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Administration of Estate of Decedent--Probate--Commission of Accounts

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ADMINISTRATION OF ESTATE OF DECEDENT — PROBATE — COMMISSIONER OF ACCOUNTS. — Decedent left the residue of her estate "to the descendants per stripes" of such of her brothers and sisters as should be predecease her. In the settlement of the estate by the commissioner of accounts, a petition was filed by *P*, the lawfully adopted daughter of a predeceased sister, claiming the right, as a descendant of the sister, to share in the residue of the estate. Evidence was taken and briefs were filed before the commissioner who ruled against the claim of *P*. *P* then presented her claim to the county court, which construed the will in her favor. The circuit court affirmed the finding. *Held,* that *P's* claim of a right, as a descendant of the predeceased sister, to share in the residue of the estate, is such a claim as is beyond the jurisdiction of the county court and the commissioner of accounts, because it is subject to controversy and pertains to the right of descent and distribution, which will involve the construction of a will, the exercise of judicial powers, and that neither the county court nor the commissioner of accounts has power to adjudicate such claim for such judicial power has not been delegated to them. *Hustead v. Boggess.*[1]

This case involves the statutory provisions made in the Code as to proof and allowance of claims against the estates of decedents.[2] They provide for the new method of receiving and disposing of these claims, being apparently designed to relieve the personal representative of the great responsibility and liability that the former law imposed, and also to furnish a modern and expeditious means, under judicial guidance, for closing up decedents' estates.[3]

There has been a great amount of litigation involving these sections of article 2, chapter 44. From a study of the cases it seems

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[1] 12 S. E. (2d) 514 (W. Va. 1940).

[2] W. VA. CODE (*Michie,* 1937) c. 44, art. 2, *et seq.*

[3] *Id.* at c. 44, art. 2, Reviser's Note; Wilhelm, *Administration of Estates of Deceased Persons under the Revised Code* (1937) 43 W. VA. L. Q. 184: "In the attempt to make this improvement the Code Revision Committee . . . [was] hampered by the provisions of the West Virginia Constitution which places jurisdiction of all matters of probate . . . in the county court. . . ." W. VA. CONST. art. VIII, § 24. In an effort to correct this situation, the code revision committee provided in c. 44, art. 2, § 1, that "the estate of his decedent shall, by order of the county court to be then made, be referred to a commissioner of accounts for proof and determination of debts and claims, establishment of their priority . . . and any other matter necessary and proper for the settlement of the estate. . . ."

that the court has been attempting to define the limits of the power and jurisdiction of county courts and commissioners of accounts, their statutory adjunct. These cases tend to clarify and also to confuse.

The dissenting opinion of Judge Kenna in the principal case was to the effect that the rule, established by a preceding case,[4] that the power "to adjudicate judicial questions" is withheld from the probate courts (county courts), states a plainly unsound principle. It seems that, in Judge Kenna's opinion, the rule is too broad in that the field of jurisdiction of county courts and commissioners of accounts should include powers to adjudicate certain judicial questions that are indispensable incidents of their duties in probate matters. In this way he distinguishes the principal case on the ground that, though it is not within their province to adjudicate collateral issues which should be determined by courts exercising "general judicial powers," still county courts, having jurisdiction in probate matters, possess certain incidental judicial powers, necessary in order that there may be an expeditious disposal of the estates of decedents. Such incidental powers are found historically to rest in the county courts in these matters relating to probate and settlement of estates of decedents.[5]

Judge Kenna, concurring in an earlier case and expressing his views as to the limitation on the jurisdiction of commissioners of accounts in the light of all the other provisions of chapter 44, article 2, said:

> ". . . I believe that a careful examination of that entire article shows distinctly that the matters that the commissioner is intended definitely to pass upon are those claims based upon a contractual undertaking, either express or implied, for the payment of money, and upon judgments and decrees that may have been rendered upon claims of that nature, or of any other nature, and become final against the estate of the decedent.

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[4] Steber v. Combs, 121 W. Va. 509, 5 S. E. (2d) 420 (1939). There were conflicting claims to property held by the decedent's estate and the title to such property was involved. The court held that under W. VA. CONST. art. VIII, § 24, the power to adjudicate judical questions is withheld from the probate court, and that a commissioner of accounts has no jurisdiction to settle conflicting claims to decedents' estates. *In re* Long's Estate, 10 S. E. (2d) 791 (W. Va. 1940), concerned a controversy over certain bank certificates, which involved the title to personal property. "The solution of a controversy involving personal property involves the exercise of judicial powers which are not found among those specifically delegated to the county courts by the constitution."

[5] Devaughn v. Devaughn, 19 Gratt. 556 (Va. 1870); Dower v. Seeds, 28 W. Va. 113, 139 (1886).

> I think that it is reasonably clear that the commissioner of accounts, in view of the express provisions of section 8 and of section 17 of article 2, providing the method of dealing with contingent and unliquidated claims, was not intended directly to pass upon claims sounding in tort and claims sounding in damages for breach of contract."[6]

In another case[7] there was a claim by *A* against a decedent's estate, where the decedent had promised to put a provision in his will bequeathing a certain sum of money to *A*, if *A* would continue in his employ. *A* contended that he had performed his part of the bargain but that the decedent had made no provision in his will, bequeathing the sum of money to *A*. Judge Kenna, in a dissenting opinion, stated that a claim against an estate, as intended by the statutory provision,[8] meant one seeking compensation in money, based upon either express or implied contract,[9] and that the claim of *A* here would not have been a debt against the estate, even if the decedent had fully performed his contract and made this provision in his will. *A* would have been a legatee, and creditors would have taken precedence over him in their claims against the estate. This shows that Judge Kenna thought that a distinction should be made as to claims for money against an estate, even though arising from a contract if a party claims recognition as a legatee.

Thus it appears that Judge Kenna's position has not changed as to the nature of the jurisdiction of commissioners of accounts. His dissenting opinion in the principal case[10] is seemingly in line with the earlier cases. One must keep in mind that the dissent distinguishes judicial powers exercisable by courts of general jurisdiction, as controversies over claims for torts or damages for breach of contract (issues collateral to settlement of an estate), and powers to determine certain judicial questions that are an indispensable incident in matters of probate and settlement. Thus though county courts could not entertain a proceeding instituted for the purpose of construing a will because such is ordinarily

[6] Garden v. Riley, 116 W. Va. 723, 733, 183 S. E. 46 (1935).
[7] Keeley v. Riley, 116 W. Va. 677, 681, 183 S. E. 43 (1935).
[8] W. VA. CODE (Michie, 1937) c. 44, art. 2, § 1.
[9] *In re* Gilbert's Estate, 115 W. Va. 599, 177 S. E. 529 (1934), a daughter of the decedent filed a claim against the estate of her father for services rendered and support furnished. There was no express contract but the commissioner allowed the claim. The county court approved the finding of the commissioner, but the circuit court dismissed the claim. The supreme court reversed the circuit court and reinstated the claim. This claim was recognized as one arising out of an implied contract.
[10] 12 S. E. (2d) 514 (W. Va. 1940).

thought to be entertainable only by a court of general jurisdiction; yet it would seem reasonable that, since the statute provides that the commissioner of accounts shall determine "the amount of the respective shares of the legatees and distributees,"[11] the commissioner could incidentally construe the will to the extent of determining what parties were legatees and distributees.

If the intent of the statutory provisions was to furnish a modern and expeditious means for the settlement of decedents' estates, such intent can only be fulfilled by holding that county courts and commissioners of accounts, in passing on matters affecting the final settlement of decedents' estates, as an indispensable incident of that duty are empowered to exercise certain incidental judicial powers, in order that such settlement of the estate may be made final so that personal representatives and their bondsmen may be discharged from their legal duties and be released from their conditional obligations. The exercise of such incidental judicial powers by probate courts and their statutory adjunct would continue to be subject, of course, to the chancery and appellate jurisdiction of circuit courts.

P. J. O'F.

AUTOMOBILES — THE FAMILY PURPOSE DOCTRINE — LIABILITY OF OWNER FOR NEGLIGENT OPERATION BY GUEST OF SON. — *D* permitted *B*, his son, to operate the family car. *B* in turn, requested *X*, his guest, to drive, who, by his negligence, caused injury to *P*, a passenger and guest therein. *P* alleged that *B* was the agent of *D* and that, when *X* was requested and permitted by *B* to operate the automobile, *X* became the agent of both D and B, by reason whereof liability for the injuries sustained by *P* attached to *D*. *Held*, on demurrer, that *P's* declaration states a cause of action against *D* under the family purpose doctrine. *Eagon v. Woolard.*[1]

The holding in the principal case is a startling extension of the family purpose doctrine beyond its early application. The doctrine arose as a rule of convenience rather than as a logical rule of law. Early the courts recognized the automobile as a dangerous instrumentality and the resulting necessity for fixing liabliity upon one financially responsible. To accomplish this desirable result the courts distorted the principles of agency law into the family

[11] W. VA. CODE (Michie, 1937) c. 44, art. 2, § 1.

[1] 11 S. E. (2d) 275 (W. Va. 1940).