial damage and the liability to pay costs in any action he may

may bring on the claim. subsequently is the only damage the creditor can suffer from failure to present his claim.

On the question of costs there was considerable litigation in former times especially as to whether the creditor could ever be entitled to costs when he had not presented his claim within the statutory six months. In the case of Denise v Denise and several previous cases the code provisions were evaded on the ground that the code section 1873 reads "in an action" and therefore does not apply to the special proceeding brought by the creditor or one who endeavors to collect the claim. However all doubts upon the question are now removed by the code section § 3240 as amended in 1881 which provides that "Costs in a

special proceeding instituted in a court of record or upon an appeal in a special proceeding taken to a court of record where the costs thereof are not specially regulated by this act may be awarded to any party in the discretion of the court at the rates allowed for similar services in an action brought in the same court" xxx

Accordingly the statutory requirements with which the creditor must comply before he can be entitled to costs against the executor or the estate (which alternative is always in the discretion of the court in the face of the circumstances of the case) are as follows: The demand made by the plaintiff must have been presented during the six months after the first publication of the notice by the executor and it must be shown that without good reason the claim was not paid by the

executor or that the executor refused to test the validity of the claim by a referee's examination

When the creditor has complied with these conditions he may ordinarily recover costs as a matter of right. This point came up as the sole question in the case of Snyder v. Sylvester 26 Hun. 324 under the following circumstances. The defendant presented his claim to the executors who refused to allow or refer it. The plaintiff then sued and recovered and the verdict was sustained on appeal to Special Term except that costs were not allowed. The plaintiff then appealed from that part of the order refusing costs. The court said "No costs shall be recovered in any suit at law against executors unless it appear that the demand on which the suit was founded was presented

and "that its payment was unreasonably resisted or neglected or that the defendant refused to refer the same" If either of these facts appear costs are a matter of right. In this case it was undisputed that the defendants refused to refer. The plaintiff should therefore have had costs awarded to her.

On the other hand it is equally clear that the executor or administrator will not be liable for costs so long as he has been reasonably diligent and careful and no violation of duty is shown and furthermore the personal representative may even violate his duty and the plaintiff may not recover costs unless he has himself fulfilled the prerequisite conditions to his right to costs. Thus in the case of Suffle v Sayre 51 Hun 30 following the earlier case of Horton v Brown 29 Hun 614 and others the plaintiff failed to

present his claim within due time after the publication of the notice and upon presenting it subsequently the administrator refused to pay it. The plaintiff thereupon requested that it be referred: but this also the administrator refused to do. The plaintiff then sued upon his claim and it was held "that the language of the statute was so broad as to require that the claim of the plaintiff should have been presented to the administrator as required by the notice when the same was published although the right of action might never exist in favor of the surety against anyone.

Whether the representative is finally beaten or not and obliged to pay the claim out of the estate makes no difference with his immunity from liability to pay costs. He is safe so long as he is not shown to have

"unreasonably resisted or neglected" to receive the claim.

What constitutes unreasonable neglect or resistance is for the court to decide "having reference" (in the language of the code) "to the facts which appeared on the trial". It must inevitably happen that sometimes the uncertain and unascertained character of the assets and liabilities of the estate will not permit the personal representative to pay claims safely either in full or pro rata and he is doubtless given more latitude in the direction of caution in the payment of claims than for boldness in hazarding the payment of doubtful claims or of claims as to which there may be doubt whether they can be paid in full. Thus in the case of Cruikshank v Cruikshank 9 Howards Pr. 350 the plaintiff sought to recover on the grounds that she had a valid claim against the estate which the

defendant had refused to pay or refer. But in the action on the claim the amount recovered was only $750. whereas the claim which the defendant had refused to entertain was for $1000. It was held that the verdict showed that the plaintiff was so indefinite that the executor was acting with reasonable discretion in refusing to entertain it at all. Justice Bacon said in the opinion "The statute contemplates the presentment of an account or some claim which may be supported by vouchers and if required by the affadavits of the party presenting it." (2 R.S. 152 §38) "A general vague demand of a gross sum is not sufficient." Among other cases holding the same way are the cases of Buckhout v Hunt 16 Howards Pr. 407 and Purcell v Fry 19 id 395 and Harrison v Myers 18 Hun 536

Finally as to the liability of personal representatives to pay costs for refusal

to refer claims the question is simply whether or not the executor or administrator did so refuse to refer. (provided of course there is nothing in the nature of the claim to excuse such refusal as hereinbefore suggested) Redfield says in his Law and Practice in Surrogates Courts "A refusal to refer is a fact and not a conclusion of law and before costs can be included in the judgment the fact of a refusal must be found or certified to by the referee or if the certificate does not state the facts fully and fairly they may be shown by affidavits on a motion for costs (See Ely v Taylor 72 Hun 203)

Ch. V
Reference of Claims

The personal representatives may compromise a doubtful claim according to § 2719 of the code of civil procedure and under the direction of the surrogate or he may reject it altogether if in his opinion it cannot reasonably be received or finally which is the most common mode of settling a disputed claim he may refer it to the examination of a referee

The statute regulating the proceedings briefly and cut as follows:-(III R.S. 6th ed p99 §§ 46-7) Sec. 47. without the amendment of § 2718 of the code which adds matter relating to notice and costs is:- "If the executor or administrator doubt the justice of any claim so presented he may enter into an agreement in writing with the claimant to refer the matter in controversy to three disinterested persons or to a disinterested

person to be approved by the surrogate and upon filing such agreement and approval of the surrogate in the office of the clerk of the Supreme court in the county in which the parties or either of them reside a rule shall be entered by such clerk referring the matter in controversy to the person or persons so selected."

§ 45. "The referees shall thereupon proceed to hear and determine the matter and make their report thereon to the court in which the rule for their appointment shall have been entered. The same proceedings shall be had in all respects the referees shall have the same powers be entitled to the same compensation and subject to the same control as if the reference had been made in an action in which such court might by law direct a reference." And under the amendment of 1893 much is added to this. So that now the statute leaves

little room for litigation upon its interpretation. The most important change by the amendment of 1933 provides that "judgment may be entered upon the award and thereafter such judgment shall be valid and effectual in all respects as if the same had been rendered in a suit commenced by the ordinary process and the judicial effect shall thereafter be the same as in other actions."

Respecting the phrase of the statute "may enter into an agreement in writing" with the claimant to refer it has been held in the case of Lanning v Swarts 9 Howards Pr. 434 that the offer to refer which must be made by the plaintiff, not the defendant need not be in writing but is binding if merely oral but on the other hand the final agreement to refer must be in writing and filed with the clerk according to the statute.

Thus in the case of Comstock v Olmstead 6 How. Pr. 77 where the claimant failed to have the agreement to refer filed with the clerk and accordingly no order of reference was entered by the clerk it was held that the statute had not been sufficiently complied with to entitle the claimant to the privileges of the court. The agreement to refer must contain the questions at stake between the parties and is [illegible] to the pleadings in an ordinary action. In the case of Woodin v. Bagley 13 W[illegible] the condition and representation [illegible] to submit the question to certain persons "to determine and award". This was held not to be an agreement to refer under the statute.

The proceedings before the referee are as in an ordinary action as prescribed by the [illegible]. The referee should take into consideration the whole case and unless sufficient for a jury should discharge the cause

The evidence submitted is to be analyzed according to the customary rules of evidence. Thus in the case of Harvey v McKeen 8 S. W. 137 J. Finch said. "Claims withheld during the life of an alleged debtor and sought to be enforced when death has silenced his knowledge are always to be carefully scrutinized and admitted only upon very satisfactory proof and when it further appears that a subsequent dealing existed in which the pretended creditor was to some extent a debtor never once presenting his claims in reduction of his debt the weight of suspicion becomes very great and justifies a demand for distinct and definite proof

As to the findings of the referee the recent case of Shea v Cornish 29 Alb. Law Cases is in point. In this case the referee when the case was sent back for a supplementation of certain findings he had found

at the plaintiff's request incorporated also some new findings: it was held that for this disobedience to the order the report must be sent back again. But when the referee conforms to the statutory rules and conducts the suit like an ordinary action his decision shall be valid and effectual in all respects as if the same had been rendered in a suit commenced by the ordinary process".