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WILLS - STATUTE OF NONCLAIM AS BAR TO CONTINGENT CLAIM

WILLS — STATUTE OF NONCLAIM AS BAR TO CONTINGENT CLAIM — Plaintiff, the receiver of an insolvent state bank, filed a claim against the estate of deceased who had been a stockholder in the bank. The estate had been closed for twelve years when the claim was filed, the bank not having become insolvent until eight years after the decedent's death. The state constitution provided double liability for the stockholders of the bank to its creditors. Defendant urged that the claim was barred by the statute of nonclaim. *Held*, the claim is not barred, for the constitutional liability was not a "claim or demand, contingent

or absolute," against the stockholder's estate within the meaning of the statute of nonclaim. *In re Wilson's Estate*, (Neb. 1934) 254 N. W. 717.[1]

In most of our states there is a statute of nonclaim which requires claimants against an estate to file their claims within a time specified in the statute or else within the time limited by the court for that purpose.[2] The Nebraska statute here involved expressly included contingent claims within its terms,[3] but many other statutes, while lacking such express provisions, are nevertheless construed to cover such claims also.[4] The general problem involved in the instant case has been before the courts often of late,[5] and it has been handled in various ways. The North Dakota court [6] with much ingenuity has argued that the statute of nonclaim presupposed a person capable of presenting a claim, and that in the case before it there was no such person until long after the statutory period had run. In Connecticut [7] and Colorado [8] a nice distinction is observed in that if the assessment against the stock is made before the statutory period has elapsed, the claim must be presented seasonably or be barred. Now, it will be noticed that in most of the preceding cases on this subject the claim arose before the estate was closed, while here it did not arise until more than twelve years thereafter. In the absence of other considerations,[9] it would seem the better rule to allow the claim before there has been a distribution of assets, and to disallow it if an attempt to present it is made afterwards, for if the estate is closed there can be no claim arising against it.[10] The liability attaches to the stock, and therefore, to

[1] See Brownell v. Sunderlin, (Neb. 1934) 255 N. W. 47, a case decided less than a month after the principal case and in which the rule of the principal case was applied to a similar fact set-up.

[2] 3 SCHOULER, WILLS, EXECUTORS, AND ADMINISTRATORS, 6th ed., sec. 2866 (1923).

[3] "Every person having a claim . . . whether due or to become due, whether absolute or contingent. . . ." See Comp. Stat. of Neb., 1929, sec. 30-609.

[4] See annotation in 58 L. R. A. 82 (1903).

[5] See annotations in 41 A. L. R. 180 (1926); 51 A. L. R. 772 (1927); 87 A. L. R. 494 (1933).

[6] Baird v. McMillan, 53 N. D. 257, 205 N. W. 682, 41 A. L. R. 177 (1925). It may be noted that the courts generally have adopted the view that the stockholder's liability being contingent, a claim against his estate is not barred by failure to present it within the period of a nonclaim statute, if the claim does not arise until after the statute has run.

[7] Bidwell v. Beckwith, 86 Conn. 462, 85 Atl. 682 (1913).

[8] First Nat. Bank v. Hotchkiss, 49 Colo. 593, 114 Pac. 310 (1911).

[9] Sometimes a statute will provide or will be interpreted to provide that the bank receiver may not sue the distributee of the stock if he failed to file a claim against the estate when such claim became absolute before final distribution. This is the situation in Minnesota. See Ebert v. Whitney, 170 Minn. 102, 212 N. W. 29 (1927), and also Mason's Minn. Stat., 1927, secs. 8812 and 8815. Under this latter section of the statute, the lapse of a fixed period bars all claims against the estate without exception.

[10] This distinction, which should be decisive of many of these controversies, is generally overlooked, the court devoting its whole attention to the problem raised by the statute of nonclaim. There is language in Zimmerman v. Carpenter, 84 Fed. 747 at 751 (1898), which shows that the court there did have this point in mind. Further, the decision in Dent v. Matteson, 70 Minn. 519, 73 N. W. 416 (1897), indicates too that courts are not entirely forgetful of this distinction.

hold the estate liable in the present case is certainly no more proper than to hold someone liable just because he once owned stock in the bank, though he has long since parted with such ownership.[11] A result opposite to the one reached by this court could hardly be termed inequitable, for the claimant could always sue those who owned the stock when the liability arose, whether they were distributees or others.[12] For these reasons it is urged that the court was in error in allowing the claim against the estate.[13] M. C. D.

[11] A recent Illinois case, Sanders v. Merchants State Bank, 349 Ill. 547, 182 N. E. 897 (1932), in which the claim was filed after the closing of the estate held such claim barred on the ground that deceased's liability was a primary one; therefore, the bank's creditors might have filed a claim against his estate during the statutory period despite the bank's then solvency. The result reached by the court was desirable for the reasons given in the body of this note, but its reasoning was bad, the effect of it being to make every depositor demand payment of his claim from the bank every time a responsible stockholder died. Such action would lead inevitably to the bank's failure. The best way to explain this case is by a reference to Illinois' strange constitutional provision, which makes a bank's stockholders directly liable to all creditors for liabilities accruing while they remain stockholders. See Ill. Const. of 1870, Art. 11, sec. 6.

[12] That this is so is rather forcefully held in Rankin v. Big Rapids et al., (C. C. A. 6th, 1904) 133 Fed. 670. Some statutes even impose this double liability upon those who no longer own the stock, but transferred it with knowledge of the bank's impending failure. See, for example, the National Bank Act, U. S. C. tit. 12, sec. 64 (1913).

[13] A few cases have allowed the claim to be filed against the estate after the running of the statutory period, and have distinguished such claim from one against the deceased by calling it a claim against the estate. In these cases the estate was still open, and therefore the result was sound, but the reasoning of the courts was specious, and was probably used simply to justify a preconceived result. See Tierney v. Shakespeare, 34 N. M. 501, 284 Pac. 1019 (1930); Hirning v. Kurle, 54 S. D. 334, 223 N. W. 212 (1929); and In re Roberts Estate, 41 S. D. 331, 170 N. W. 580 (1919). It is fundamental in the law of the administration of estates that if a claim is ever allowed against an estate, it must be because the liability, contingent or absolute, was incurred by deceased. All liabilities arising after his death are not payable out of the estate.