

Surrogate's Court Allows Running of Sixty Days Before Entertaining Petition Under Section 211-b of the Surrogate's Court Act

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SURROGATE'S COURT

Surrogate's Court allows running of sixty days before entertaining petition under Section 211-b of the Surrogate's Court Act.

*In re Unseld's Estate*³¹⁸ involved a proceeding by an executrix under Section 211-b of the Surrogate's Court Act. This section provides that whenever an executor or administrator has reason to question the validity of a claim, and no action to enforce the claim has been instituted and the estate has sufficient assets to permit payment of the claim in full, the executor or administrator may present a petition to the surrogate praying that the claimant be cited to show cause why his claim should not be disallowed. Section 211-c, however, enables the claimant to commence an ordinary action at law or equity on the claim, provided that where his claim has been presented and rejected, such action must be commenced within sixty days after the rejection. Both sections, 211-b and 211-c, were added in 1963 and became effective March 1, 1964. In this case, the claim was presented on April 2, 1964 and rejected on April 20, 1964. The court reasoned that since the claimant had sixty days from the date of rejection to commence an action at law or in equity on the claim, the personal representative should not be permitted to utilize the show-cause procedure (of § 211-b) in the surrogate's court until that sixty days (under § 211-c) had expired. This avoids a multiplicity of proceedings; the entertaining of the section 211-b petition before the sixty days had lapsed would not prevent the claimant from proceeding in another court under section 211-c within the sixty days. Thus, the court held that it would entertain the petition only after the running of the sixty days (provided, of course, that the claimant had not commenced an action at law or equity during that period).

³¹⁸ 43 Misc. 2d 106, 250 N.Y.S.2d 353 (Surr. Ct. 1964).