The Estate of the late J. J. ROSS, Appellant, v. **The Estate of the late J. L. FULLER**, Appellee.

ARGUED APRIL 28, 1915. DECIDED MAY 10, 1915.

Dossen, C. J., Johnson and Witherspoon, JJ.

Limitation of Claims. Administrator's Notice.

1. A valid claim against an estate is not barred because presented outside the time-limit of administrator's notice.

2. A claim against an estate may be presented at any time within a year from the granting of letters of administration.

3. Under peculiar circumstances the Probate Court has power to extend this time by six months longer.

4. Where there has been a previous distribution of any, or all of the assets, of an estate, an administrator is not responsible for the losses that may arise from the laches of a claimant in presenting his claim.

Mr. Chief Justice Dossen delivered the opinion of the court:

Debt Appeal from Judgment. This case is brought before us upon an appeal from the judgment of the Monthly and Probate Court, Sinoe County, rendered at its April term, 1914.

The records show that the said J. L. Fuller died intestate, and that in conformity with the statute relating to intestate estates, letters of administration were granted W. S. Bracewell and Z. B. Russ, constituting them administrators of the said intestate estate. The records further show that under date of November 7th, 1913, the said administrators gave public notice to all claimants against the said estate, to present their claims to the aforesaid administrators within two months from date of said notice. At the April term, 1914, of said court, said administrators appeared in court with a report on their doings and for the purpose of closing the estate. The attorney for

appellant objected to the estate being closed and presented a claim in the nature of a note of hand for $572.60 given by the late J. L. Fuller during his lifetime. The administrators rejected the claim on the ground that it was not presented within the time prescribed in the notice, and upon the question being referred to the court, whether the said claim should be admitted, the court decided against its admissibility, on the ground that it had not been presented within the time prescribed in the notice of the said administrators, to which ruling appellant excepted.

This is a synopsis of the facts in this case.

The questions involved in this controversy, and, which have been brought for our decision have not been settled by any prior decision of this court; but notwithstanding that fact, we think it is fully controlled by the statute relating to the management of intestate estates. The entire case hangs upon the construction of that portion of the said statute limiting the time for the closing of such estates which we quote as follows :

"That all estates on which letters of administration have been granted, shall be settled up and the accounts closed in one year from the date of the commission of administration; nevertheless should it appear to the satisfaction of the Probate Court, that owing to there being foreign creditors or debtors, or, to any other circumstance, said estate could not be closed in one year without detriment and damage to those concerned, said court shall be competent to grant a longer term, not exceeding six months." (See Lib. Stat., art. III, sec. 3.)

After a careful consideration of said statute, we have failed to discover any ground for the theory upon which the judgment of the lower court is founded ; namely : that a claim against an estate is barred if not presented within the time-limit stated in an administrator's notice calling for the presentation of claims against an estate. It is not difficult to discover the abuse which an administrator might make of his powers as such, and, the disadvantages to which creditors might be subjected, if, standing in the room of the deceased, the law should facilitate his escape from the responsibility of paying the just debts against the estate, by conferring upon him the power to bar the same by his own act in this manner. This we opine would be a temptation to dishonesty and a connivance at fraud, which, judging from the weakness of human

nature, we may reasonably conclude would hardly be generally avoided.

It was argued with great eloquence and earnestness by the learned counsel for the appellee that the keeping open of an estate in the hands of an administrator is often attended by a devastavit of the assets, to the injury and loss of the heirs. While recognizing the force of this contention we are nevertheless of the opinion that while it is the duty of courts to safeguard the interest of heirs and to throw around them the strong arm of the law, yet they should not fail at the same time to protect the just claims of creditors. It is a maxim in law particularly applicable to such cases as the one at bar, that, "a man must be just before he is generous." Any construction placed upon the statute aforesaid calculated to promote dishonesty and to evade the payment of a lawful claim against an estate, is to our minds repugnant to good conscience and transparent justice.

To the mind of the court the case at bar presents no features that require exhaustive research into the common law or statutes of other countries to enable us to arrive at a sound conclusion in the premises. The references made at the hearing of the case to the laws of other countries, while exceedingly interesting and entertaining to the court, can not enlarge the scope of the statute governing this case, nor confer upon administrators powers which the said statute does not profess to confer.

After a dispassionate consideration of the whole case and the points presented to our consideration in the arguments by the learned counsel for appellee, we fail to discover any injustice that could accrue to the estate, or, to the heirs thereof, by the admission of a genuine claim. As to the probability of paying said claim, that is a distinct question. If the appellant withheld his claim until the estate was exhausted, he can not complain of his own laches, nor can he call into question the act of the administrators in distributing the assets among creditors whose claims were presented and satisfied while there were assets in hand. We hold that while it appears to us unquestionable, that the statute does not bar the payment of a claim presented within a year from the granting of letters of administration, or, within such extended time as the said statute allows under certain circumstances, still an administrator may proceed to pay off the claims against an estate after he has given reasonable notice of such intention, which must be decided from the circumstances of creditors

with respect to their locality and the adequacy of the means adopted to extend such notice ; and, if under such circumstances, a claim can not be satisfied in whole, or even in part, on account of the distribution of the assets prior, we hold that no responsibility attaches to such administrator on account of having applied the assets to the liquidation of such claims as were then in hand.

In view of the foregoing facts this court is of the opinion that the case should be remanded to the lower court with instruction to resume jurisdiction over same and to cause the said estate of J. L. Fuller to be reopened and to admit the claim of appellant, and if found genuine, to pay same or such pro rata thereof as the undistributed assets of the estate will warrant. And it is hereby so ordered. Costs disallowed.

S. A. Ross and *C. B. Dunbar,* for appellant. *Arthur Barclay,* for appellee.