

SUPREME COURT OF CALIFORNIA

Edlund v. Superior Court of S.F.

209 Cal. 690, 289 P. 841 (1930) · Decided June 30, 1930

SUMMARY

The California Supreme Court considered whether a probate court was required to enter an order establishing proof of service in proceedings to determine heirship under section 1664 of the Code of Civil Procedure. The court held that, where due service was adequately shown and no valid objection was made to the proof, entry of the order was mandatory. It further concluded that vacating the decree of distribution reopened the estate proceeding as to the residuary estate, allowing the petitioners to pursue heirship proceedings.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Shenk, J.; Seawell, J.; Richards, J.; Preston, J.; Waste, C.J.; Langdon, J.; Curtis, J.
JURISDICTION	California
DECIDED	June 30, 1930
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding for a writ of mandate directing the superior court to enter an order establishing proof of service in proceedings to establish heirship under section 1664 of the California Code of Civil Procedure.
STANDARD OF REVIEW	Whether the superior court had a mandatory duty under section 1664 to enter an order establishing proof of service upon satisfactory proof of service and whether the prior decree of distribution barred the heirship proceeding.
PRECEDENTIAL VALUE	Published California Supreme Court opinion; precedential.
PARTIES	Alma Skutt Edlund, Clinton Skutt v. Superior Court of San Francisco, Judge of the Superior Court of San Francisco

TOPICS

- probate procedure
- estate administration
- probate
- civil procedure
- remedies

PRACTICE AREAS

Probate

Civil procedure

Remedies

QUESTIONS PRESENTED

1. Whether section 1664 of the California Code of Civil Procedure required the probate court to enter an order establishing proof of service after satisfactory proof of service was presented and no objection was made to the form or sufficiency of that proof.
2. Whether the prior decree of distribution remained a bar to the petitioners' heirship proceeding after the probate court had vacated and set aside the decree of distribution and revoked the order discharging the executor.

HOLDINGS

1. When satisfactory proof of service has been presented in a proceeding under section 1664 and no valid objection exists, entry of the order establishing proof of service is a mandatory formal step; the court acquires jurisdiction upon proof of due service.
2. Vacating and setting aside the decree of distribution opened the administration of the estate for lawful proceedings as though no decree of distribution had previously been entered; the vacated decree therefore did not bar the petitioners' proceeding to establish heirship.

KEY QUOTATIONS

“The entry of an order, it must be apparent, is merely a formal step in the exercise of the jurisdiction thereby acquired and is mandatory if no valid objection can be made to the entry thereof.” (at 694)

“We conclude, therefore, that as to these petitioners the form of the order vacating and setting aside the decree of distribution was such as to open up the administration of the decedent's estate for any proceedings lawfully to be taken therein in regular course as though no decree of distribution had theretofore been entered.” (at 696)

FACTUAL BACKGROUND

John H. Peltier's will left the residue of his estate to his children, with a deceased child's share passing to issue or, absent issue, to the surviving children. A 1927 decree distributed the residue among five surviving children after determining that Julia Peltier had died without issue. The decree was later vacated after Martha Agnes Nelson claimed to be Julia's adopted daughter, and the probate court determined that Nelson was entitled to Julia's share. Alma Skutt Edlund and Clinton Skutt then claimed to be Julia's natural children from a prior marriage and sought to establish heirship, but the probate court refused to recognize proof of service because it viewed the original decree as still binding.

PROCEDURAL HISTORY

The probate court initially entered a decree of distribution and later vacated the decree in part after an adopted daughter of a deceased legatee sought to establish her entitlement to a share of the residue. Edlund and Skutt, claiming to be the natural children of that legatee, later initiated proceedings to establish heirship. The probate

court refused to enter an order establishing proof of service, reasoning that the original decree of distribution remained binding on the petitioners and barred their proceeding. The California Supreme Court granted mandate.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Issue the peremptory writ of mandate directing the superior court to entertain the petitioners' application for an order establishing proof of service and to enter its order thereon.

CASES CITED

- In re Painter, 115 Cal. 635, 639, 47 P. 700 (1896)
- Estate of Ross, 185 Cal. 8, 16, 195 P. 674 (1921)
- Burroughs v. De Coutts, 70 Cal. 361, 372, 11 P. 734 (1886)
- McKinley v. Tuttle, 34 Cal. 235 (1867)
- Osmont v. All Persons, 165 Cal. 587, 592, 133 P. 480 (1913)