Florida Law Review

Volume 1 | Issue 1 Article 1

March 2021

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University of Florida Law Review

Vol. I SPRING, 1948 No. 1

PROBATE CLAIMS IN FLORIDA

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In any system of probate administration the handling and treatment of claims is of prime concern to personal representatives, creditors and the next of kin, heirs or legatees or devisees or those who may seek to claim through or under them by purchase or otherwise. A compact, closely knit and well thought out group of sections of the Florida Probate Law deals with most aspects of the problem in a reasonably complete manner.[1] These sections, as well as the other parts of the Probate Law, reflect considerable thought and study by the Probate Law Committee of the Florida State Bar Association. They manifest a clear policy and purpose to facilitate and effectuate a speedy settlement of estates in so far as such goal can be accomplished with fairness and justice towards all.[2] Pursuit of the statutory procedure enables the personal representative within a reasonable time to ascertain what demands or debts are due and whether the estate is solvent or insolvent. Creditors know how to proceed to secure satisfaction of their claims and distributees can become informed as to the propriety of insisting on distribution.[3]

I. NOTICE TO CREDITORS

The initial step with reference to claims is a published or posted notice to creditors.[4] Every personal representative comes under a mandatory obligation to see that this step is taken promptly after the taking out of letters testamentary or of administration. A curator appointed

[1] FLA. STAT. 1941, §§733.15-733.21 and 734.29 (Supp. 1945).

[2] State Bank of Orlando and Trust Co. v. Macy, 101 Fla. 140, 133 So. 876 (1931).

[3] State *ex rel.* Courtney v. Harrison, 145 Fla. 727, 200 So. 345 (1941); Smith v. Fechheimer, 124 Fla. 757, 169 So. 395 (1936); Remseyer v. Datson, 120 Fla. 414, 162 So. 904 (1935).

[4] FLA. STAT. 1941, §733.15 (Supp. 1945).

under Florida Statutes 1941, §732.21 is probably not subject to this duty simply by virtue of his appointment. It would seem, however, that he should apply to the court for authority to publish notice where it appears that there may be long delay in the appointment of a personal representative.[5]

First publication (or posting) of the notice starts the running of the time within which creditors must file their claims.[6] Failure to give notice, on the other hand, prevents the nonclaim period from becoming operative, but as shown later claims may nevertheless become barred by other time limitations. If they know of the death of their debtor, therefore, claimants should be desirous of filing their claims although no notice has been published. This they have a clear right to do as nothing in the statute makes publication of notice a condition precedent to the right to file proof on a claim. Failure to publish notice merely makes the need for filing a claim less urgent or imperative.[7]

Selection of the newspaper to be used for publication is left in some measure to the good judgment of the personal representative. No court order designating the paper to be used is required as it is for notices published under the constructive service act.[8] Florida Statutes 1941, §733.15 makes reference to "a newspaper published in the county wherein said letters have been granted," but subsequent language makes it clear that the newspaper must satisfy the general legal requirements for papers used for the publication of legal notices.[9] However, any person claiming that an improper or unauthorized paper was used must demonstrate that fact.[10]

Early statutes required the publication to be once a week for eight weeks.[11] The present requirement is "once a week for four consecutive weeks, four publications being sufficient." This latter language is suggestive that failure to have the publications consecutive or spaced one week apart may not be fatal so long as there are four of them.

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[5]For a demonstration of the desirability of having the curator take this step see Berger v. Jackson, 156 Fla. 768, 23 So.2d 265 (1945).

[6]Ellison v. Allen, 8 Fla. 206 (1858).

[7]Berger v. Jackson, 156 Fla. 23 So.2d 265 (1945).

[8]See FLA. STAT. 1941, c. 48.

[9]See FLA. STAT. 1941, §§49.01, 49.03.

[10]Bush v. Adams, 25 Fla. 809, 6 So. 860 (1889).

[11]Florida Laws, Act of Nov. 20, 1828, §§3 and 28; FLA. REV. GEN. STAT. 1920,

As to its form and contents the notice is to notify "all persons having claims or demands against the estate of the decedent to file their claims in the office of the county judge granting such letters, at his office in the courthouse of said county within eight calendar months from the time of the first publication of said notice."[12] Minor deviations or omissions in the content should not deprive a notice of its effectiveness,[13] and a creditor cannot question the sufficiency of the notice as to a class of claimants to which he does not belong,[14] but it would appear unwise to purposely deviate from the form normally accepted and used.[15]

Posting can be used only if no newspaper conforming to the requirements of law is published in the county of the administration. The requirements as to posting appear to be governed by Florida Statutes 1941, §732.09(7)(b) which provides for posting a true copy of the notice at the courthouse and a true copy at each of two other places in the county to be prescribed by the county judge.

Proof of publication or posting is to be filed with and recorded by the county judge. Section 733.15 is silent as to how such proof is to be made. However, section 732.09(7)(c) provides generally that proof of publication or posting shall be by affidavit and it is obviously contemplated that where publication is in a newspaper the uniform affidavit elsewhere prescribed for publishers shall be used.[16]

II. Proof or Filing

Death of his debtor presents the creditor or claimant with the question of how and when to proceed to get satisfaction of his claim from the estate. The present Probate Law allows the average creditor some choice provided he acts within the proper time after the first

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§3732; Fla. Comp. Gen. Laws 1927, §§5597 and 5598.

[12]Fla. Stat. 1941, 733.15 (Supp. 1945).

[13]*See* Fillyau v. Laverty, 3 Fla. 72 (1850) where a notice to "all persons" to present claims was held sufficient although the statute provided notice should be to "all creditors, legatees, and persons entitled to distribution."

[14]Penn. Rubber Co. v. Reel, 148 Fla. 193, 3 So.2d 872 (1941).

[15]See form in Redfearn, Wills and Administration of Estates in Florida 836, Form 53 (2d ed. 1946). Even this form, which is widely accepted and used, deviates slightly from the statutory language in that it is directed to "creditors" rather than to "all persons having claims or demands."

[16]See Fla. Stat. 1941, §49.05.

publication of notice to creditors.[17] If his claim is unsecured, and he has not started or does not wish to start suit, the claimant's proper course is to file sworn proof of his claim in the office of the county judge granting the letters. In most instances, if the claim is of unquestioned validity, this is the preferred procedure since, if the estate is solvent, it will usually result in payment as a matter of course without the expense and trouble of suit. As a matter of fact, prior to the 1947 Legislature, the only way most claimants could have their claims treated as valid and binding upon the estate, the personal representative and the heirs, legatees, or devisees was by filing a proper proof of claim within eight months after the first publication of notice to creditors.[18] Suit might have been brought after proof of claim was filed but not before. A suit within the period for filing claims, but without having filed the claim on which suit was brought was of no avail to the claimant.[19] And the fact that claimant had an action pending against decedent at the time of the latter's death did not excuse him from complying with the nonclaim statute.[20]

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[17]FLA. STAT. 1941, 733.16 (Supp. 1945) as amended by Florida Laws 1947, c. 23970, §1.

[18]American Surety Co. of N. Y. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942); Smith v. Fechheimer, 124 Fla. 757, 169 So. 395 (1936).

[19]Jones v. Allen, 134 Fla. 751, 184 So. 651 (1938); Smith v. Fechheimer, 124 Fla. 757, 169 So. 395 (1936); A. R. Douglas, Inc., v. McRainey, 102 Fla. 1141, 137 So. 157 (1931).

[20]*Under earlier statutes*: *Anderson v. Agneu,* 38 Fla. 30, 20 So. 766 (1896) held that a proper suggestion of the death of a defendant, and prayer that his executor be made party defendant, when filed within time limited for presentation of claims is equivalent to and dispenses with actual presentation of claim upon which suit was brought. *Ellison v. Allen,* 8 Fla. 206 (1858) held that when a defendant dies after service of process in a suit against him, and the plaintiff within time limited for filing claims obtains an order of scire facias to make the personal representative a party, the order is equivalent to and dispenses with actual presentation even if the scire facias is never served. *Schilling v. Biggs,* 108 Fla. 351, 146 So. 559 (1933) held that when a suit has been brought to enforce a mechanic's lien again owner of property, and owner dies pending the suit, an order reviving the suit against personal representative and the heirs of deceased is equivalent to and dispenses with the filing of a claim, where initial steps for revivor are taken within period of presentation. *Bush v. Adams,* 22 Fla. 177 (1886) held that mere pendency of a suit to foreclose did not amount to a presentation of the claim and that the revivor of a suit against personal representative after nonclaim statute has run did not constitute a legal presentation, there being no effort to revive suit during period for presenting claims.

Recent amendments by the 1947 Legislature[21] expressly permit a claimant to bring suit against the personal representative without filing proof in the county judge's court if suit is filed and service of process had upon the personal representative within eight months from the time of the first publication of notice to creditors. Evidently no proof of claim need be filed on any judgment so recovered,[22] but a claimant who brings suit rather than filing his claim is precluded from recovering costs or attorneys fees. Furthermore, a judgment so recovered is accorded no priority rights on payment and is nonenforcible by levy of execution. Recovery of judgment against the representative merely determines the merits of the claim and avoids the necessity for filing.[23]

The benefits of the 1947 amendments are extended to suits pending against the personal representative of an estate unclosed at the time the amendments became effective if process has been served upon the personal representative within the eight month period.

Time for filing. It is thus apparent that, unless he is excepted, claimant must act either by filing his claim, or by having a suit filed and process served on the personal representative, within eight months from the time of the first publication of notice to creditors. If he lets this time expire without taking proper action his claim becomes void and unenforcible against the personal representative, the estate or distributees,[24] although the personal representative has filed no objection.[25] A claim thus barred will not be sustained simply because of the hardship or equities involved.[26]

The time period allowed to creditors, from the first publication of notice to creditors, has been shortened by degrees from two years to the present time of eight months. Such time starts to run, not from the date of filing proof of publication, but from the date of first publication

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[21]Florida Laws 1947, c. 23716, §2, FLA. STAT. ANN. §735.04.

[22]FLA. STAT. 1941, §733.19 (Supp. 1945) requires claims to be filed on all judgments against the decedent.

[23]See FLA. STAT. 1941, §733.19 (Supp. 1945).

[24]American Surety Co. of N. Y. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942); Bendenbaugh v. Lawrence, 141 Fla. 341, 193 So. 74 (1940). If a claim is once barred by expiration of the nonclaim period of repeal of the nonclaim statute does not revive the claim. Bradford v. Shine, 13 Fla. 393 (1869-71).

[25]*In re* Wood's Estate, 133 Fla. 730, 183 So. 10 (1938).

[26]*Ibid.*, the nonclaim statute will be strictly enforced, and failure to file claim as required will render claim void, notwithstanding the hardship or equities involved.

of notice to creditors.[27] Special time limitations on filing or suing on claims against an estate will, of course, operate as a bar although the general statute of limitations has not run.[28] The underlying purpose and policy has been to facilitate and speed the administration and closing of estates. This course of action by the legislature has been held not to infringe the provisions of the Florida or United States Constitutions.[29]

As already indicated if notice to creditors is not published or posted the eight months limitation does not come into operation. Time limitations upon the pursuit or enforcement of claims must be found elsewhere. Other limitations are to be found in the general statutes of limitations[30] and section 734.29 of the Probate Law.

If the applicable statute of limitations has already run in favor of a debtor at the time of his death that is, of course, a matter of defense that can be raised by way of objection to the claim or otherwise.[31] Another problem is presented, however, if the statute has not fully run at the time of the debtor's death. Does the statute keep on running so that the creditor may be barred thereby even within the nonclaim period? Or does the death of the debtor suspend or interrupt the running of the statute and, if so, for how long? The treatment of these and related problems varies from state to state.[32] In Florida the matter appears to be covered by section 734.28 of the Probate Law which provides:

> "If a person against whom a cause of action exists dies before the expiration of the time limited for commencement thereof and the cause of action survives, claim shall be filed thereon and like proceedings had as in the case of other claims against the estate."

This provision seems to suspend the running of the statute of limitations and allows the claimant the full eight months period of the nonclaim statute in which to file even though but for the death of the debtor he would have been sooner barred by the general statute of limitations,[33] and, of course, the actual filing of a claim (or presenta-

[27]Brooks v. Fed. Land Bank, 106 Fla. 412, 143 So. 749 (1932).

[28]Inman v. Davis, 125 Fla. 298, 169 So. 741 (1936).

[29]*In re* Wood's Estate, 133 Fla. 730, 183 So. 10 (1938).

[30]FLA. STAT. 1941, c. 95.

[31]Perry v. Reichert, 113 Fla. 125, 151 So. 403 (1933); Sanderson's Adm'rs v. Thomas, 17 Fla. 468 (1880) (administrator may be charged with amount he pays on barred debt).

[32]WOOD, LIMITATIONS §194 (1916); Note, 22 IOWA L. REV.. 557 (1937).

[33]Smith v. Pattishall, 127 Fla. 474, 173 So. 355 (1937). See *Anderson's Adm'rs v. Thomas*, 17 Fla. 468 (1880) holding under early law that if a person against whom

tion when that was the proper course) suspends the running of the general statute of limitations against it.[34] If the cause of action does not accrue until after the death of the person against whom it lies, the statute of limitations does not start to run until a personal representative is appointed.[35]

A question not so readily answered is: what happens if there is no administration or if no notice to creditors is published or posted? The language is suggestive of the thought that the claimant would have three additional years from the death of the debtor:

> "After three years from the death of a person his estate shall not be liable upon any obligation or cause of action if (a) no letters testamentary or of administration have been taken out within said three years, or if (b) letters testamentary or of administration were taken out in Florida within said three years but no proof of publication of notice to creditors was filed in the office of the county judge as provided by law."[36]

It has been held notwithstanding this section that the lapse of three years from the death of the decedent does not bar a creditor who has not filed within that time where during the entirety of the time the estate was in the hands of a curator because of a will contest and the creditor did file within eight months after publication of notice by an executor later appointed.[37]

Place or person where or with whom claim to be filed. Proofs of claims are required to be filed in the office of the county judge granting the letters.[38] This requirement is explicit and designed to get away from the evils of the former practice of making presentment to the personal

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an action may be brought dies before expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators after expiration of that time, and within one year after issuing letters.

[34]Ramsyer v. Datson, 120 Fla. 414, 162 So. 904 (1935); Barnes v. Scott, 29 Fla. 285, 11 So. 48 (1892); Deans v. Wilcoxin, 25 Fla. 980, 7 So. 163 (1889); Sanderson's Adm'rs v. Sanderson, 17 Fla. 820 (1880).

[35]Berger v. Jackson, 156 Fla. 768, 23 So.2d 265 (1945).

[36]FLA. STAT. 1941, §734.29 (Supp. 1945).

[37]Berger v. Jackson, 156 Fla. 768, 23 So.2d 265 (1945).

[38]FLA. STAT. 1941, §733.16 (Supp. 1945).

representative.[39] Filing in court is more satisfactory from the standpoint of all concerned. The creditor is protected by having his claim made a matter of official record. Other persons interested in the estate can scrutinize the claim with a view to making objections. Therefore, although creditors often desire to make presentment of their claims to the personal representative, the latter should insist that the proofs be filed in court. If, however, the personal representative requests that the claim be filed with him or accepts it without objection he may be estopped from thereafter objecting on the ground that it was not filed in the office of the county judge.[40] But if the personal representative refuses to accept the claim or insists that it be filed in the office of the county judge then that is the course the claimant must follow.[41]

Persons and types of claims covered. Nearly all classes of claimants and claims are covered by the present nonclaim provisions of the Florida Probate Law. These provisions have been steadily broadened until they are more comprehensive in coverage than those existing in many states. Exceptions serve but to delay and confuse the settlement of estates.

Only two express exclusions appear in section 733.16. The lien of a duly recorded mortgage or of any person in possession of personal property may be enforced although no claim is filed. But this is a very narrow exception since any personal or deficiency liability of the estate is barred by the failure of the secured creditor to file his claim.[42] Also there was a time in the history of the nonclaim statute when it would operate to bar even the enforcement of the lien of a secured creditor.[43] A somewhat related problem arose where a deceased mortgagee has agreed to cancel the mortgage in return for board and lodging supplied by the mortgagor. It was held that the mortgagor might assert

[39]Prior to 1925 claims were to be presented to the personal representative. FLA. REV. GEN. STAT. §3739. Under such requirement it was held that presentment to one representative was sufficient. If this was done presentment did not have to be made to another or successor representative. Barnes v. Scott, 29 Fla. 285, 11 So. 48 (1892); McHardy v. McHardy's Ex'r, 7 Fla. 301 (1857). But the presentment had to follow some definite course. State Bank of Orlando & Trust Co. v. Macy, 101 Fla. 140, 133 So. 876 (1931).

[40]Ramseyer v. Datson, 120 Fla. 414, 162 So. 904 (1935); State Bank of Orlando & Trust Co. v. Macy, 101 Fla. 140, 133 So. 876 (1931).

[41]Ramseyer v. Datson, 120 Fla. 414, 162 So. 904 (1935).

[42]*In re* Comstock's Estate, 143 Fla. 500, 197 So. 121 (1940); Clark v. Fullerton, 130 Fla. 150, 177 So. 851 (1937).

[43]Fremd v. Hogg, 68 Fla. 331, 67 So. 75 (1914); Bush v. Adams, 22 Fla. 177 (1886).

his right to have the mortgage cancelled although he had filed no claim on the agreement against the estate of the deceased mortgagee.[44]

It has likewise been made explicit in accordance with long existing policy,[45] that legatees, devisees or heirs need not file a claim for the interest or share to which they may be entitled. This limitation has been the source of contentions by creditors that they are not within the nonclaim statute where there is a will directing the payment of debts. Contentions of this sort have caused many careful draftsmen to advocate the elimination or omission from wills of the time honored clause directing the payment of debts.[46] In so far as Florida is concerned this would seem to be an unnecessary precaution since our Supreme Court has ruled that creditors do not escape the nonclaim statute because of a will clause of the type just mentioned.[47]

A third limitation which seems apparent, although it is not made explicit, is that the requirement as to filing does not apply to obligations and expenses incurred by the personal representative in the course of administering the estate. After all such obligations may not even come into existence until after the eight months period for filing has expired.[48] The personal representative may properly pay these items and seek credit or reimbursement on his accounts.

A fourth exception which has been engrafted by decision against the terms of the statute is that the United States Government cannot be barred by its failure to file its claims against the estate of a Florida decedent.[49]

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[44]Starke v. Pfender, 146 Fla. 262, 200 So. 850 (1941).

[45]*See* Haydon v. Weltmer, 137 Fla. 130, 187 So. 772 (1939); Amos. v. Campbell, 9 Fla. 187 (1860).

[46]See LEFEVER, CHECK LIST FOR WILL DRAFTING 15, *Trusts and Estates*, (July 1947).

[47]*In re* Comstock's Estate, 143 Fla. 500, 197 So. 121 (1940); Marshall Lodge No. 39 A. F. & A. M. v. Wodson, 139 Fla. 579, 190 So. 749 (1939).

[48]See FLA. STAT. 1941, §734.01 (Supp. 1945) which provides, without any requirement of filing, that the personal representative shall be allowed all necessary expenses and attorney's fees paid in the care, management and settlement of the estate. See Miller v. Monroe, 50 Idaho 726, 300 Pac. 362 (1931) (for case holding that nonclaim statute does not apply to claims for administration expenses, such as attorney's fees).

[49]United States v. Summerlin, 310 U. S. 414 (1940) (claim assigned to the Federal Housing Administrator acting on behalf of the United States); United States v. Casey, 143 Fla. 715, 197 So. 445 (1940). A county judge's order which goes beyond the jurisdiction of the county judge's court and purports to adjudge a claim of the United States void as a claim against estate of deceased because of failure of the United States to comply with COMP. GEN. LAW SUPP. §5541 (92) (FLA. STAT. 1941,

Matter which is merely defensive, such as payment or cancellation, to a cause of action held by an estate may be asserted although no claim has been filed on account of such defensive matter.[50]

Apart from these restrictions the filing requirement applies broadly to all claimants, including non-residents, infants, and incompetents. There is no tolling of the bar for favored groups.[51] Even the personal representative must file his claim, and with reference thereto an administrator ad litem must be appointed to represent the estate.[52] However, if interested parties file objections then no administrator ad litem is needed.[53] Claims for reimbursement for expense of administration should be taken and claimed by the representative in his accounts and need not be filed.

Equally as broad is the coverage with respect to types or classes of claims. Decisions, based on earlier statutes, are to be found, which have exempted from the filing requirement claims for property in the hands of the decedent as trustee, bailee, or guardian,[54] and contingent

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§733.16) is erroneous. United States v. Embrey, 145 Fla. 277, 199 So. 41 (1940). Seemingly overruled are earlier state cases holding federal agencies barred by the nonclaim statute. Brooks v. Fed. Land Bank of Columbia, 106 Fla. 412, 143 So. 749 (1932).

In *United States v. Summerlin, supra,* the court said: "The question whether a further defense of *plene administravit* was good, that is, whether a distribution of surplus assets, after the payment of all known debts, among the heirs, either voluntary or under a probate decree, would protect the administrator from suit by the United States is a question not necessary to decide." *Quaere,* does this mean that the plea of *plene administravit* might completely bar a claim of the United States or just bar suit against the personal representative, leaving the United States free to pursue assets in the hands of distributees for satisfaction of the claim?

See *Probate Committee Report,* 15 FLA. L. J. 138 (1941). This committee, referring to the cases of *United States v. Summerlin, supra,* and *United States v. Embrey, supra,* recommends a congressional act requiring personal representatives to notify the Government of the death of the debtor and appointment of the personal representative and then require the United States Government and its agencies to file claims as other creditors or be barred.

[50]Starke v. Pfender, 146 Fla. 262, 200 So. 850 (1941).

[51]Brooks v. Fed. Land Bank of Columbia, 106 Fla. 412, 143 So. 749 (1932).

[52]See FLA. STAT. 1941, §732.55 (Supp. 1945), Shambow v. Shambow, 149 Fla. 278, 5 So.2d 454 (1942). The earlier law permitted the personal representative of a solvent estate to retain sufficient of the assets to satisfy a debt to him although no claim was presented. Sanderson's Adm'rs v. Sanderson, 17 Fla. 820 (1880).

[53]Shambow v. Shambow, 149 Fla. 728, 5 So.2d 454 (1942).

[54]Cooey v. Cooey, 132 Fla. 716, 182 So. 202 (1938); Tibbets Corner Inc. v. Arnold, 108 Fla. 239, 146 So. 218 (1933); Bourne v. State Bank of Orlando & Trust Co., 106

claims.[55] All such holdings and restrictions appear to be swept aside by the legislative language which refers to any "claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent" and any "cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission." The Supreme Court has shown a tendency to give this language full play. Contingent claims for which no proofs have been filed within the eight months period have been held barred although the contingency might never happen and it was impossible to determine with any degree of satisfaction the amount for which the claimant should prove and how his claim should be paid or handled by the personal representative.[56] Tort claims for personal injuries caused by the deceased must be filed,[57] and where the injured person has brought his action, and the eight months period does not expire until after issue is joined, the personal representative may raise the bar by an additional plea filed thereafter.[58] Claims on judgments obtained against the decedent during his lifetime must be filed as other claims or the benefit of the lien will be lost.[59]

Fla. 46, 142 So. 810 (1932); Bloxham v. Crane, 19 Fla. 163 (1882); McDonald v. Bogue, 14 Fla. 363 (1874).

[55]Gibson v. Mitchell, 16 Fla. 519 (1878) (claim for contribution against co-surety); May v. Mann, 15 Fla. 553 (1876) (claim for contribution against co-surety). But debts which were absolute but merely not yet due were covered. Fillyau v. Laverty, 3 Fla. 72 (1850).

[56]Fowler v. Hartridge, 156 Fla. 585, 24 So.2d 306 (1945) obligation to pay future rent); American Surety Co. of N. Y. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942) (claim against a decedent for breach of a replevin bond on which he was surety); Bedenbaugh v. Lawrence, 141 Fla. 341, 193 So. 74 (1940).

A contingent claim is one where the liability depends upon some future event, which may or may not happen, which renders it uncertain whether there ever will be a liability. American Surety Co. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942).

[57]Jones v. Allen, 134 Fla. 751, 184 So. 651 (1938).

[58]*Ibid.*

[59] FLA. STAT. 1941, §733.19 (Supp. 1945), Gilpen v. Bower, 152 Fla. 733, 12 So. 2d 884 (1943); Cumberland & Liberty Mills v. Keggin, 139 Fla. 133, 190 So. 492 (1939); *see* Union Bank of Fla. v. Powell's Heirs, 3 Fla. 175 (1850) decided under the Act of Nov. 1828 which required an action upon a judgment to be brought within

Form and contents of proof or claim. Florida's early nonclaim statutes requiring "presentment" of a claim were not very rigid as to the precise form the proof or presentment had to take, although it was held that there must be some overt act of proof or presentment by the creditor, and that mere knowledge of the claim by the personal representative was not enough.[60] Section 733.16 of the present Probate Law provides that the claim or demand "shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant or his attorney." This provision gives some detail as to the form and content of the proof of claim as to formal matters but is patently silent as to the way in which the substance of the claim or cause of action should be described, stated or pleaded. Will any method of statement suffice or must the proof so set forth the claim that all the technical requirements for pleading a cause of action are satisfied?

Reflection will show that to insist upon the technical requirements of pleading would in many instances defeat the purposes of the claim procedure. Creditors are expected in many instances to represent themselves and obviously a good cause of action cannot be stated on a claim not due or a contingent claim with respect to which the contingency has not yet occurred. It is not surprising therefore that the general approach has been to treat proofs of claims in probate with considerable liberality and not to insist upon the technical requirements of good pleading.[61] This appears to be the attitude of the Florida Supreme Court. Thus it has held a claim on a lost note sufficient although no copy was attached and no allegation of the loss was made.[62] And it has been held that good faith substantial compliance by the

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five years from qualification of the personal representative; *Report of Committee on Probate and Guardianship,* 21 FLA. L. J. 69 (1947), "A majority of the Committee look with disfavor on the proposal to include 'duly recorded judgments' as an exception to the operation of the statute of nonclaim. It is felt that if a judgment creditor does not file his claim within eight months after the first publication of notice to creditors, he should not be entitled to an in rem preference against any of the estate assets any more than a general creditor who failed to file his claim during such period. It is believed the law in this respect should remain as it is."

[60]Schilling v. Biggs, 108 Fla. 351, 146 So. 559 (1933); State Bank of Orlando & Trust Co. v. Macy, 101 Fla. 140, 133 So. 876 (1931); Fillyau v. Laverty, 3 Fla. 22 (1850).

[61]See Note, 74 A. L. R. 368 (1931).

[62]Fields v. Fields, 140 Fla. 269, 191 So. 512 (1939).

creditor is all that can be expected.[63] If the personal representative, or other interested person, regards the substance of the claim insufficiently stated it would seem that he should object on that score and give the claimant opportunity to amend or otherwise have the objection deemed waived.[64]

Amendments to correct defects in form, such as a failure to state the residence and post office address of the claimant, can be freely allowed by the county judge in view of Florida Statutes 1941, §733.17 which provides that if a bona fide attempt is made to file a claim by any creditor or other claimant and same is defective as to form, the county judge, in his discretion, may permit the amendment of such claim at any time before payment.[65] Apart from this it is proper for the county judge to permit a claimant to amend, even after the nonclaim period has expired, to satisfy the personal representative's request for a more specific statement, so long as an entirely new claim is not stated and there is no increase in the amount claimed.[66] But an amendment which states an entirely new or different claim is not permissible.[67]

Waiver. Numerous cases, decided on the basis of the law as it existed prior to the 1933 Probate Law, held that the personal representative could waive or dispense with the necessity for filing a claim, either expressly, or by some act such as payment of interest or part of the principal,[68] although mere knowledge by the personal representative of

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[63]American Surety Co. of N. Y. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942).

[64]*See* Pietrantonio v. Tonn's Estate, 278 Mich. 535, 270 N. W. 777 (1936).

[65]*In re* Jeffries' Estate, 136 Fla. 410, 181 So. 833 (1938).

[66]Black v. Walker, 140 Fla. 48, 191 So. 25 (1939).

[67]Thompson v. Harris, 150 Fla. 471, 7 So.2d 854 (1942).

[68]Marshall Lodge No. 39, A. F. & A. M., v. Woodson, 139 Fla. 579, 190 So. 749 (1939); State Bank of Orlando & Trust Co. v. Macy, 101 Fla. 140, 133 So. 876 (1931); Tucker v. First Nat. Bank of Lakeland, 98 Fla. 914, 124 So. 464 (1929); Miller v. Crosby, 68 Fla. 365, 67 So. 76 (1914); Fremd v. Hogg, 68 Fla. 331, 67 So. 75 (1914). Compare *Jefferson Standard Life Ins. Co. v. Estate of Jose Lovera Inc.,* 125 Fla. 682, 171 So. 512 (1936) where it was held that the payment of interest on the principal debt, secured by a mortgage, made by personal representative during the statutory period for filing claims, is not sufficient to constitute waiver, as it is consistent with the recognition of the mortgage as an enforceable lien only, and such payment alone will not waive claim so as to support a deficiency decree, and *Clark v. Fullerton,* 130 Fla. 150, 177 So. 851 (1937) (to the same effect). In *Marshall Lodge No. 39, A. F. & A. M. v. Woodson, supra,* the court tried to reconcile the earlier cases by explaining that if the evidence clearly shows that payment of interest on the principal of the mortgage debt had been made by the personal representative in recognition of the validity of the debt as a whole, and was not made for the purpose of deferring fore-

the existence of a claim would not make out a case of waiver.[69] Any such doctrine of waiver tends to defeat in good measure the purpose of the nonclaim statute in so far as it seeks to command that all claims be made a matter of public record so that all persons interested in the estate, not just the personal representative, can file objections and become fully informed as to the indebtedness of the estate. It is not surprising therefore that the doctrine of waiver has been rejected by the present Probate Law (Florida Statutes 1941, §733.16) which provides that any claim not filed within the required period shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise. Notwithstanding this provision it has been held that fraud practiced by the personal representative upon the claimant may estop the personal representative from pleading the nonclaim statute.[70]

III. Objections and Adjudication

A personal representative or any person interested in the estate may object to a claim which has been filed.[71] In fact the personal representative would appear to be under a duty to scrutinize the filed claims carefully and interpose any apparent and proper grounds of objection.[72]

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closure proceedings to enforce the lien of the mortgage, such payment "might have dispensed with presentation of the mortgage claim within the nonclaim period, with the result that a deficiency decree against the estate would be upheld even if no claim were filed."

In *Fowler v. Hartridge,* 156 Fla. 585, 24 So.2d 306 (1945) a waiver was claimed because a corporation was formed to carry on the business of the estate and the corporation paid rent to the claimant. The court held there was no waiver because claimant had notice of demise of deceased and notice of corporation's existence and its ownership of the lease by assignment. The corporation was a distinct entity, and its actions are not imputed to the personal representative in the absence of fraud.

[69]State Bank of Orlando & Trust Co. v. Macy, 101 Fla. 140, 133 So. 876 (1931).

[70]Adams v. Hackensack Trust Co., 156 Fla. 30, 22 So.2d 392 (1945) (where claimant was induced to believe that decedent had died domiciled in New York and that the claim was properly filed there, and did not discover until after nonclaim period had expired that although deceased had died in New York he was a resident of Florida where the estate was being probated. The case, however, is none too convincing since it relies heavily on general authorities and early Florida cases, and does not adequately dispose of the language now appearing in the Probate Law. *Cf.* Fowler v. Hartridge, 156 Fla. 585, 24 So.2d 306 (1945); American Surety Co. of N. Y. v. Murphy, 151 Fla. 151, 9 So.2d 355 (1942).

[71]Fla. Stat. 1941, §733.18 (Supp. 1945).

[72]Sanderson's Adm'rs v. Sanderson, 17 Fla. 820 (1880).

Evidently unfiled claims which have been reduced to judgment against the personal representative would not be subject to the objection procedure. But since such judgments cannot be enforced by execution the recourse of the claimant would appear to be a petition in the county judge's court to compel payment to which the only likely defenses would be a deficiency of assets or that the time for payment had not yet arrived.

Objections are to be in writing and to be filed on or before the expiration of ten calendar months from the first publication of notice to creditors, unless the county judge, for good cause shown, extends the time for filing objections as he is permitted to do.

Beyond this there is little in the Probate Law as to the form and content of objections. Verification is not required and there is no reason to suppose that the formalities of a plea or answer in a suit at law or in equity must be observed. At the same time the conclusion is inescapable that the objection must set forth some good reason or ground for denying recognition to, or refusing to pay, the claim. That the proof of claim is in improprer form, that it does not sufficiently state the claim, or that it is filed too late, are all good grounds of objection unrelated to the merits of the claim. An objection going to the merits of the claim could seemingly be asserted on the basis of any matter that could be raised as a defense if the claim were being sued on. A claimant who has filed a claim may bring suit thereon immediately against the personal representative but if he does so within eight months from the granting of letters and no objection has been filed he cannot recover any costs of suit or attorneys fees.[73] After the eight months he can evidently sue and recover costs and attorneys fees even though no objections have been filed.

The procedure to be followed in obtaining an adjudication on questions presented by an objection to a claim is a matter which has been left in a somewhat unsettled state. The Florida Probate Law does not in terms grant to the county judge's court the power to allow and disallow claims. Indeed the plain intent of the Probate Law is to have questions pertaining to the validity of claims adjudicated in the court which would normally have jurisdiction to entertain a suit on the claim.[74]

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[73]Cooper v. Livingston, 19 Fla. 684 (1883).

[74]See Rogers, *Memorandum of the Deliberation of the Conference of Bar Delegates*, 6 FLA. L. J. 314 (1932) where it is said: "This section (*now* 733.18— Payment of and objection to Claims) was regarded as too inelastic. More time was suggested for the

Florida Statutes 1941, §733.18 provides that if objection is filed to a claim, claimant shall have twelve calendar months from the first publication of notice to creditors in which to bring appropriate suit, action or proceeding upon such claim, or if the person filing the objection serves a copy thereof on the creditor (and the personal representative if he is not the objector) the claimant's right to sue is limited to two calendar months from the date of service.[75] The time may be extended by the county judge for good cause shown upon application for which due notice is given.[76] Because of this power of the county judge it has been said that the time requirements as to filing objections and bringing suit thereafter are rules of judicial procedure rather than mandatory statutes of limitation;[77] and it has been held that the county judge may grant an extension even after the time limitation has expired. [78] A suit previously brought against decedent during his lifetime on a claim which has been filed and objected to may be revived against the personal representative within the time allowed for bringing

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bringing of suit upon a claim objected to. It was suggested that the bankruptcy rule be made applicable, allowing a personal representative to object to a claim at any time before payment, and that thereafter reasonable time be given for the liquidation of claim of suit. . . . We have a different situation under our statute as the bar delegates have heretofore decided and instructed us *not to provide for the county judge hearing and determining claims,* and most of the committee have the same view. Consequently we cannot exactly have an informal and an indefinite manner and time for objecting to claims and liquidating them. On the other hand, we must not make it so ironclad that eternal vigilance is required by the personal representative and claimant."

[75]*Committee Comment on Notice of Objection*: "Another proposal would require the personal representative or the court to give notice to a claimant upon the filing of any objection to his claim. It is believed that such notice should not be required by law. It is to be noted that under the present law, if the personal representative or other legally interested party wishes to shorten the usual period within which suit may be brought on a disputed claim (from the 12 months period following first publication of notice to creditors to a shorter period, depending upon when objection filed), he may do so only upon notice to the claimant by personal service or registered mail. In no case does a claimant have less than 60 days after objection filed within which to sue. It is submitted that the statute already affords reasonably adequate process of law and ample protection to all diligent creditors." *Report of Committee on Probate and Guardianship*, 21 FLA. L. J. 69 (1947).

[76]FLA. STAT. 1941, §733.18 (Supp. 1945).

[77]*In re* Jeffries' Estate, 136 Fla. 410, 181 So. 833 (1938).

[78]Atlantic Nat. Bank of Jacksonville v. Kirkwood, 152 Fla. 59, 10 So.2d 743 (1942); *In re* Jeffries' Estate, 136 Fla. 410, 181 So. 833 (1938).

a new suit.[79] Filing of an objection matures an unmatured claim so as to permit immediate suit thereon.[80] Claimant's right to sue is barred if he does not act within the time limited,[81] although a claimant's right to sue on a note is thus barred, this fact does not preclude him from foreclosing a mortgage securing the same.[82] Where a claim is amended after the time for filing suit, because of the personal representative's request for a more specific statement, and the personal representative rejects the claim, the claimant may still bring suit if he acts promptly.[83]

If one stopped with the provisions of this section of the probate law he would probably conclude the following: (1) That if no objection was filed to a claim within the time allowed, and no extension of such time obtained, the validity of the claim must be taken as conceded. (2) That if objection is filed within the time allowed, the same is not to be passed on in the county judge's court and that if claimant does not sue within the time allowed the claim in effect is denied and barred. (3) That if claimant after objection does sue within the time allowed and is unsuccessful his claim is defeated. (4) That if the claimant after objection sues within the time allowed and recovers judgment he is entitled to have the judgment considered and docketed as a valid claim without filing, but he cannot take out execution, and obtains no position of priority by virtue of the judgment.

But consideration must also be given to other provisions pertaining to the jurisdiction of the county judge's court and to the decisions of the Florida Supreme Court. Section 17 of Article V of the Florida Constitution gives the county judge jurisdiction of the settlement of the estates of decedents and to discharge the duties usually appertaining to courts of probate. Florida Statutes 1941, §732.01 provides that the county judge shall have jurisdiction of the administration, settlement, and distribution of estates of decedents, the probate of wills, the establishment of lost or destroyed wills, and granting of letters testamentary and of administration, and of all other matters usually pertaining to courts of probate. The county judge's court is not a court of general juris-

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[79]State *ex rel.* Courtney v. Harrison, 145 Fla. 727, 200 So. 345 (1941).
[80]FLA. STAT. 1941, §733.18 (Supp. 1945).
[81]State *ex rel.* Courtney v. Harrison, 145 Fla. 727, 200 So. 345 (1941).
[82]Baker v. Reconstruction Finance Corp., 109 F.2d 336 (C. C. A. 5th 1940).
[83]Black v. Walker, 140 Fla. 48, 191 So. 25 (1939).

diction,[84] and it may be necessary to resort to other courts to obtain relief which the county judge's court cannot grant.[85] Furthermore, the usual approach is to say that power to try and determine disputed claims is not a part of the normal jurisdiction of probate courts and must expressly be conferred upon them.[86]

Nonetheless the current attitude of the Supreme Court seems to be to permit the county judge to determine any question that is incidental to the administration of an estate,[87] or reasonably pertains thereto.[88] Statements have accordingly been made that the allowance and disallowance of claims are within the probate jurisdiction of the county judge.[89] Questions pertaining to the operation and application of the nonclaim statute,[90] and the priority of claims,[91] are within his jurisdiction.

In *Dill v. Stevens*,[92] it was held, but with a strong dissent, that where a claim is duly filed and not objected to within the time allowed for filing objections and the personal representative nevertheless denies the validity of the claim, the claimant is entitled to have the county judge determine the validity of the claim on a petition for order of payment. This case appears to run counter to the plan of Florida Statutes 1941, §733.18, both insofar as it indicates that the personal representative may question the validity of a claim without filing a proper and timely objection and that the validity of a claim on its merits is a matter for determination by the county judge.[93] If failure to file timely ob-

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[84]Krivitsky v. Nye, 155 Fla. 45, 19 So.2d 563 (1944); State *ex rel. West Drug* Stores v. Cornelius, 110 Fla. 299, 149 So. 332 (1933).

[85]Pournelle v. Baxter, 142 Fla. 517, 195 So. 163 (1940).

[86]24 C. J., Executors and Administrators, §1109.

[87]White v. Bourne, 151 Fla. 12, 9 So.2d 170 (1942) (equitable question on terminability of trusts).

[88]Wells v. Menn, 154 Fla. 173, 17 So.2d 217 (1944).

[89]Ullendorf v. Brown, 156 Fla. 655, 24 So.2d 37 (1945); United States v. Embrey, 145 Fla. 277, 199 So. 41 (1940).

[90]United States v. Embrey, 145 Fla. 277, 199 So. 41 (1940). *Expiration of nonclaim period* does not divest the county judge of jurisdiction to determine validity of claim thereafter filed by the United States for income taxes. United States v. Embrey, 145 Fla. 277, 199 So. 41 (1940).

[91]United States v. Embrey, 145 Fla. 277, 199 So. 41 (1940).

[92]144 Fla. 307, 196 So. 811 (1940).

[93]See concurring opinion in *Pierce v. Pasquarello,* 125 Fla. 330, 169 So. 727, 729 (1936) where it is said, "The statute (733.18) is an acceleration statute designed to speed up the institution of litigation against estates on disputed claims. It was not intended to make the probate proceedings the forum for settling such claims through the

jection does not establish the validity of the claim it would seem at any rate that the claimant may sue thereon without time limit. Filing of the claim tolls the nonclaim statute and the statute of limitations. And the three year limitation for unadministered estates would not come into play if the estate was regularly administered and notice to creditors given.[94] Failure of the personal representative to file timely objections does not prevent the county judge from disallowing the claim where claimant has first filed his claim and then without objection being made he brings suit thereon in another court and is defeated on the merits,[95] and such conduct on the part of the claimant starts the twelve month limitation running on the bringing of another suit.[96]

The *Dill* case and several others[97] caused the Probate Committee of the Florida Bar Association to suggest some changes in Florida Statutes 1941, §733.18, which were never adopted. The suggested changes are set forth in the footnote below.[98] Some such corrective steps appear to be needed. At present too much uncertainty prevails as to how long the validity of a claim remains open to question and as to the court in which the issues pertaining thereto must be decided. Perhaps as to the

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simple expedient of treating all claims as valid merely because no contest thereof is filed, as might be done, by the personal representative." See also Smith v. Pattishall, 127 Fla. 474, 173 So. 355 (1937), where it is said: "Section 122 of Probate Act of 1933 (733.18) puts a time limit on the filing of objections to claims, and, if no objections are filed within that period, it would seem that the validity of the claim is constructively admitted."

[94]*See* Smith v. Pattishall, 127 Fla. 474, 173 So. 355 (1937).

[95]Pierce v. Pasquarello, 125 Fla. 330, 169 So. 727 (1936).

[96]*Ibid.*

[97]Wyman v. Barrett, 153 Fla. 860, 16 So.2d 112 (1943); Atlantic Nat. Bank v. Kirkwood, 152 Fla. 59, 10 So.2d 743 (1942); *In re* Barrett's Estate, 147 Fla. 198, 3 So.2d 734 (1941); *In re* Jeffries' Estate, 136 Fla. 410, 181 So. 833 (1938); Pierce v. Pasquarello, 125 Fla. 300, 169 So. 727 (1936).

[98]"If no objections are filed to a claim within the time above prescribed in this section, the claim shall be a valid claim against the estate, and the County Judge shall order it paid, unless the personal representative or some person interested in the estate files a written petition with the county judge before the entry of such order for leave to file objections to it. Written notice shall be served personally or by registered mail on the creditor to whose claim it is thus sought to object, unless notice is waived in writing. After the hearing the County Judge, in his reasonable discretion, may extend the time for filing objections for not more than 30 days. If the time is not extended, the claim shall be valid, and the county judge shall order it paid.

forum of adjudication a distinction might be drawn between different types of objections. If the objection presents an issue as to the form of the claim, or its compliance with the nonclaim statute, there appears to be no good reason why such issue should not be regarded as within the probate jurisdiction of the county judge. On the other hand, if the objection raises a question, such as one of equity jurisprudence or tort liability, which is normally within the cognizance of the circuit court and not that of the county judge, then the matter should go to the circuit court by way of appropriate suit.

Where the personal representative files his own claim against the estate and no objections are filed, the claim must nevertheless be formally allowed by the county judge before being paid, but the county judge should not peremptorily disallow the claim without considering the personal representative's evidence.[99]

IV. Payment and Priorities

A personal representative may pay claims either voluntarily or because of an order of the county judge directing him to do so. In making payment voluntarily he should proceed with some caution, as an improper payment lays him open to personal liability. Doubts should be resolved by getting a protective order from the county judge on the petition either of the personal representative or the claimant. An *ex*

"If the time for filing suit on a claim to which objections have been filed as prescribed in this section has expired, the claim thereafter shall be considered void, and neither the personal representative nor the estate shall be responsible for the payment of it; provided, however, that the creditor whose claim is thus barred may apply to the county judge by written petition for leave to file suit on such claim. Written notice of the hearing on such petition shall be served personally or by registered mail on the personal representative unless such notice is waived in writing. At the hearing the county judge may extend the time for filing such suit for not more than 30 days from said hearing and any lawful payment of claims or lawful distribution made in part or in whole to others by the personal representative before such written petition has been filed and served upon him shall be valid as against the claim of such creditor; provided further that, when an estate is not completely administered within two years from the date of the granting of letters, no suit can be filed against said estate or the personal representative thereof, on a claim against the decedent after two years from the date of the granting of such letters." 18 Fla. L. J. 272 (1944). And see 19 Fla. L. J. 105 (1945).

[99]Shambow v. Shambow, 149 Fla. 278, 5 So.2d 454 (1942).

parte order entered by the county judge upon sworn petition of the personal representative may authorize the compromise of a doubtful claim, subject to the qualification that no compromise can be made until after the time for filing objections has expired and that any person who has objected to the claim must be notified of the proposed compromise.[100] If the personal representative acts without the benefit of such an order, and interested persons object to his conduct, he has the burden of showing that he acted judiciously and in the best interests of the estate,[101] and he cannot compromise a claim based upon a judgment rendered by a court without jurisdiction.[102]

Payment should be made only for administration expenses, claims which have been properly filed, or claims which have properly been reduced to judgment against the personal representative without filing. Before making payment the personal representative should examine the claims carefully. He cannot take credit for payments made on claims which are subject to objections or defenses which could be discovered by the exercise of reasonable care.

Prompt payment of claims of unquestionable validity is highly desirable particularly if they are interest-bearing obligations. If the solvency of the estate is beyond all doubt the personal representative can proceed with payment as soon as assets become available for that purpose. Otherwise he will normally want to delay paying everything but the most pressing administration expenses until after the time for the filing of claims has expired. To protect the personal representative against being compelled to make payment before the asset and liability situation of the estate can be ascertained the Probate Law provides that no personal representative shall be compelled to pay the debts of the

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[100]FLA. STAT. 1941, §733.21 (Supp. 1945).

Prior Law. Chapter 8473, Acts of 1921, Sec. 1, enacted a statute (Sec. 5613, C. G. L. 1927) for compromise and settlement of claims, whether in suit or not, by or against the estate of a minor, lunatic, or decedent, or any legal representative thereof. The procedure thus set forth was the same as §733.21 except it required publication of notice once a week for 4 weeks, in addition to notice to parties interested.

Further, the act did not contain the proviso that no compromise could be made until time for filing objections expired. See *In re* Wetner's Estate, 154 Fla. 292, 17 So. 2d 396 (1944); Penn. Mut. Life Ins. Co. v. Roberts, 120 Fla. 392, 162 So. 881 (1935); Evans v. Tucker, 101 Fla. 688, 135 So. 305 (1931).

[101]Evans v. Tucker, 101 Fla. 688, 135 So. 305 (1931).

[102]*In re* Paine's Estate, 128 Fla. 151, 174 So. 430 (1937).

decedent until after the expiration of eight calendar months from the granting of letters.[103] This would seem to be substantially the equivalent of the nonclaim period, in most cases, although it dates from the granting of letters rather than the first publication of notice to creditors.[104] Only a minimum restriction on compulsory payment is contained in this provision. Even after the expiration of the eight month period the personal representative should be able to defeat a petition for compulsory payment by showing that an objection to the claim remains undisposed of, that he is without funds or that considering the priority provisions of Florida Statutes 1941, §733.20 the funds available are or may be insufficient to take care of all claims in the particular class either in whole or in part.

If the personal representative, without good cause and after the expiration of the eight months period, refuses to pay a claim, the remedy of the claimant is by petition to the county judge to obtain an order for payment.[105] In fact this is the only remedy available to unsecured creditors. Acquisition of a judgment either against the decedent or the personal representative does not enable the creditor to levy execution on the assets of the estate. Judgments can be enforced only as other claims.[106] However mortgages, pledges (liens other than judgment) and claims to specific property real or personal may be enforced against

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[103]FLA. STAT. 1941, §733.18 (Supp. 1945).

[104]An order directing payment before expiration of the time prescribed by statute is erroneous. Marshal v. Hewett, 155 Fla. 700, 21 So.2d 201 (1945).

[105]Dill v. Stevens, 144 Fla. 307, 196 So. 811 (1940).

[106]FLA. STAT. 1941, §733.19 (Supp. 1945); Gilpen v. Bower, 152 Fla. 733, 12 So.2d 884 (1943); Brown v. Sweat, 149 Fla. 524, 6 So.2d 538 (1942); Cumberland & Liberty Mills v. Keggin, 139 Fla. 133, 190 So. 492 (1939); Clark v. Fullerton, 130 Fla. 150, 177 So. 851 (1938); Higgins v. Druggs, 21 Fla. 103 (1884) (An execution against an administrator personally should be suspended when it does not appear on its face whether it is to be satisfied out of the individual property of the administrator or out of the property of his intestate); Wilson v. Broward, 15 Fla. 587 (1876). *Setting aside execution sale by heirs.* When heirs at law bring bill in equity to set aside judgment and vacate execution sale, said bill being against judgment creditor, it is not necessary to make a discharged administrator a party, when no right of his, either personal or representative, is involved, even though the creditor obtained the judgment in question against the administrator. King v. Dekle, 53 Fla. 940, 43 So. 586 (1907). *Levy or judgment against administrator and sole heir* held within purview of prohibition. Brown v. Sweat, 149 Fla. 524, 6 So.2d 538 (1942).

the particular property involved without an order from the county judge,[107] and a suit to foreclose a mortgage may be brought before the expiration of eight months from the granting of letters.[108]

Contingent claims must be filed, as already shown, but when filed what is to be done about their payment? Nothing in the Probate Law covers this problem, nor have the decisions of the Florida Supreme Court holding that contingent claims must be filed had anything to offer thereon. If the contingency occurs before the time for distribution arrives payment can, of course, be made. But if the contingency has not happened it is obvious that payment should not be made on a claim that may never amount to anything. The alternatives are (1) to withhold distribution of enough to cover the claim in case the contingency happens, (2) to make distribution but require a bond from the distributees or (3) to make distribution without requiring bond and leave the claimant to his remedies against the distributees in the event the contingency happens.[109] The third seems the preferable alternative if the likelihood of the contingency happening is extremely remote.

Interest is not to be paid upon a claim until the expiration of ten calendar months from the granting of letters, unless the claim is founded upon a written obligation expressly calling for the payment of interest.

No provisions deal explicitly with claims against insolvent estates, but the most material section in event of insolvency is Florida Statutes 1941, §733.20 which prescribes the order in which expenses and claims shall be paid. The order of priority is fixed by law and the personal representative cannot by agreement or negotiation place a claim in a higher class than to which it belongs.[110] Claims due the United States

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[107]Baker v. Reconstruction Finance Corporation, 109 F. 2d 336 (C. C. A. 5th 1940); Cumberland & Liberty Mills v. Keggin, 139 Fla. 133, 190 So. 492 (1939). *Attachment lien perfected during decedent's lifetime* may be enforced after his death by execution against the real estate to which the lien attached. Desiderio v. D'Agostino, 127 Fla. 377, 173 So. 682 (1937). *Judgment lien cannot be enforced in chancery* under FLA. STAT. 1941, §62.36. Gilpen v. Bower, 152 Fla. 733, 12 So.2d 884 (1943).

[108]McKinley v. Fed. Land Bank of Columbia, 128 Fla. 789, 176 So. 36 (1937).

[109]See Notes, 41 COL. L. REV. 950 (1941); 37 ILL. L. REV. 277 (1942); See Comments, 43 COL. L. REV. 237 (1943); 27 CORN. L. Q. 111 (1941); 54 HARV. L. REV. 1067 (1941); 41 MICH. L. REV. 920 (1943).

[110]May v. May, 7 Fla. 207 (1857).

are given no particular priority by Florida Statutes 1941, §733.20, but such claims are given priority by federal statute.[111] And by force of this statute such claims must be put ahead of everything but costs of administration, funeral expenses, and perhaps widow's allowances.[112]

Claims are to be paid off in the order of their priority and if claims of preceding classes exhaust the assets, subsequent classes receive nothing. Where there is a balance left for a particular class, but not enough to pay all claims therein in full, such claims are to be paid on a pro rata basis.[113]

Top priority is given to costs, expenses of administration, and compensation of personal representatives and their attorneys. This provision of Florida Statutes 1941, §733.20 should be read in conjunction with Florida Statutes 1941, §734.01, which provides for commissions to personal representatives and that they shall be allowed all necessary expenses and attorneys fee paid in the care, management and settlement of the estate.[114] Further provisions of Section 734.01 permit the attorney or personal representative to petition the court for an order allowing attorneys' fees, after notice to persons adversely affected. The personal representative may claim credit on his accounts for sums paid to attorneys for services and expenses but these items are subject to objection if not previously allowed by the county judge. Reasonable charges for legal services rendered to the personal representative are thus chargeable to the estate and this although the personal representative has forfeited his right to commissions because of mismanagement of the estate.[115] But the estate cannot be charged if it has not been benefited by the legal services for which the fees are claimed,[116] except under Florida Statutes 1941, §732.14, which provides that an executor, being

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[111]31 U. S. C. A. §191, United States v. Embrey, 145 Fla. 277, 199 So. 41 (1940).

[112]ATKINSON, WILLS §238 (1937).

[113]FLA. STAT. 1941, §733.20(2) (Supp. 1945).

[114]*In re* Warren's Estate, 106 Fla. 163, 142 So. 885 (1932). ***Early Law.*** Attorneys' fees were not under early statutes given priority under the heading of "expenses of administration." They were allowed but under the last order of priority accorded all other debts.

[115]*In re* Paine's Estate, 128 Fla. 151, 174 So. 430 (1937).

[116]*In re* Graham's Estate, 156 Fla. 421, 23 So.2d 485 (1945); see Brickell v. McCaskill, 90 Fla. 441, 106 So. 470 (1925) (decided before present statute where estate was held improperly charged for legal services which did not benefit it); Lewis v.. Gaillard, 70 Fla. 172, 69 So. 797 (1915) (to same effect). ***Unsuccessful attempts*** to pro-

prima facie justified in offering a will in due form for probate, shall generally receive his costs and attorneys' fees out of the estate, even though he is unsuccessful.[117] This latter provision, however, requires a good faith executor and will not help an attorney who has acted in good faith if the executor has acted in bad faith.[118]

V. Conclusion

For the most part the provisions of the probate law on claims are ample to serve their purpose and have been construed and applied to attain that end. They are sufficiently rigid to provide an expeditious and efficient method for estate settlement and yet they allow a reasonable amount of latitude to the personal representative and the county judge so that the demands of a particular situation can be accommodated. It is easy to agree with the conclusion of the Florida Bar Association's Probate Committee that no effort should be made to provide in the probate law a statutory formula for each and every situation that may arise.[119] Something might be gained, however, from new or more ample provisions dealing with the treatment of contingent claims which have been filed and with the jurisdiction of the county judge over claim disputes. As to contingent claims a simple expedient might be to provide that the filing gives a right to payment if the contingency happens before distribution, and that otherwise distribution may be made, without withholding assets or demanding security for the claim, but with the creditor's rights against the distributees being preserved in event the contingency happens.

On the matter of jurisdiction it is to be noted that, although the apparent policy of the Probate Law is to deny the county judge juris-

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bate or revoke probate of will on contingent fee basis held not proper basis for charging attorney's fees to the estate. *In re* Graham's Estate, 156 Fla. 421, 23 So.2d 485 (1945); Smith v. Callison, 152 Fla. 516, 12 So.2d 381 (1943). *Successful services in setting aside a bogus will.* Sums due attorneys for expenses and services have been allowed against the estate where they were incurred in setting aside a bogus will. *In re* Cobb's Estate, 157 Fla. 590, 26 So.2d 442 (1946) (judgment of trial court on amount of fee will not be reversed where no abuse of discretion shown).

[117]Watts v. Newport, 151 Fla. 209, 9 So.2d 417 (1942).

[118]*In re* Graham's Estate, 156 Fla. 421, 23 So.2d 485 (1945).

[119]See *Report of Committee on Probate and Guardianship,* 21 Fla. L. J. 69 (1947)

diction over probate claim disputes, the decisions have to a certain extent defeated this policy. The result has been a far from satisfactory state of confusion. Perhaps the best way to solve the matter is to reverse the policy of the Probate Law and to give the county judges jurisdiction over claim disputes. There is much to be said in favor of this course. A grant of such jurisdiction would no doubt expedite the handling of many disputes. Procedure in the county judge's court is relatively simple and the delays of rule days are not encountered. If the county judge is to be entrusted with the decision of the important and difficult question of whether a will disposing of a vast estate is valid, why not permit him to determine the validity of a claim for a few hundred or a few thousand dollars? Is not the right of appeal to the circuit court sufficient protection against alleged shortcomings of the county judge's court, whether it be as to claims or other matters? Denial of jurisdiction over all claims problems is difficult to justify and, in view of the court decisions, it is doubtful if it could be accomplished without a constitutional amendment. Therefore, any attempt to limit the jurisdiction of the county judge's court over claims will be accompanied by difficult questions as to where the jurisdictional line shall be drawn. This can be avoided, and the more basic policy of the Probate Law to facilitate the administration of estates subserved, by granting the county judge's court jurisdiction over all claims problems.