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EXECUTORS AND ADMINISTRATORS - COMPARISON OF NONCLAIM STATUTES AND THE GENERAL STATUTES OF LIMITATIONS

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EXECUTORS AND ADMINISTRATORS — COMPARISON OF NONCLAIM STATUTES AND THE GENERAL STATUTES OF LIMITATIONS — An overwhelming majority of the states possess nonclaim statutes, which, in one form or another, purport to bar all claims against decedent's estates not presented to the decedent's personal representative within a stipulated period. It is the purpose of this comment to compare such statutes with the general statutes of limitations, giving particular regard to those situations where the operation of the two types of statute upon one cause of action may appear to conflict.

These nonclaim statutes generally declare that all claims against a decedent's estate which are not presented to the executor or administrator of the estate within a stipulated period "shall be forever barred." [1] A few of the statutes do not expressly bar non-presented claims, but provide that a failure duly to present the claim will save the personal

[1] Over 30 of the 46 statutes found employed this phrase. Three examples follow: Cal. Prob. Code (Deering, 1937), § 707; Ill. Rev. Stat. (1937), c. 3, § 71; Mich. Comp. Laws (1929), § 15707.

representative from any personal liability incurred from non-payment of the claim.[2] A smaller number of statutes do not completely bar improperly presented claims, but purport to make them inferior to claims which are properly presented within the limits of the statutory period.[3] The duration of the nonclaim period varies throughout the states from four months to two years.[4] The two most common points of time at which the period begins to run are: (1) The granting of letters of administration to the personal representative,[5] and (2) the publishing by the personal representative of a notice to creditors to present their claims.[6]

The courts, in comparing and contrasting the nonclaim statutes with the general statutes of limitations, have frequently stated that "the statute fixing the time for filing claims against an estate is not a general statute of limitations, but is a specific act adopted for the particular purpose of facilitating the early settlement of estates."[7] Although the general wordings of the two types of statutes are quite analogous,[8] there are considerable differences in their operation. One rather direct result of this first mentioned distinction is found in the fact that the executor or administrator under no circumstances is permited to waive the bar of the nonclaim statute, occasioned by the running of the nonclaim period;[9] while there is considerable authority

[2] Del. Rev. Code (1935), §§ 3838, 3839; 6 Mass. Ann. Laws (1933), c. 97, § 3; ibid. (Supp. 1937), § 2; N. Y. Civ. Prac. (Cahill, 1937), § 208 (Surrogate's Court Act).

[3] "A claim not presented within six months after the first publication of the notice is not barred, but it cannot be paid until the claims presented within that period have been satisfied." 1 Ore. Code Ann. (1935), § 11-502. See also, Ohio Ann. Gen. Code (Page, Perm. Supp. 1935), § 10509-112.

[4] In Ohio the duration of the period is four months, and in Michigan, two years. Notice that a few statutes provide that the duration of the period is within the discretion of the probate court, although such discretion must be exercised within certain statutory limits. Conn. Gen. Stat. (1930), § 4914; Minn. Stat. (Mason Supp. 1936), § 8992-101.

[5] Ala. Code (Supp. 1932), § 5815.

[6] Cal. Prob. Code (Deering, 1937), § 707.

[7] Durflinger v. Arnold, 329 Ill. 93 at 98, 160 N. E. 172 (1928). See also, In re Lathers' Estate, 215 Wis. 151, 251 N. W. 466 (1935); Johnson v. Larson, 56 N. D. 207, 216 N. W. 895 (1927).

[8] The wording of a nonclaim statute usually takes the following form: "All claims against the estate must be presented within the enumerated statutory period, or they will be forever barred," while the general statute of limitations will generally be found in the following form: "The particular action shall be brought within the enumerated statutory period." The only essential difference in the usual wordings of the two statutes is the use of the additional provision, in the nonclaim statute, that claims not presented in accordance with the directions of the statute will be "forever barred."

[9] Bristow v. First Trust Co., 140 Kan. 711, 38 P. (2d) 108 (1934); In re

which permits the executor or administrator to waive the bar of the general statute of limitations, either unqualifiedly, or under special circumstances.[10]

The statements that "the statute of nonclaim as a bar is more rigorously applied than the general statute of limitations,"[11] and "the nonclaim statutes not only deny a remedy but wipe out the debt itself,"[12] throw some light on the differences which the courts have set up as concerns the operations of the two statutes. It would appear that the truth of these statements is reflected by the decisions in a variety of ways. Thus, under the view that the nonclaim statute bars the right as well as the remedy, it has been held that the executor or adminis-

Lather's Estate, 215 Wis. 151, 251 N. W. 466 (1933); Nochemson v. Aronson, 279 Mass. 278, 181 N. E. 188 (1932); Bogart v. Wilson, 158 Md. 393, 148 A. 585 (1929); In re Lander's Estate, 34 N. M. 431, 283 P. 49 (1929); State ex rel. Scherber v. Probate Court of Hennepin County, 145 Minn. 344, 177 N. W. 354 (1920); Rhodes v. Cannon, 112 Ark. 6, 164 S. W. 752 (1914). When the claimant has failed to present his claim within the nonclaim period, because of fraudulent representations by the executor or administrator that due presentment is not necessary, there is some authority for the view that the claim is then barred. See Burroughs v. McLain, 37 Iowa 189 (1873); Bank v. Fairbanks, 49 N. H. 131 (1869) (dictum). Other courts have similarly held that the claim is barred under such circumstances, feeling that the claimant's remedy in deceit against the personal representative is a sufficient remedy under the circumstances. Kennedy v. Burr, 101 Wash. 61, 171 P. 1022 (1918); Vanderpool v. Vanderpool, 48 Mont. 448, 138 P. 772 (1914); Nagle v. Ball, 71 Miss. 330, 13 So. 929 (1893).

[10] There is a clear split of authority as to whether the executor or administrator is permitted to waive the bar of the general statute of limitations. Cases which hold that he is permitted to do so, either generally or under special circumstances are: McGowan v. Miles, 167 Tenn. 554, 72 S. W. (2d) 553 (1934); Twiddy v. Mullen, 176 N. C. 16, 96 S. E. 653 (1918); In re Estate of Baumhover, 151 Iowa 146, 130 N. W. 817 (1911); McCoy's Admr. v. McCoy, (Ky. 1910) 125 S. W. 177; Friedman v. Shamblin, 117 Ala. 454, 23 So. 821 (1898); Preston v. Cutter, 64 N. H. 460 (1887); Shreve v. Joyce, 36 N. J. L. 44 (1872). Cases which hold that it is the executor's or administrator's duty to plead the bar of the general statute of limitations are: In re May's Estate, 160 Misc. 497, 290 N. Y. S. 327 (1936); Judkins v. Jamison, (Tex. Civ. App. 1935) 83 S. W. (2d) 793; In re Lather's Estate, (Wis. 1933) 251 N. W. 466; In re Estate of Duffield, 258 Ill. App. 78 (1930); Fontana Land Co. v. Laughlin, 199 Cal. 625, 250 P. 669 (1926); Branch v. Lambert, 108 Ore. 423, 205 P. 995 (1922); Dern v. Olsen, 18 Idaho 358, 110 P. 164 (1910).

[11] In re Estate of Golden, 120 Neb. 226 at 230, 231 N. W. 833 (1930). See also: Winter v. Winter, 101 Wis. 494 at 497, 77 N. W. 883 (1899). But see, In re Jameson's Estate, (Okla. 1919) 182 P. 518, where it was held that because the statutes of nonclaim were highly penal, they should be strictly construed, and literally followed in order to constitute a bar.

[12] Latham v. McClenny, 36 Ariz. 337 at 343, 285 P. 684 (1930). This concept of the nonclaim statute barring the debt, as well as the remedy on the debt, is quite different from the theoretical effect of a bar by the general statute of limitations, namely, a barring only of the remedy on the debt.

trator cannot revive the debt after it has been barred by receiving payments thereon or by making acknowledgments of its existence.[13]

A foremost illustration of the courts' general feeling that the statute of nonclaim should be more rigorously applied than the general statute of limitations is the almost universal refusal of the courts to toll the running of the nonclaim statute because of disabilities in the holder of the claim.[14] An example of the extreme to whch this principle has been carried is afforded by the case of *Davis v. Shepard*.[15] In this case, the guardian of the claimant received a fund of money on behalf of his ward and fraudulently misappropriated such fund. A few days after the claimant attained his majority, which was three years after his guardian's death, the claimant discovered the fraudulent misappropriation and very shortly thereafter filed his claim against the guardian's estate. It was held that the claim was barred by the nonclaim statute. The court said, "If fraud will prevent the bar of the statute being raised, there is no reason why infancy, nonresidence, insanity, and other disabilities may not have the same effect, and estates can never be closed and definitely distributed, for, years after the distribution, one who has been guilty of no laches may appear with a claim based on fraud, etc., and establish his rights."[16]

A final point of difference to be noticed in the operation of the two statutes is the fact that although it is generally held that the general statute of limitations does not run against the state or federal governments,[17] the courts are about equally divided on the question whether

[13] Rhodes v. Cannon, 112 Ark. 6, 164 S. W. 752 (1914). This of course links in directly with the executor's or administrator's inability to waive the bar of the nonclaim statute. See supra, note 9.

[14] Parkhurst v. Healy's Estate, 97 Vt. 295, 122 A. 895 (1923); Estabrook v. Moulton, 223 Mass. 359, 111 N. E. 859 (1916); Van Haaren v. Tierney, 180 Mich. 192, 146 N. W. 660 (1914); Beale v. Swasey, 106 Me. 35, 75 A. 134 (1911); Beekman v. Richardson, 150 Mo. 430 (1899); Morrow v. Barker, 119 Cal. 65, 51 P. 12 (1897); Cone v. Dunham, 59 Conn. 145, 20 A. 311 (1890); Morgan v. Hamlet, 113 U. S. 449, 5 S. Ct. 583 (1884).

Notice that a considerable number of the nonclaim statutes make specific exceptions for some disabilities in the claimant. See: Fla. Comp. Gen. Laws (1927), § 5611; Ill. Rev. Stat. (1937), c. 3, § 71.

[15] 135 Wash. 124, 237 P. 21 (1925).

[16] 135 Wash. 124 at 132, 237 P. 21 (1925). See also, Atwood v. Bank, 2 R. I. 191 (1852), where it was held that an action for superadded statutory liability of bank stock, against an administrator who held the stock for the estate, was barred by the nonclaim statute, even though the capital impairment of the bank giving rise to the cause of action was not discovered until after the nonclaim period had expired. This decision appears to be contrary to the weight of authority. Cases are collected in: 41 A. L. R. 180 (1926); 51 A. L. R. 772 (1927); 87 A. L. R. 494 (1933).

[17] In re Smather's Will, 249 App. Div. 523, 293 N. Y. S. 314 (1937); Valley Bank & Trust Co. v. Proctor, 47 Ariz. 77, 53 P. (2d) 857 (1936); Richison v. State

the running of the nonclaim statutory period will bar a claim held by the state or federal governments.[18] Attention should also be called to a decision which holds that the decedent cannot waive the bar of the nonclaim statute by a previous agreement with the holder of a claim against the estate.[19]

The conclusion derived from the several points of difference in the operation of the two statutes is that, as the courts have so frequently observed, the nonclaim statute is generally applied more rigorously than the general statute of limitations. The policy behind such rigorous application is grounded in the desirability of procuring a rapid, reliable, and final settlement of decedents' estates. Perhaps another reason for this rigorous application of the nonclaim statutes is to be found in the usual difference in the wordings of the two statutes,—that is, the use, in the context of the nonclaim statutes, of the additional words, "forever barred."[20] Suffice it to say, however, that as far as the writer has been able to ascertain, no court has specifically made this distinction.

Interesting problems arise in regard to those fact situations where the operation of the two types of statutes upon a particular cause of action may appear to conflict. In a consideration of these problems, a basic starting point is found in the fact that if for some reason, such as insufficient notice to creditors by the personal representative, or failure to obtain the appointment of the personal representative,[21] the nonclaim statute is not brought into operation, then the general statute of limitations is completely controlling over the duration of causes of action against the estate.[22] Similarly, it is reasonable to assume, although no cases have been found on the point, that if for some reason which does not prevent the nonclaim statute from operating the general statute of limitations is suspended, then the nonclaim statute is

ex rel. Barnett, 176 Okla. 537, 56 P. (2d) 840 (1936); Board of Comrs. v. City of Yates Center, 139 Kan. 519, 32 P. (2d) 209 (1934); Ex parte State ex rel. Davis, 206 Ala. 393, 90 So. 871 (1921); Grand Trunk Western Ry. v. United States, 252 U. S. 112, 40 S. Ct. 309 (1920). Cases are collected in 37 C. J. 711 (1925).

[18] Cases are collected in 53 A. L. R. 569 (1928).

[19] McDaniel v. Putnam, 100 Kan. 550, 164 P. 1167 (1917).

[20] See supra, note 8.

[21] See Bauserman v. Charlott, 46 Kan. 480 (1891), where it is held that if an administrator is not appointed, the nonclaim statute begins to run at the expiration of the time within which, by statute, the creditors of the estate could have secured the appointment of an administrator.

[22] Burr v. Goodwin, 126 Cal. App. 539, 14 P. (2d) 808 (1932); McConaughy v. Wilsey, 115 Iowa 589, 88 N. W. 1101 (1902); York's Appeal, 110 Pa. St. 69 (1885); Pratt v. Houghtaling, 45 Mich. 457, 8 N. W. 72 (1881); Doerge v. Heimenz, 1 Mo. App. 238 (1876).

completely controlling. Furthermore, where a cause of action against the decedent is barred by the general statute of limitations at the decedent's death, such case of action is not affected in any way by the subsequent operation of the nonclaim statute. In other words, the nonclaim statute only operates upon causes of action which are alive and subsisting at the decedent's death,—a cause of action which is barred by the general statute of limitations at the decedent's death cannot be asserted thereafter as a claim against the estate.[23] It is also equally clear that claims which are presented after both the nonclaim period and the general statute of limitations' period have expired are completely and finally barred.[24] However, between these two clear extremes, the decisions are in some disagreement.

This disagreement is first encountered when a situation arises in which the cause of action against the decedent accrues at such a time that the nonclaim period, if applicable, will expire before the general statute of limitations has run. Thus, we can assume the following type of case: *C*, the creditor, has a contract cause of action against *T* which accrues on June 1, 1930. *T* dies on June 1, 1931. Assuming that the general statute of limitations provides that all actions upon contracts shall be brought within five years, and further assuming that the nonclaim statute provides that all claims against a decedent's estate will be forever barred if not presented within one year after the decedent's death, the question then arises as to how soon after *T's* death *C* must present his claim in order to effectually bind *T's* estate for its payment. It is entirely clear that a presentment within one year after *T's* death will effectually bind the estate. It is equally as clear that a presentment after June 1, 1935, will not bind the estate.[25] But can *C* bind the estate by presenting his claim within the period from June 1, 1932 to June 1, 1935? Re-phrasing the question, does the operation of the nonclaim statute supersede and cut off the operation of the general statute of limitations where the nonclaim period expires before the expiration of the period of the general statute of limitations? An affirmative answer to the latter phrasing of the question is rendered by an examination of the authorities.[26] Only one dictum has been found to support the view

[23] Brogden v. Baugh, 176 Okla. 339, 55 P. (2d) 994 (1936); Bank of Bowie v. Phillips, (Tex. Civ. App. 1936) 101 S. W. (2d) 319; Miller v. Summers, 124 Ark. 599, 187 S. W. 664 (1916); Bromwell v. Estate of Bromwell, 139 Ill. 424, 28 N. E. 1057 (1891); Sperry v. Moore's Estate, 42 Mich. 353, 4 N. W. 13 (1880).

[24] In re Shulthis' Estate, 140 Kan. 650, 37 P. (2d) 1005 (1934); McMillan v. Hayward, 94 Cal. 357, 29 P. 774 (1892); Doerge v. Heimenz, 1 Mo. App. 238 (1876); Toby v. Allen, 3 Kan. 395 (1866).

[25] See supra, note 24.

[26] The following cases have held that the nonclaim statute cuts off the general statute of limitations: Johnson v. Larson, 56 N. D. 207, 216 N. W. 895 (1927);

that the nonclaim statute does not cut off the general statute of limitations.[27] Thus in our hypothetical set of facts, by the clear preponderance of authority, *C* could not bind *T's* estate by a presentation of his claim after June 1, 1932. In truth, his claim, if not presented before that date, would be "forever barred." Such ruling appears to be sound for the reason that the fundamental and basic purpose of the nonclaim statute is "to obtain early and final settlement of estates so that those entitled may receive the property free from incumbrances and charges which might lead to long litigation."[28] This purpose is deemed to be so essential that the rights of a creditor to enjoy the full period of the general statute of limitations within which to satisfy his claim may be cut off in the necessity of effectuating such purpose.

The second situation which occasions considerable difficulty is one in which the cause of action accrues some considerable time before the decedent's death, so that the period of the general statute of limitations has expired before the period of the nonclaim statute. Again reverting to a hypothetical set of facts, and assuming the same statutes are applicable as were set out in our first hypothetical set of facts (that is, a general statutory period of five years, and a nonclaim period of one year) we might have: *C's* cause of action accrues on June 1, 1930, and *T* dies on May 1, 1935. Again, it is clear that a presentment of the claim against the estate before June 1, 1935 will bind the estate, and that a presentment after May 1, 1936 will not bind the estate.[29] The difficulty arises over a presentment of the claim within the interval of time from June 1, 1935 to May 1, 1936. Does the general statute

Davis v. Shepard, 135 Wash. 124, 237 P. 21 (1925); Mueller v. Light, 92 Ark. 522, 123 S. W. 646 (1909); Bank v. Plannett's Admr., 37 Ala. 222 (1861). Dicta supporting this view is to be found in: Burr v. Goodwin, 126 Cal. App. 539, 14 P. (2d) 808 (1932); State ex rel. Buder v. Brand, 305 Mo. 321, 265 S. W. 989 (1924); State v. Soliss, (Okla. 1915), 152 P. 1114.

[27] Gardner's Estate, 228 Pa. 282, 77 A. 509 (1910). In this connection one should be careful to distinguish those cases which are concerned with statutes which permit the bringing of an action on a claim against the estate, during a stipulated period after the appointment of the personal representative, and are entirely distinct from the nonclaim statutes which have to do with the presentment of claims to the estate. It has been generally held, the nonclaim statute having been complied with, that a creditor thereafter can bring an action upon his claim either within the aforementioned statutory period, or within the period of the general statute of limitations, whichever is the longer. See: Miller v. Lewiston Nat. Bank, 18 Idaho 124, 108 P. 901 (1910); Johnson v. Equitable Life Assur. Society, 137 Ky. 437, 125 S. W. 1074 (1910); Benson v. Bennett, 112 N. C. 505, 17 S. E. 432 (1893); Sammis v. Wightman, 31 Fla. 10, 12 So. 526 (1893); Blaskower v. Steel, 23 Ore. 106, 31 P. 253 (1892); McMillan v. Hayward, 94 Cal. 357, 29 P. 774 (1892); Knippenberg v. Morris, 80 Ind. 540 (1881); Harris v. Rice, 66 Ind. 267 (1879).

[28] Davis v. Shepard, 135 Wash. 124 at 131, 237 P. 21 (1925).

[29] See supra, note 24.

of limitations cut off and impinge upon the operation of the nonclaim statute, so that a presentment within this interval would not bind the estate? The decisions are just about evenly divided on the answer to this question.[30] An offshoot of the previously stated rule[31] that if the nonclaim statute is not brought into operation, the statute of limitations is then completely controlling, should be here noted,—namely, that if the period of the statute of limitations expires before the nonclaim period begins to run, because of the failure to give notice to creditors or some other reason, the claim is then completely barred, and any subsequent operation of the nonclaim statute will not generally revive it.[32] This fact is mentioned here, because several of the decisions sustaining this result have gone on to imply in their dicta that the general statute of limitations in all cases supersedes the nonclaim statutes.[33] It is submitted that such dicta are unreliable and confusing, in view of the peculiar fact circumstances under which they were given.

The conflict of authority on the question whether the general statute of limitations supersedes the nonclaim statute, when the general statutory period terminates before the nonclaim period, seems to resolve itself into a disagreement over the probable intent of the legislatures in passing the nonclaim statutes. Thus, it is said, "The statutes relating to the settlement of estates were manifestly designed to put all claims upon an equal footing. Their practical effect is to bar some claims in a much less time than the general statute does, and in other cases . . . the time may be somewhat extended."[34] Another court has stated,

[30] Those decisions which hold that the statute of limitations does not cut off the operation of the nonclaim statute, are: In re Anderson's Estate, (Minn. 1937) 274 N. W. 621; McGill v. Hughes, 84 Ark. 238 (1907); Ross v. Frick Co., 73 Ark. 45 (1904); Continental Life Ins. Co. v. Barber, 50 Conn. 567 (1883); In re May's Estate, 160 Misc. 497, 290 N. Y. S. 327 (1936) (dictum since both periods had expired). Those decisions which hold that the statute of limitations does cut off the operation of the nonclaim statute are: Hinshaw v. Warren, 167 Mo. App. 365, 151 S. W. 497 (1912); McKinzie v. Hill, 51 Mo. 303 (1873); Perry v. Monger, 7 Tex. 589 (1852).

[31] See supra, note 22.

[32] Brigham v. Garcelon, 254 Mass. 65, 149 N. E. 598 (1925); Bank of Montreal v. Buchanan, 32 Wash. 480, 73 P. 482 (1903); Knowles v. Whalely, 15 R. I. 97 (1885); York's Appeal, 110 Pa. St. 69 (1885). *Contra:* McGill v. Hughes, 84 Ark. 238 (1907); Ross v. Frick Co., 73 Ark. 45 (1904).

[33] Bank of Montreal v. Buchanan, 32 Wash. 480, 73 P. 482 (1903); York's Appeal, 110 Pa. St. 69 (1885).

[34] Continental Life Ins. Co. v. Barber, 50 Conn. 567 at 571 (1883). Notice the interesting theory advanced in McClintock's Appeal, 29 Pa. 360 (1857), and overruled by York's Appeal, 110 Pa. St. 69 (1885), that since the claim of a creditor vests at the debtor's death in the personal representative as trustee, the creditor thereafter has an equitable share in the assets of the estate, and therefore such claim is

"But, here the offer was to prove that the claim was exhibited within two years after the granting of letters. That is the time allowed by the statute for proving up claims against an estate, but if the demand is barred by the general provisions of the statute before it is presented, it was never intended to graft this on the statute as an extension of time."[85]

It is submitted that from a policy standpoint, the preferred view is the one which holds that the general statute of limitations should be completely superseded by the nonclaim statute in all cases where the claim is not already barred by the general statute, at the time the nonclaim statute is brought into operation. Thus, where the nonclaim period curtails the length of time which the creditor would have otherwise had under the general statute of limitations, such curtailment is desirable in view of the policy of having estates settled finally, speedily, and definitely. Although this necessity of quick administration of estates does not favor the superseding of the nonclaim statute over the general statute of limitations where the general statutory period expires before the nonclaim period, there are other factors involved. A holding in such a case that the claim would be barred at the expiration of the general statutory period would probably not aid the early settlement of the estate to any marked degree in view of the fact that there would be other claims against the estate which would not be barred until the nonclaim period had expired. When this is coupled with the fairness of allowing the creditor an adequate period of time to readjust his situation to meet the debtor's death, it appears most reasonable from a policy standpoint that the nonclaim statute should supersede the general statute of limitations, even when the general statutory period expires before the nonclaim period.[86]

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removed from the operation of the general statute of limitations and thereafter the statutes relating to decedent's estates are completely controlling.

[85] McKinzie v. Hill, 51 Mo. 303 at 305 (1873).

[86] Another factor which lends weight to this conclusion is that if the nonclaim statute is held to supersede and control the general statute of limitations in all cases, then some degree of simplicity and clearness in this branch of the law will be attained, which is certainly a desirable result.