

CALIFORNIA COURT OF APPEAL

In re Estate of Clary

234 P. 851 (Cal. Ct. App. 1925) · Decided January 29, 1925

SUMMARY

The court held that a probate court lacked jurisdiction in the final-accounting and distribution proceeding to offset a deceased executor's alleged debt to the estate against the executor's distributive share and commissions. Because the executor had died before completing administration, the accounting had to proceed under California Code of Civil Procedure section 1639 against the executor's personal representatives or successors. The challenged portion of the decree was reversed.

CASE DETAILS

COURT	California Court of Appeal
WRITING FOR THE COURT	Hart; Plummer, J.; Finch, P.J.
JURISDICTION	California
DECIDED	January 29, 1925
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the portion of a superior court probate decree settling the final account and distributing the estate of Abraham E. Clary that retained the deceased executor's distributive share and executor commissions to offset his alleged debt to the estate.
STANDARD OF REVIEW	The appellate court reviewed the probate court's jurisdiction and authority to determine and enforce the alleged indebtedness in the final accounting and distribution proceeding.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion
PARTIES	Heirs of Charles M. Clary

TOPICS

- probate procedure
- estate administration
- probate
- civil procedure

PRACTICE AREAS

- Probate
- Estate administration
- Civil procedure

QUESTIONS PRESENTED

1. Whether the probate court had jurisdiction in the final accounting and distribution proceeding for Abraham Clary's estate to determine and enforce an indebtedness allegedly owed by Charles Clary, a deceased former executor, against Charles's heirs.
2. Whether the probate court could retain Charles Clary's distributive share and executor commissions to extinguish the alleged indebtedness without proceeding under Code of Civil Procedure section 1639.

HOLDINGS

1. The probate court lacked jurisdiction in that proceeding to appropriate Charles Clary's distributive share and executor commissions to extinguish his alleged indebtedness to Abraham Clary's estate.
2. Section 1447 did not authorize the probate court to bypass the accounting procedure required by section 1639.

KEY QUOTATIONS

“But, at any rate, whatever might have been the rule of procedure in such a case as the one we have here prior to the enactment of section 1639, or whatever may be the procedure in such cases in other jurisdictions, it is certainly thoroughly established by said section that where the heirs of an executor are proceeded against to account for any moneys or assets which their ancestor, as executor, failed to account for in his administration of the estate, the proceeding for such accounting must be inaugurated under said section of the Code of Civil Procedure.” (234 P. 851)

“At all events, a consideration of the provisions of section 1639 compels the conclusion that the court below in this proceeding was without jurisdiction, as against the interests of his heirs, to appropriate the distributive share of C.M. Clary in the estate of his father or the commissions earned by him as executor to the extinguishment of his indebtedness to said estate.” (234 P. 851)

FACTUAL BACKGROUND

Abraham Everstine Clary died testate, leaving his wife and six children, and naming his sons Edward and Charles as executors. Charles was indebted to Abraham on a promissory note, but the note was not inventoried or presented as a claim against Charles's estate after Charles died. The Yolo County Superior Court nevertheless charged Charles's estate with the debt and retained his distributive share and executor commissions as an offset. Charles's heirs challenged the decree, including the probate court's jurisdiction and the statute of limitations.

PROCEDURAL HISTORY

Charles M. Clary served as a joint executor of Abraham E. Clary's estate and died before completion of the administration. In settling Abraham's estate, the Yolo County Superior Court determined that Charles had owed the estate money on a promissory note and ordered Charles's distributive share and executor commissions retained as an offset. Charles's heirs objected and appealed that portion of the decree.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The portion of the probate decree retaining Charles M. Clary's distributive share and executor commissions against the alleged indebtedness was reversed.

CASES CITED

- Holmes v. McPheeters, 149 Ind. 587, 49 N.E. 452
- Webb v. Fuller, 85 Me. 443, 22 L.R.A. 177, 27 A. 346
- Stevens v. Superior Court, 155 Cal. 148, 150, 99 P. 512
- In re Burdick, 112 Cal. 387, 391, 44 P. 734
- Estate of More, 121 Cal. 609, 54 P. 97
- Estate of Walker, 125 Cal. 242, 73 Am. St. Rep. 40, 57 P. 991
- Estate of Thomas, 140 Cal. 397, 73 P. 1059
- Estate of Pease, 149 Cal. 167, 170, 85 P. 149
- Estate of Hall, 154 Cal. 527, 98 P. 269
- Estate of Emerson, 175 Cal. 724, 167 P. 149
- In re Loheide, 17 Cal. App. 475, 120 P. 56
- King v. Chase, 159 Cal. 420, 115 P. 207
- Bush v. Lindsey, 44 Cal. 121
- Chaquette v. Ortet, 60 Cal. 594
- In re Thompson, 101 Cal. 349, 35 P. 991, 36 P. 98, 508
- Vance v. Smith, 124 Cal. 219, 56 P. 1031
- Slater v. McAvoy, 123 Cal. 437, 56 P. 49
- Zurfluh v. Smith, 135 Cal. 644, 67 P. 1089
- Guardianship of Wells, 140 Cal. 349, 73 P. 1065
- In re Philbrook, 47 Cal. App. 678, 683-684, 191 P. 77
- Estate of Randall, 188 Cal. 329, 333, 205 P. 118
- In re Allgier, 65 Cal. 228, 230, 3 P. 849
- Estate of Cook, 77 Cal. 220, 232-233, 11 Am. St. Rep. 267, 1 L.R.A. 567, 17 P. 923, 19 P. 431
- Estate of Moore, 96 Cal. 522, 31 P. 584
- Estate of Cates, 195 Cal. 319, 232 P. 972
- Lathrop v. Bampton, 31 Cal. 23, 89 Am. Dec. 141
- Roach v. Caraffa, 85 Cal. 436, 25 P. 22

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