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PROBATE LAWS—SOME NEEDED CHANGES

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IN a day of streamlined trains, which pick up their passengers at the conclusion of the day's business in Denver and deposit them in Chicago at the beginning of the next day's business; in a day of fast airplanes, capable of completely encircling the globe in a period of less than four days; of radio, which brings instantaneously, to the remotest parts of the earth, descriptions of events then happening, or, within the space of a very few minutes, brings accurate reports of things which have happened, of newspapers which carry, within a few hours, reports of happenings, even pictures of events which have just occurred thousands of miles away; in a day when creditors are constantly in touch with their debtors, know their every movement, and know, within the space of a few hours, of the death of a debtor; when recluses in the most inaccessible parts of the earth are now better informed by radios, good roads, newspapers, airplanes and streamlined trains, of world events than were the back fence gossips of not so long ago; in a day such as this we, in Colorado, are operating under probate laws which were designed for the period when it took days and weeks for a lawyer or judge to traverse the territory between county seats; during a period when the ox cart was more popular than the automobile; when communication was slow, and when citizens of this great state might go for months without hearing any of the news of the outside world.

It must have been a delightful experience to administer estates in the ox cart days, when an Administrator's chief duties were to count the cows, make a list of them, sell them, report the same to the Court and, after the expiration of the one-year period for filing claims, file final report and be discharged.

Prior to the advent of the inheritance tax, with the necessity of filing a report to the Inheritance Tax Department,

and subsequently attempting to prove to the Department, in one or more conferences, the fairness of the executor's valuations; in a time prior to the advent of the Federal estate tax, with the necessity of filing complicated Federal estate tax returns, computing tax on a complicated scale and having numerous arguments with numerous Internal Revenue agents, examiners, technical staff and commissioners, attempting to convince them of the fairness of the executor's valuations; and prior to the advent of the Federal income tax law, and its subsequent changes, which make it necessary for executors to file such returns in all estates of any size, and have numerous arguments with various Internal Revenue officials regarding the correctness of the return and the tax paid; in a day prior to the advent of the Colorado state income tax law, with the necessity of filing returns in every estate, of figuring normal taxes and 2% surtaxes, deductions and exemptions; when an executor could file an inventory in the County Court, without standing in mortal fear that the Assessor would eventually find the inventory, and attempt to tax the $100.00 checking account of the decedent for ten or fifteen years before, at the rate of three or four per cent a year, because the decedent had, following the universal practice of taxpayers, failed to return such account as a part of his taxable assets; yes, I say, it must have been a very pleasant experience to administer an estate in those olden days.

However, we are living in a streamlined age, in an age of fast communication; in an age of changing conditions and tremendous responsibilities, and our probate laws should meet the test of such days, not the test of ox cart days, and, for that reason, I feel that it is time that our Legislature seriously undertook the task of streamlining our probate laws.

One thing that needs attention is our statutes regarding the filing of claims against an estate and setting the normal administration period. Although, under optional valuation privileges of the Federal Estate Tax law and the new Colorado

Inheritance Tax law amendments, the administration period of large estates cannot be reduced by reducing the time within which claims can be filed, the period for administering small and simple estates can be reduced by that method, and executors will be enabled to more quickly determine the financial status of their estates so that proper and oftentimes much needed distributions can be made earlier.

I propose a time limit for filing claims of four or six months. During the past five years, since my admission to the Bar, virtually all of my work has been the handling of estates and, naturally, over this period of time I have come in contact with many. To the best of my knowledge, not once in any of these estates would a period of four or six months have not been more than sufficient time in which to allow creditors to file claims. Once in my experience a claim was filed five days prior to the expiration of the one-year period for filing claims. The claim was filed by the decedent's landlady, the first person who knew of his death and who could have filed a claim within twenty-four hours after the death, if she had so desired.

There is some question as to whether or not all claims must be filed within the one-year period. There seems to be an extensively-held opinion among Denver attorneys that the one-year period applies only to claims of the fifth class, and that claims of the other four classes may be filed at any time. This should certainly be clarified. There is also considerable doubt as to whether or not contingent claims, or claims which have not matured, must be filed within the one-year period. In my opinion, there is no reason why contingent and unmatured claimants cannot file their claims within four or six months of the decedent's death, providing proper provision is made for settlement and allowance upon the ripening of the claim. There is also much question as to what of the various claim statutes apply to estates of minors and mental incompetents. This matter should also be clarified.

Adjustment Day is a day of the past. Whatever purpose it might have served in the past, it certainly does not serve the same purpose at the present time. I propose that an executor or administrator, upon appointment, run a notice to creditors, advising them of the appointment, advising them to file claims and giving the last day upon which claims may be filed. Such a notice would certainly be sufficient, and would recognize the passing of the usefulness of Adjustment Day. Such a notice could be published once a week for four successive weeks, and could state that claims must be filed within four or six months from the date of the first publication.

Another difficulty of our present law is that where an Administrator to Collect is appointed, this appointment does not start running the time for filing claims, with the result that, if an Administrator to Collect acts, as he might very well do, for, say, six months, creditors have actually eighteen months to file claims. The appointment of an Administrator to Collect should start running the period for filing claims. Many minor changes in the claims statutes could be made for their betterment, but space limits mentioning all of them, and all statutes which now point to a normal time of administration of one year should be changed to conform to the time as finally determined by the claim statutes for filing claims.

The statute concerning administration of estates under $300.00, although very wise in its goal, probably needs some attention in order to make it absolutely valid. Small changes, such as a provision for giving notice to creditors, might be added in such a way as to remedy the objections. It has been suggested, and very properly, that the amount might be increased to, say $500.00.

The statutes relating to probating wills also need attention. In the first place, the time of notice could probably be very beneficially reduced. I have often wondered why it is that anyone except the heirs at law should be entitled to notice

of probate. Under our present practice, we notify all heirs and all legatees and devisees, and yet the real reason for the notice is to give persons who would benefit by the will's being denied probate an opportunity to be heard. Legatees and devisees, receiving something which they would not receive otherwise, are not in this position. Notice by publication satisfies the legal requirements and yet, unless a notice is actually sent to the persons to whom the notice runs, the notice isn't worth much. My suggestion would be that a copy of the published notice be sent by ordinary or registered mail to every person entitled to such notice.

I think, also, that it is time our Legislature considered the advisability of adopting a statute relating to living probate. Under such statutes a testator can go before a proper officer, be examined as to testamentary capacity and other things, and the will is then lodged, with a proper official, and, upon the death of the testator, is immediately probated, without notice to heirs. A statute could probably be drawn, which would not only effectuate the purpose of living probate but would also protect the rights of heirs to have an improperly probated will set aside.

Another division of our laws which needs attention is that part relating to the powers of executors. When an executor is given, in the decedent's will, broadest possible powers for conduct of an estate, transfer agents, and many other classes of people, abrogate those powers by requiring that Court approval be obtained of the action. In many states, the executor, after probating the will and filing an inventory, if properly exempted by the will, is relieved from any further necessity to report to or account to, or be under the supervision of, the probate court, and is allowed to conduct the estate free from the control of the probate court. I do not, at present, advocate such a procedure in this State, but I do believe that, when a testator gives an executor full powers, those powers should not be limited by the Courts unless contrary to public policy,

and I believe that our statutes should be so clarified as to confirm in executors such powers as are given by the will.

Testamentary Trusts are a fairly new development. The rapid growth of testamentary trusts caused at one time the insertion of a provision in our laws that testamentary trustees should, unless otherwise provided by the testator, remain under jurisdiction of the County Court. The duties, powers and liabilities of such trustees were set forth in one small clause, which states that testamentary trustees shall have the powers, duties and liabilities of executors. Now, a testamentary trustee cannot logically be subject to all of the duties and liabilities of an executor. There is no reason for giving notice to creditors; the statutory sale of real estate is clearly not applicable to the position of a testamentary trustee; there is no reason for doing numerous things that would be required of a testamentary trustee under such a provision. For that reason, I believe, the powers, duties and liabilities of testamentary trustees should be carefully considered and fully set forth in the statutes. When a testamentary trust is not under jurisdiction of the Court, there is some question as to what must be done. May he file an oath and bond, and is he then relieved from the jurisdiction of the Court, or, does he proceed without filing an oath and bond? It would be good sense to fully and adequately set forth the exact status of a testamentary trustee.

Many of our various sections, written at different times, cause conflicts in regard to the various details of similar procedures in different instances; for example, there is the procedure of determination of heirship. There are three separate provisions under which heirship can be determined. In these three provisions there are variances relating to notice, relating to the time in which the petition must be filed; relating to the time after which the decree may be entered, and other things, with the result that the poor lawyer must remember three separate procedures, whereas, with proper correlation, there

would be the necessity for remembering only one procedure.

Scattered through our probate statutes are various provisions relating to fiduciary bonds. All of these various sections could be eliminated by one simple section, which provided simply that the executor or administrator must, at all times, have on file with the Court a bond, sufficient in amount adequately to protect the estate as to all personal property and the proceeds from the rental or sale of real property which may come into the executors hands, and that if, at any time, it appears that the bond is inadequate, it must be made adequate.

It might also be noted that there are many provisions relating to notices; that most of the provisions are conflicting and that, of the various notices required by the probate laws, there are different periods for each kind of notice. There might be some justification for having some variation between various types of notices, but there is no reason why they should not be the same in most cases.

The so-called "Statutory Sale of Real Estate" is the hoodoo of many executors. We are living in a day when real estate transactions must be made quickly. Both agents and purchasers wish a sale to be completed within two or three days of the time the offer is made. Probably most executors do not start a statutory sale proceeding until an offer is actually received, and it is very difficult for purchasers and agents to understand why it is necessary for some two months to elapse while the property is being appraised and while the court is being petitioned for sale, while notice is being published to non-resident heirs, and the time required for such notice is running, and then while the order for sale is being entered by the Court upon testimony of the executor and, after the sale, it must be confirmed by the Court. I dare say that when an abstract is submitted to you for an examination, you make it the first order of business, because, if you do not, the prospective purchaser will be calling you, continuously and excitedly, to know why it can't be rushed right through.

I live in mortal fear of the day when my phone will ring, and I will pick it up to hear a conversation something like this: "Mr. John Doe died this morning. I have a buyer for his house. Can we close the deal this afternoon?" and then I must explain that it is necessary for appraisers to be appointed, for the court to be petitioned, for notice to run to heirs, devisees and legatees, and that, in all probability, the sale cannot be completed for two months' time. This long period of time between offer and completion of the sale seems long and useless to our present day real estate purchasers and agents who are used to doing business in a period of hours, not months, and it does seem to me that any procedure which requires so much time is not in keeping with our present idea of speed and fast communication.

These points are, in my opinion, the main points which need revision, and which will materially assist in the simplification of estate administration. Many other points need attention, such as the sections providing for the concurrent jurisdiction of District and County Courts, when the constitution specifically gives this jurisdiction to the County Court; there is, of course, the section which talks about children and descendants of children of the half-blood, the appearance of which history does not record. There is also the question of the election and allowance of an insane widow. In spite of our mandatory law, it would seem that an insane widow may, without a Conservator, have the right of election after the six months' period may have expired. This should be clarified in such a manner that the widow would adequately be protected and yet that the right of election would not exist forever.

Of the present 255 sections of Chapter 176, very likely most of them need attention, but someone must start now and campaign vigorously and continuously until such changes are adopted as will enable the executor or administrator to administer an estate from the technical standpoint as simply as

possible. Problems of investments, taxation and the increasing number and complication of reports necessary to be made, disposition of the assets and settlement with the heirs and beneficiaries, are so great that the executor or administrator should be given as much relief as possible from unnecessary and burdensome details of administration.

Colorado has not shown itself adverse to advisable changes in either substantive law or rules of procedure. Kansas and other states have recently revised their probate laws, bringing them up to date. Louisiana has adopted a new Trust Estates Act, embodying many very desirable features. With this spirit of change so widely manifested, the Colorado Probate Code should receive early attention.

Repealing Obsolete Laws

The Illinois Legislature recently inaugurated a campaign to remove obsolete legislation from their statute books, with the result that there was achieved the mass repeal of 402 acts and parts of acts that had long outlived their usefulness.

Many of the laws repealed were old validating acts and appropriation measures, others outlived by the advance of time and the progress of civilization, and some related to the Chicago Sanitary district, state parks, state institutions, railroads, taxes, highways, and public health.

The search for these obsolete laws was not without some humor. One act repealed was passed in 1897 and prohibited "long continued and brutal bicycle riding." Another prohibited "fraud in the sale of lard," and an act to prevent "the sale of renovated butter" was found. Apparently the oldest of the bills repealed was "an act to afford relief to total abstinence societies" which was enacted in this state on May 20, 1879.

Of more pertinent concern were the act to prohibit "false advertising in the purchase of Liberty bonds," other measures providing "relief to Illinois flood sufferers," and penalties against "nuisances at the World's Fair." One act was found making it a misdemeanor "to sell or give away toy pistols," and another act purported "to secure all persons freedom in the selection of an occupation, profession or employment."

This statute housecleaning process was accomplished by Senate Bills 375 and 435, the first measures of their kind to be introduced in the Illinois legislature since 1874. The Statutes of Illinois in 1819 were contained in a volume of 375 pages; when these repealing acts were introduced by Senator Hickman, the volume had grown to 3,743 pages. The removal of these 402 useless and obsolete acts is expected to effect a material reduction in the size of the Illinois Revised Statutes and thus assist the active law practitioner who must make constant use of the volume. *"Illinois Bar Journal,* Sept., 1919."

Colorado could well afford to have a committee of the next legislature with a similar end in view.

Discrimination in Respect to "Hire"

The National Labor Relations Board recently ordered an employer to give "back pay" to two union members who had never been employed by the company. The basis of the Board's holding was that the employer, in failing to hire these men, had discriminated against them in respect to their hire and had thus discouraged union membership. The period of "back pay" ran for more than two years, since the men applied for work in July, 1937. The Board overruled the employer's contention that the refusal to employ these men was also due to their lack of experience on the particular machines to be used, the advanced age of the applicants, and the fact that they already were employed elsewhere. The employer also argued that there were several applicants for each position available at the time. (*In re Waumbec Mills, Inc.,* 15 NLRB, No. 4, Sept. 1, 1939.) (N. Y. State Bar Assn., Lawyer Service Letter Oct. 18, 1939.)

NEGLIGENCE

HOLC Not Immune

The Court of Appeals has affirmed the order in the Gillen case (digested *supra,* p. 117) holding that when the HOLC owns, manages, and leases real property it engages in a proprietary function and is therefore not immune in tort for damage claims arising out of a tenant's personal injuries. *(Gillen v. HOLC,* Ct. of App., May 16, 1939.) *Accord, Keifer & Keifer v. RFC,* 59 S. Ct. 516. (N. Y. State Bar Ass'n Letter, May, 1939.)

COLORADO BAR ASSOCIATION SECTION

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PRESIDENT APPOINTS STANDING COMMITTEES FOR STATE BAR

WM. R. KELLY of Greeley, President of the Colorado Bar Association, announces with this issue of Dicta the appointment of all standing committees of the Association. The appointments are made in accordance with the recent amendments to the by-laws adopted in the 1939 annual meeting.

These amendments provide that each affiliated association designates ten members for each representative on the Board

of Governors as eligible for committee membership. From those so designated, the president selects all the standing committees. Each standing committee is composed of five members except the committee on judicial procedure. This committee according to the by-laws is composed of four district court judges, two county court judges, and a representative from each affiliated association not represented by a judge. The membership is divided into active members who carry on the bulk of the committees work, and the remaining members act in an advisory and liaison capacity.

In order to establish continuity of committee work a portion of those designated serve for two years. In the list of committee appointments which follow the figure "two" after a name means that that member serves until 1941.

The Colorado Bar Association Standing Committees 1939-1940

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