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# Jury Trial--Surrogate's Court--Executrix Has Right to Jury Trial Under New York State Constitution (Matter of Garfield, 14 N.Y.2d 251 (1964))

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In conclusion, it would appear that in order to avoid the danger that lower courts will construe this decision as do the dissenting judges, this case should be viewed as an equivocal opinion designed to grant the appellant her full day in court, and yet not intended by the majority to effectuate drastic changes in both criminal and constitutional law in New York.

JURY TRIAL — SURROGATE'S COURT — EXECUTRIX HAS RIGHT TO JURY TRIAL UNDER NEW YORK STATE CONSTITUTION. — Claimants petitioned for a compulsory accounting in the surrogate's court nearly six years after the executrix of decedent's estate rejected their claim for legal services. The executrix answered that an accounting would be unnecessary since there were no other claims pending against the estate, the assets of which were sufficient to meet the claim if it was determined to be valid. The executrix then demanded a trial by jury of the disputed claim. In reversing the lower court decisions which rejected this latter demand, a divided Court of Appeals *held* that petitioners' claim was in the nature of an action at law for work, labor and services for which a trial by jury was preserved by the New York State Constitution. *Matter of Garfield*, 14 N.Y.2d 251, 200 N.E.2d 196, 251 N.Y.S.2d 7 (1964).

In 1830 the Revised Statutes of New York conferred upon the surrogate's courts [1] the powers of equity formerly utilized in administration suits in chancery.[2] However, it should be noted that a primary limitation on the equity jurisdiction in administration suits was the necessity of first establishing disputed claims at law where claimant would be afforded a jury trial.[3] Therefore, in

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ADMINISTRATIVE LAW 688 n.5 (4th ed. 1960); Vanderbilt, *Functions and Procedure of Administrative Tribunals*, 12 U. CINC. L. REV. 117, 119-21 (1938); Rourke, *Law Enforcement Through Publicity*, 24 U. CHI. L. REV. 225, 235 (1957).

[1] Before the Revolutionary War the surrogate's court was called the prerogative court. The colonial governor was its judge and his deputies were called surrogates. In 1686 these courts were given the powers exercised in England by the ecclesiastical courts. One of these powers was the settlement and adjustment of executors' accounts. In 1788, by statute, the prerogative court became the surrogate's court. See Malone v. Sts. Peter & Paul Church, 172 N.Y. 269, 64 N.E. 961 (1902).

[2] Matter of Kent, 92 Misc. 113, 120, 155 N.Y. Supp. 383, 387 (Surr. Ct. 1915); 1 JESSUP-REDFIELD, LAW AND PRACTICE IN THE SURROGATES' COURTS IN THE STATE OF NEW YORK § 91 (rev. ed. 1947).

[3] Matter of Kent, *supra* note 2, at 123, 155 N.Y. Supp. at 389.

New York prior to 1895 a disputed claim against a decedent's estate could not be heard and determined in the surrogate's court.[4] In 1895 an amendment to the Code of Civil Procedure provided that a disputed claim could be determined by the surrogate upon the judicial settlement of an executor's account, provided that the claimant had not already commenced an action at law, and that *both* parties had consented in writing.[5] Parties who consented to surrogate's court jurisdiction under this amendment waived their right to a jury trial since at that time there was no provision for such a trial in the surrogate's court.

Thus, by the close of the nineteenth century the surrogate's courts had jurisdiction over the judicial settlement of accounts, an equitable proceeding in which there was no trial by jury. In addition, a rejected or disputed claim could be adjudicated by either an action at law, where a trial by jury was available, or by the surrogate himself without a jury, if both parties consented in writing.

In 1914 the Surrogate's Court Act went into effect. It contained "more liberal provisions than any other act ever affecting the jurisdiction of the surrogates." [6] This act gave the surrogates power "to administer justice in all matters relating to the affairs of decedents . . . [and] to try and determine all questions, legal or equitable, arising between any or all of the parties. . . ." [7] Furthermore, the act authorized a determination of a rejected and disputed claim in the surrogate's court without the need for the written consent of the parties. However, a claimant's right to commence an action at law within a specified time from the rejection of his claim by the executor was still assured.[8] A new section was also added which authorized, for the first time, a trial by jury of any controverted question of fact in the surrogate's court, provided the party demanding a jury trial had a constitutional right to such a trial.[9]

Prior to the 1914 act the executor's right to a trial by jury of a disputed claim was certain since he could refuse to consent to an adjudication by the surrogate. The *Revisers' Report* [10] indicates that this act was not intended to deprive any party of his right to a jury trial. The report further indicates that the

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[4] Matter of Martin, 211 N.Y. 328, 330, 105 N.E. 546, 547 (1914).

[5] N.Y. Sess. Laws 1895, ch. 595, § 1822; Matter of Martin, *supra* note 4, at 329, 105 N.E. at 547.

[6] Matter of Kent, *supra* note 2, at 128, 155 N.Y. Supp. at 392.

[7] N.Y. Sess. Laws 1914, ch. 443, § 2510.

[8] N.Y. Sess. Laws 1914, ch. 443, § 2681.

[9] N.Y. Sess. Laws 1914, ch. 443, § 2538. This section is substantially identical to N.Y. Surr. Ct. Act § 68.

[10] The Report of the Commission to Revise the Statutes in Relation to Practice in the Surrogate's Court (1914) (hereinafter referred to as Revisers' Report).

revisers believed that it would be unconstitutional to compel the parties to try their "controverted questions of fact" without a jury in the surrogate's court.[11] Therefore, the primary question when a demand for a jury trial is made is whether the person claiming the privilege is entitled to it under the New York Constitution.

The New York State Constitution of 1894 assured a jury trial "in all cases in which it has heretofore been guaranteed. . . ." [12] As noted above, prior to 1914 there were no jury trials in the surrogate's court. It would therefore appear, at first glance, that there is no constitutional right to a jury trial in an accounting proceeding in the surrogate's court.[13] However, at that time disputed claims were not adjudicated in the surrogate's court, but at law where a jury trial was available. It was only with the adoption of the Surrogate's Court Act of 1914 that those courts were given jurisdiction to try disputed claims without the consent of the parties.

The dilemma posed in the principal case is whether (1) the nature of the (accounting) proceeding in the surrogate's court, which is equitable and in which there has never been a right to a jury trial, or (2) the nature of the claim, which is legal and for which a trial by jury has traditionally been guaranteed, should be the controlling factor. Past authorities indicate that the nature of the proceeding is the deciding factor.[14]

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[11] *Ibid.* Section 2536 of the N.Y. CODE OF CIV. PROC., entitled "Surrogate may refer questions of fact," was amended in 1914 to read (in part): "In a special proceeding other than one instituted for probate of a will, *and subject to the right of trial by jury of any question of fact,* the Surrogate may, in his discretion, appoint a referee. . . ." (Revisers recommended addition in italics). Section 2677 of the N.Y. CODE OF CIV. PROC. is the first section in the article relating to the presentation and proof of creditors' claims. The Revisers' notes to that section state: *"With provision for jury trial* and judicial settlement at the end of the advertising for creditors, all claims *can* be tried on judicial settlement, and should be so tried without right to reference or any action in supreme court." (Emphasis added.) See Revisers' note to N.Y. CODE CIV. PROC., § 2537. *But see* General Note, REVISERS' REPORT 1.

[12] N.Y. CONST. art. I, § 2 (1894). N.Y. CONST. art. I, § 2 (1954) is substantially the same.

[13] Matter of Leary, 175 Misc. 254, 23 N.Y.S.2d 13 (Surr. Ct.), *aff'd sub. nom.* Werner v. Reid, 260 App. Div. 1000, 24 N.Y.S.2d 1000, (1st Dep't 1940), *aff'd,* 285 N.Y. 693, 34 N.E.2d 383 (1941).

[14] 11 CARMODY-WAIT, ENCYCLOPEDIA OF NEW YORK PRACTICE § 271 (1954). "Since accounting proceedings are considered equitable in nature, it is generally considered that the operation of § 68 of the Surrogate's Court Act does not give any constitutional right to a jury trial in matters concerned with the settlement of accounts even though the claimant against the estate might have gone to a common-law court and there obtained a jury." *Ibid.* See also 1 JESSUP-REDFIELD, *op. cit. supra* note 2, § 420; 1 WARREN, HEATON ON SURROGATES' COURTS § 108 ¶ 2(h) (1940); BUTLER, NEW YORK SURROGATE LAW AND PRACTICE § 467 (1950).

In *Matter of Beer*,[15] the petitioner sought a compulsory accounting after the administratrix rejected his claim. The administratrix then petitioned for a voluntary accounting and the proceedings were consolidated. Issues of fact were raised by the petitioner and the administratrix demanded a trial by jury. The appellate division, reversing the surrogate, held that such a trial should have been granted as a matter of right. However, the value of this case as precedent was severely weakened by the leading case of *Matter of Boyle*.[16]

In *Boyle* the claimant requested a jury trial during an accounting proceeding, the administrator having previously rejected the claim. The surrogate ordered a jury trial as of right and the appellate division affirmed, certifying to the court of appeals the question: "Is the respondent . . . entitled as a matter of right to a trial by jury of her claim?" [17] The question certified was answered in the negative, hence reversing the lower court. The court of appeals indicated that *Beer* was merely one of two cases [18] in which a claimant's right to a trial by jury was upheld by the appellate division.[19] However, in *Beer* it was not a *claimant* who demanded a jury trial, but an *administratrix*. This important factual distinction was apparently overlooked when the court of appeals decided *Boyle*. Consequently, since the holding in *Boyle* denies the right of a *claimant* to a trial by jury, it may be concluded that *Boyle* did not specifically overrule *Beer* because that case dealt with the *administratrix's* right to a jury trial.[20] However, the generalized statements in the *Boyle* opinion, when removed from their context, appear to deny the existence of any right to a trial by jury in an accounting proceeding in the surrogate's court, whether the party demanding such is the claimant or executor.[21]

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[15] 188 App. Div. 894, 175 N.Y. Supp. 894 (2d Dep't 1919) (memorandum decision). The surrogate's court decision is not officially reported, but the facts are set forth in detail in Matter of Stein, 200 App. Div. 726, 193 N.Y. Supp. 298 (4th Dep't 1922).

[16] 242 N.Y. 342, 151 N.E. 821 (1926).

[17] *Id.* at 344, 151 N.E. at 821.

[18] The other case is Matter of Stein, 188 App. Div. 894, 175 N.Y. Supp. 894 (2d Dep't 1919).

[19] "It is true that the Appellate Divisions of the second and fourth departments have held that *claimants* under facts quite similar to those presented in the present case were entitled as a matter of right to a jury trial." Matter of Boyle, 242 N.Y. 342, 344, 151 N.E. 821 (1926). (Emphasis added.)

[20] The headnote to *Matter of Boyle*, which is not an official part of the record, incorrectly states that *Matter of Beer* is overruled. See also 1 JESSUP-REDFIELD, *op. cit. supra* note 2, § 421, at 469 n.13 which cites *Matter of Beer* as being overruled by *Matter of Boyle*.

[21] With respect to N.Y. SURR. CT. ACT § 68 the court stated: "The statute gives an absolute right to a jury trial in a probate proceeding, but there is no such right as to a rejected claim." Matter of Boyle, *supra* note 19, at 345, 151 N.E. at 822.

*Matter of Boyle* approved two earlier cases which had held, in sweeping terms, that there was no right to a trial by jury in an accounting proceeding.[22] Similarly, nearly all the cases which have followed the rule in *Boyle* contain general statements to the same effect.[23] However, none of these cases involved the specific question presented in the instant case, viz., whether an *executor* or an *administrator*[24] is entitled to a jury trial as a matter of constitutional right in an accounting proceeding.[25]

The majority in the principal case held that since the nature of the claim is clearly legal, the right to a trial by jury is guaranteed to either party by the New York State Constitution.[26] They noted that since the validity of the claim for work, labor and services has not been determined, the executrix has no matured fiduciary duty to the claimants and, therefore, there are no equitable principles which govern the relationship between the parties. The history of the development of the surrogate's courts' powers in accounting proceedings would appear to support the Court in this statement when it is recalled that before 1895 a disputed claim first had to be established at law.

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[22] Matter of Beare, 122 Misc. 519, 203 N.Y. Supp. 483 (Surr. Ct. 1924), *aff'd*, 214 App. Div. 723, 209 N.Y. Supp. 793 (1st Dep't 1925); Matter of Woodward, 105 Misc. 446, 173 N.Y. Supp. 556 (Surr. Ct. 1918), *aff'd*, 188 App. Div. 888, 175 N.Y. Supp. 926 (1st Dep't 1919).

[23] *E.g.*, Raymond v. Davis, 220 App. Div. 480, 221 N.Y. Supp. 675 (4th Dep't 1927), *rev'd on other grounds*, 248 N.Y. 67, 161 N.E. 421 (1928); Matter of Ludlam, 5 Misc. 2d 1068, 162 N.Y.S.2d 138 (Surr. Ct. 1957).

[24] All distinctions made hereafter between a claimant and an executor apply equally well for a claimant and an administrator.

[25] *Supra* note 23. *But see* Matter of Woodward, *supra* note 22, where it appears that the demand for a jury trial was filed by the executrix. However, the surrogate seems to have decided the case as if the demand for a jury trial was made by the creditor.

Thus, while the authorities do not specifically decide whether or not an executor has a right to a jury trial in an accounting proceeding, they do seem to indicate in general statements, that since an accounting proceeding is equitable in nature there is no right to a jury trial by either party. See TEMPORARY STATE COMMISSION ON MODERNIZATION, REVISION AND SIMPLIFICATION OF THE LAW OF ESTATES, SECOND REPORT TO GOVERNOR AND LEGISLATURE (1963), where the Commission states that there is no right to a jury trial in an accounting proceeding, but yet seems to believe that it would be unconstitutional to deprive a claimant of his right to secure such a trial. The Commission's comment to § 211-c reads, in part: "Under the proposed new section 211-a, a *claimant's* right to an adjudication on a rejected claim would be limited to accounting proceedings *in which as we also know jury trials are not available, at least as a matter of right.* Hence it seems advisable to recommend a section which would say in terms that nothing in the article shall prevent a *claimant* from bringing an action on his claim at law or in equity." *Id.* at 365-66. (Emphasis added.) It is interesting to note that no mention is made of the executor's corresponding right.

[26] Matter of Garfield, 14 N.Y.2d 251, 200 N.E.2d 196, 251 N.Y.S.2d 7 (1964).

The Court also stated that the legislature has not the power to "deprive a party who would have had a right to jury trial at common law of such right by authorizing a court of equity to take jurisdiction." [27] Section 211 of the Surrogate's Court Act, as it appeared before the 1964 changes,[28] provided that if a *claimant* did not bring an action at law on a rejected claim, that claim would be decided in the surrogate's court upon the judicial settlement of the executor's account without the consent of the parties. However, the executor had no choice of courts since he had to represent the estate in the court chosen by the claimant. The Court reasoned that since the cause of action asserted by the claimants is legal, the executor had a constitutional right to a trial by jury. Yet, section 211 appears to preclude this right in the case of the executor. Nevertheless, the Court avoided ruling section 211 unconstitutional by holding that the legislative history of Section 68 of the Surrogate's Court Act, which provided for jury trials in the surrogate's court in certain cases, "was intended to preserve the existing right of jury trial in creditors' claims arising on judicial settlement." [29]

The Court analogized the situation presented in the principal case to one where a plaintiff brings a suit in equity by joining legal and equitable causes thereby forcing the defendant to defend the legal action in a court of equity. It was held that in the latter situation the defendant, although in equity, did not lose his right to a trial by jury.[30] This analogy was disputed by the dissent which declared that an executor is not brought into equity since one of the responsibilities of the executor is the duty to account for assets that have come into his possession.[31] The reasoning is that by accepting his letters the executor is already in equity and subject to its processes. However, the history of the development of the surrogate's courts would appear to lend its support to the rationale of the majority, since historically a claim of this nature was always decided at law.

The impact of this decision could have far-reaching effects on the orderly and speedy administration of justice in the surrogate's courts of New York. An executor now has the right to demand a jury trial of claims presented against the estate. An executor who felt that he was in a good "jury position" might be induced to assert his right to a trial by jury against every claim asserted against him. In discussing the consequence of allowing such jury trials in the surrogate's courts, Surrogate Fowler

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[27] *Id.* at 258, 200 N.E.2d at 199, 251 N.Y.S.2d at 11.
[28] N.Y. SURR. CT. ACT § 211 (1963).
[29] Matter of Garfield, *supra* note 26, at 259, 200 N.E.2d at 200, 251 N.Y.S.2d at 12.
[30] *Id.* at 258, 200 N.E.2d at 199, 251 N.Y.S.2d at 11.
[31] *Id.* at 262, 200 N.E.2d at 201, 251 N.Y.S.2d at 14 (dissenting opinion).

stated that "such a practice if inaugurated would end only in confusion, delay and injustice. . . ." [32] The fact that few executors have demanded such a trial in the past may be attributable to the earlier authorities which strongly indicate that the courts, the bar, and legal scholars believed that there was no such right to a trial by jury in an accounting proceeding in the surrogate's courts. The decision in *Garfield* is sure to substantially increase such demands.

The New York Court of Appeals has rectified a long standing misconception as to the executor's right to a trial by jury in an accounting proceeding. The decision is strongly supported by the history of the development of the surrogate's courts' powers, since such claims at common law were triable at law where a jury was available. The expansion of surrogate court jurisdiction should not eliminate the right to have a jury trial in these cases. Although the decision in the principal case may cause some confusion and consternation in the surrogate's courts, the right to a trial by a jury of peers is a fundamental constitutional right and this decision is a reaffirmation thereof.

LABOR LAW — NATIONAL LABOR RELATIONS ACT — RECOGNITIONAL PICKETING IN VIOLATION OF SECTION 8(b)(7)(C) HELD INSUFFICIENT TO WARRANT INJUNCTIVE RELIEF. — Petitioner, a distributor of paper products, had for a number of years entered into collective bargaining agreements with respondent union. The most recent agreement expired; and when the parties were unable to agree on a new contract the union filed charges with the National Labor Relations Board alleging a refusal to bargain. These charges were subsequently determined by the Board to be without foundation; however, the union continued to picket. The Regional Director sought an injunction under Section 10(l)[1] of the National Labor Relations Act alleging that the acts of the union constituted recognitional picketing in violation of section 8(b)(7)

[32] Matter of Woodward, *supra* note 22, at 449, 173 N.Y. Supp. at 558.

[1] Section 10(l) of the act reads in part: "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of . . . section 158(b)(7) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character. . . . Upon the filing of . . . [a] petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. . . ." Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act) § 704(d), 73 Stat. 544, 29 U.S.C. § 160(l) (Supp. IV, 1963).