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EXECUTORS AND ADMINISTRATORS -- QUASI-CONTRACT LIABILITY OF DECEDENT'S ESTATE -- ADMINISTRATIVE EXPENSES AS A PRIOR CHARGE ON THE ESTATE

Ralph Winkler
University of Michigan Law School

EXECUTORS AND ADMINISTRATORS — QUASI-CONTRACT LIABILITY OF DECEDENT'S ESTATE — ADMINISTRATIVE EXPENSES AS A PRIOR CHARGE ON THE ESTATE — After the supply of feed for the decedent's livestock had been depleted and before the appointment of an administrator, the plaintiff furnished some grain at the request of the decedent's daughter and son-in-law, no other parties attempting to assist in any way. It was understood that the plaintiff would look to the estate for payment. In an action of contract against the administrator in his representative capacity for the value of the grain the court *held* that the plaintiff had a valid claim in quasi-contract against the estate, basing the decision upon "broad considerations of policy." Since the estate was insolvent, the court considered the plaintiff's claim as an expense of administration, thus entitling it to priority over "debts" as specified in the statute. *Wilder Grain Co. v. Felker*, (Mass. 1936) 5 N. E. (2d) 207.

Debts incurred by the decedent and the expenditures of the administrator [1] in settling the estate have been, *ordinarily*, the only two charges imposed ultimately on a decedent's estate, with the exception of statutory obligations. The instant case would appear to offer another avenue of liability in the form of a quasi-contractual recovery, where a party has rendered a benefit to the estate during the period between the demise and the appointment of an administrator, when such services were absolutely essential to the preservation of the estate.[2]

[1] The expenditures of the administrator are not regarded as debts of the decedent. See ATKINSON, WILLS 615 (1937); 24 C. J. 63 (1921), stating the general rule of personal liability of the administrator, with exceptions.

[2] Todd v. Martin, 104 Cal. xviii, 37 P. 872 (1894), where the court allowed a claim for continued services at decedent's stable before appointment of an admin-

At common law the doctrine of *executor de son tort* imposed a liability upon anyone who, without proper authorization, intermeddled with a decedent's estate.[3] To this rule were appended the well-recognized exceptions of acts of "kindness and charity," [4] such as payment of funeral expenses, feeding the stock, protecting the estate from waste, etc. It would seem that the holding in the principal case is somewhat of a corollary to these exceptions, in that it views the situation from the standpoint of the party who performed the service, at the request of the intermeddler. The instant case is not without analogous precedent in the law. Despite the strong antipathy for intermeddlers, the courts, even at common law, allowed recompense to persons who paid the burial expenses of a decedent before the appointment of an administrator.[5] This liability was presumptively chargeable to the estate, although the administrator could become personally liable therefor, dependent on the particular circumstances.[6] But even in the case of payment of funeral expenses by other persons the courts have limited the amount of the allowance to necessary expenditures.[7] Since one of the duties of an administrator is to preserve the estate, there is no doubt that providing sustenance for livestock would be a proper item of the administrator's account; [8] and had the plaintiff in the instant case supplied the grain at the request of a subsequently appointed administrator the doctrine of relation back [9] would have validated the transaction. "Expenses of administration are necessarily entitled to payment before the debts of the deceased, because they are incurred

istrator. The court said that the employment may be considered as a debt of decedent; or if that theory is not sustainable the charge may be "analogous to a claim for funeral expenses . . . thrown upon the assets by necessity." Lenz v. Brown, 41 Wis. 172 (1876).

[3] 2 WOERNER, THE AMERICAN LAW OF ADMINISTRATION, 3d ed., 635 ff. (1923).

[4] 1 WILLIAMS, EXECUTORS, 11th ed., 181 (1921); Rohn v. Rohn, 204 Ill. 184, 68 N. E. 369, 98 Am. St. Rep. 185 at 196 (1903); 24 C. J. 1213 (1921).

[5] 33 L. R. A. 660 (1897); 30 A. L. R. 444 (1924), discussing the situation where a person other than the executor binds himself for the payment of funeral expenses; Phillips v. Phillips, 87 Me. 324 (1895), "The necessity of a decent burial arises immediately after the decease, and the law both ancient and modern, pledges the credit of the estate for the payment of such reasonable sums as may be necessary for that purpose, even though such expenses may have been incurred after the death and before the appointment of an administrator."

[6] 33 L. R. A. 660 at 663 (1897).

[7] Samuel v. Estate of John Thomas, 51 Wis. 549 at 553 (1881), a claim for a tombstone was not allowed, even though it was admitted that it would have been a proper expenditure for a qualified administrator. "Every expenditure which can decently and reasonably be postponed until an administrator is appointed, should be so postponed."

[8] ATKINSON, WILLS 622 (1937).

[9] Tucker v. Whaley, 11 R. I. 543 (1877), where the plaintiff furnished grain for decedent's livestock at defendant's request, and the defendant was subsequently appointed administrator. In holding that the defendant was personally liable the court remarked "though it might be difficult to charge him if he had always remained a stranger to the estate," which is the problem in the principal case. 26 A. L. R. 1359 (1923).

for the very purpose of securing the payment of the debts" [10] and "his [the administrator's] claim to reimbursement must be superior to the rights of the beneficiaries." [11] The court was sufficiently impressed with the meritorious position of the plaintiff to accord him a preferential claim on the assets of the estate,[12] by considering his claim as an administrative expense.[13] To have held otherwise would be unjust, since the plaintiff incurred his detriment that the other claimants might not lose their security, which is within the theory of the administrator's priority. As a basis for this relief the court declared that the need must have been "immediate, absolute and imperative in order to preserve the estate itself and where that need would otherwise remain unsatisfied." Thus limited, little, if any, jeopardy to the estate is involved; while on the other hand a deserving claimant is sufficiently protected.

Ralph Winkler

[10] 3 WOERNER, THE AMERICAN LAW OF ADMINISTRATION, 3d ed., 1774 (1923).

[11] 2 ibid. 1197.

[12] For a discussion of the usual order of priorities under modern statutes, see ATKINSON, WILLS 663 ff. (1937).

[13] Mass. Gen. Laws (Ter. ed. 1932), c. 198, § 1: "If the estate of a person deceased is insufficient to pay all his debts, it shall, after discharging the necessary expense of his funeral and last sickness and the charges of administration, be applied to the payment of his debts, which shall include equitable liabilities, in the following order. . . ." This statute is fairly typical.